

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
HENNIGAN PLACE

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HENNIGAN PLACE ("Declaration") is made on the date hereinafter set forth by HENNIGAN PLACE, HOLDINGS, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant." Each capitalized term used in this Declaration shall have the meaning for such term defined herein unless otherwise required by context.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of all of that certain real property located in Mecklenburg County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). The Property has been or will be developed by Declarant as a residential community which is herein referred to as and which shall hereafter be known as Hennigan Place. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Hennigan Place and for the maintenance of the Property and improvements thereon, and to this end desire to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in Hennigan Place and the residents' enjoyment of the specific rights, privileges and easements set forth in this Declaration that an organization be created to which will be delegated and assigned the powers of maintaining common areas and certain easement areas, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused to be created or will cause to be created, for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Hennigan Place Homeowners Association, Inc.;

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Hennigan Place. Subject to the rights of Declarant reserved in this Declaration, such easements, covenants, conditions, restrictions,

charges and liens shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each Owner (as hereinafter defined) of the Property or any part thereof.

## ARTICLE I

### DEFINITIONS

Section 1.     Definitions. The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein), shall have the following meanings:

(a)     “Access Easement” shall mean and refer to all portions of the existing gravel driveways located on the Property, along with a new access driveway to be to be constructed as shown on Exhibit A to serve the six lots located to the left of the Homeplace.

(b)     “Act” shall mean and refer to the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

(c)     “Annual Assessments” shall have the meaning set forth in Article V hereof.

(d)     “Approved Builder” shall mean and refer to one or more persons or companies, in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale on the Property, so long as any such Approved Builder is in good standing with Declarant. As of the date of this Declaration, Classica Homes, LLC is the sole Approved Builder.

(e)     “Architectural Design Guidelines” shall have the meaning set forth in Article X hereof.

(f)     “Articles” shall mean and refer to the Articles of Incorporation of the Association.

(g)     “Association” shall mean and refer to Hennigan Place Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(h)     “Association Member” or “Member” shall mean and refer to any Person who holds membership in the Association as set forth in Article III hereof. Association Members shall include the Declarant, for so long as Declarant owns any part of the Property, and all Owners of Lots.

(i)     “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association.

(j)     “Bylaws” or "ByLaws" or "By-Laws" shall mean and refer to the Bylaws of the Association.

(k) “Certificate of Occupancy” shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

(l) “Common Area,” “Common Open Space”, “C.O.S.” or “Tree Save Area” shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired, in fee, from time to time by the Association, including, without limitation, that property identified and designated as “Common Open Space & Tree Save Area - 0.53 Acres (23,124 sq. ft.),” or other similar designation on any Plat (as hereinafter defined).

(m) “Common Expenses” shall mean and refer to the actual and estimated expenses the Association incurs or expects to incur, for the general benefit of all Owners (as hereinafter defined). Common Expenses include any reserves the Board deems necessary or appropriate.

(n) “Common Mailbox” shall mean and refer to the community mailbox, if any, for the Property from time to time maintained by the Association for the common use of the Owners.

(o) “Declarant” shall mean and refer to Hennigan Place Holdings, LLC, a North Carolina limited liability company, successors in title to Hennigan Place Holdings, LLC to the extent provided in and upon compliance with the requirements of the Act.

(p) “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Hennigan Place as it may be amended and/or supplemented from time to time as herein provided.

(q) “Historic Landmarks Commission” refers to that appointed body with the full name of the Charlotte-Mecklenburg Historic Commission, which has as its principal purpose the preservation of historically significant structures.

(r) “Homeplace” shall mean that portion of the Property, including all existing and proposed future structures or additions current approved or approved in the future by the Historic Landmarks Commission, that shall remain subject to the ongoing, perpetual authority of that body, and as specifically delineated on the attached Exhibit B.

(s) “Lot” shall mean and refer to any plot of land, with delineated boundary lines, shown on any Plat (as hereinafter defined), with the exception of any Common Areas. In the event any Lot is increased or decreased in size by resubdivisions, through recordation of new subdivision plats, any such newly platted Lot shall thereafter constitute a Lot for the purposes of this Declaration.

(t) “Member” shall mean and refer to each Owner (as hereinafter defined) or Lot Owner (as hereinafter defined) who by virtue of ownership of a Lot is automatically a Member in the Association.

(u) “Mortgage” shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

(v) “Mortgagee” shall mean and refer to the owner and holder of a Mortgage at the time such term is being applied.

(w) “Notice and Opportunity for Hearing” shall mean and refer to the giving of at least fifteen (15) days prior notice of a proposed action and the reasons thereof, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

(x) “Occupant” shall mean and refer to any person occupying all or any portion of a Lot or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

(y) “Owner” or “Lot Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

(z) “Person” shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

(aa) “Plat” shall mean and refer to any plat of the Property or any part of it which has been recorded in the Registry.

(bb) “Property” shall mean and refer to that certain real property located in Mecklenburg County, North Carolina, and more particularly described on Exhibit A attached hereto and incorporated herein by reference.

(cc) “Special Assessments” shall have the meaning set forth in Article V hereof.

(dd) “Special Individual Assessments” shall have the meaning set forth in Article V hereof.

(ee) “Special Declarant Rights” shall mean the rights defined in Section 47F-1-103(28) of the Act for the benefit of Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in this Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising Hennigan Place; to use easements for the purpose of making improvements within Hennigan Place; and to elect,

appoint or remove any officer or Board member of the Association until the Turnover Date (as defined in Section 2(b) of Article III hereof).

(ff) “Storm Drainage Easement Areas” shall mean and refer to the portions of the Property designated “Public Storm Drainage Easement” or other similar designation on any Plat, or as otherwise referenced on any current or future version of the Plat.

(gg) “Utilities Easement Areas” shall mean and refer to the portions of the Property designated “Charlotte Water – Water Easement” or other similar designation on any Plat, together with the front and rear ten feet (10’) and each side five feet (5’) of each Lot.

## ARTICLE II

### PROPERTY

Section 1. Property Made Subject to Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property, subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additional Declaration Documents. Declarant may supplement the provisions of this Declaration, whether with regard to the entire Property or any portion thereof, including any modifications as may be necessary to reflect the different character of any portion of the Property, provided the same are not inconsistent with the plan and spirit hereof.

Section 3. Changes to this Declaration Requiring Declarant’s Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of the Declarant shall be required for any Person to modify, change, supplement and/or amend, in whole or in part, the terms and provisions of this Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. Voting Rights. 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 Lot Owners except the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one 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. The Class B Member shall be the Declarant. The Class B Member shall be entitled to twenty (20) votes for each Lot owned. Notwithstanding anything contained herein to the contrary, the Class B membership shall cease and be converted to a Class A membership on the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that Class B membership cease and be converted to Class A membership (which election may be made, if at all, upon the Declarant giving written notice of the election to the Owners); or (c) December 31, 2020. The earliest to occur of (a), (b) or (c) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A Member.

#### ARTICLE IV

#### PROPERTY RIGHTS, EASEMENTS AND RIGHTS OF ENTRY

Section 1. Owner's Right of Enjoyment. Every Owner, and in the case of rented homes, such Owner's tenants, shall have a non-exclusive right to and easement for the enjoyment of the Access Areas, the Storm Drainage Easement Areas and the Utilities Easement Areas, which shall be used and maintained as set forth in this Declaration for the common benefit of the Property and the Owners. Such rights and easements shall be appurtenant to and shall pass with the title to every Lot.

Each Owner's non-exclusive right to and easement for the enjoyment of the Common Areas, Access Areas, the Storm Drainage Easement Areas and the Utilities Easement Areas shall be subject to the following:

(a) The right of the Association to suspend the voting rights for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas 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 three-fourths (3/4) of the votes appurtenant to each of the two classes of Lots (Class A Lots and Class B Lots) agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of water supply, sewerage, utilities, including CATV, and drainage facilities upon, over, under and across the Common Areas without the assent of the Members when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Property. Notwithstanding the above, the Association shall have the right to convey or transfer small portions of the Common Areas to any party or parties for the purposes of changing any Lot lines or correcting minor errors, discrepancies or encroachments which may arise in deeds, surveys or other instruments into the Association or any Owner, including any corrections made necessary by the revision or modification of an existing Plat of the Property;

(c) Except as provided in Subsection (b) hereinabove, conveyance or encumbrance of Common Areas shall be governed by Section 47F-3-112 of the Act which provides that portions of the Common Areas may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of Common Areas shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Areas or subject Common Areas to a security interest, but the contract is not enforceable against the Association until approved as hereinabove set forth. Thereafter, the Association has all powers necessary and appropriate to make the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support.

(d) The right of the Association, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each of the two classes of Lots (Class A Lots and Class B Lots), to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) The right of the Association to levy Annual Assessments, Special Individual Assessments and Special Assessments;

(f) The right of Declarant, and its successors and assigns, to make any improvements for any reason it deems proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of development the remainder of the adjacent property owned by Declarant. Although not limiting the scope of this easement, this easement shall include the right of access at all times for Declarant's employees, agents, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements and general utility easements across any of the Common Areas. This easement shall terminate upon completion of the development of Hennigan Place or fifteen (15) years from the date hereof, whichever first occurs;



(g) The right of the Association to prescribe rules and regulations governing the use, operation and maintenance of the Common Areas (including limiting the number of guests of Owners who may use such Common Areas) and the Lots (“Rules and Regulations”) subject to limitations established by Declarant on such right to impose the Rules and Regulations.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article 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 the City.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to the Owner’s tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in the City.

(c) Common Area. Except as otherwise provided herein, the common open space located to the left and rear of the Homeplace, is reserved for buffering for the Homeplace and otherwise for visual enjoyment and wildlife enhancement and shall generally remain undisturbed and unused subject to such rules and regulations governing said use of the Common Areas as may be established by the Board of Directors.

Section 3. Title to Common Areas. Title to the Common Areas shall be conveyed to the Association free and clear of all liens and encumbrances; provided, however, that Declarant shall have the right from time to time to reserve for the purpose of development of the Property, all or any portion of the Property, including any Common Areas, various easements and rights-of-way, together with the right to dedicate same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. Declarant’s rights hereunder shall not unreasonably interfere with any Owner’s easement for enjoyment.

The Association shall accept “as is” the conveyance of Common Areas without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements and repairs to be completed after the conveyance, including, without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operations of, or the utilities, materials or furniture which have been or will be used in such Common Areas or repairs, except as set forth herein. By acceptance of an interest in any such Common Area or the deed to any Lot, the Association and all Owners release Declarant from any claims and warrant that no claim shall be made by the Association or any Owner relating to the condition, or completeness of such property or repairs or for incidental or consequential damages arising therefrom.

Section 4. Entry Easement to Association. The Association, through its authorized representatives, shall have the right of entry and access to, over, upon and through all of the Property, to enable the Association to perform its obligations, exercise its rights, and fulfill its duties pursuant hereto, and such representatives shall not be deemed to have committed a trespass as a result thereof. Except in an emergency situation, entry shall only be during reasonable hours and after notification to the Owner(s) of the portion of the Property being entered.

Section 5. Provision of Services. The Association may provide, or provide for, services and facilities for all or any of the Owners and their Lots, and may enter into contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as a Common Expense and assess it as part of the Annual Assessment, if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, telephone, internet access, security monitoring, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by this Declaration. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

## ARTICLE V

### COVENANT FOR 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 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: (1) Annual Assessments or charges as provided in Section 3 of this Article V; (2) Special Assessments as provided in Section 4 of this Article V; and (3) Special Individual Assessments as provided in Section 5 of this Article V; The assessments described in (1), (2), and (3) of this Section 1 (the "Assessments"), together with interest thereon, late charges, attorney fees, court costs and other costs of collection, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made or has matured. The Assessment shall also be the personal or entity obligation of the person(s) or entity(ies) owning such Lot at the time when the Assessment fell due. Although unpaid Assessment charges are not the personal or entity obligation upon such Owner's successors in title unless expressly assumed by the successors in title, the unpaid Assessment charges continue to be a lien upon the property against which the Assessment has been made or has matured.

Section 2. Purposes of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the residents of the Property, the enforcement of this Declaration and the rules of the Association, and in particular for the improvement, and maintenance of the Property and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and any other areas maintained by the Association, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise, all such items being Common Expenses of the Association.

Section 3. Annual Assessment. Annual Assessment amounts shall be determined by the Board of Directors in accordance with the provisions of the Act and this Declaration effective January 1 of each year. In making such determination, the Board of Directors shall take into consideration, among other things, estimated development and maintenance costs to be borne by the Association under this Article V and future needs of the Association under this Article V. The time of payment of the applicable Annual Assessment amount shall be determined by the Board of Directors from time to time as set forth in statements of amounts due sent to each Owner of a Lot subject to Annual Assessment.

Annual Assessment amounts established by the Board of Directors shall continue thereafter from year to year until changed by said Board.

Section 4. Special Assessments. In addition to the Annual Assessments described in Section 3 above, the Board may levy in any assessment year or years, in accordance with the Act and this Declaration, 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 costs of any construction, reconstruction, repair or replacement of a capital improvement upon or within any Common Area or upon or within any Retaining Wall Easement Area. 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 a Special Assessment must be approved by a vote of the Members entitled to cast no less than two thirds (2/3) of all votes entitled to be cast by the Members. The due date of any Special Assessment levied pursuant to this Section 4 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner of a Lot subject to the Special Assessment at least thirty (30) days prior to the date such Special Assessment is due.

Section 5. Special Individual Assessments. The Board may levy Special Assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, the Retaining Wall Easement Areas, the Storm Drainage Easement Areas or the Utilities Easement Areas occasioned by the act

of a Lot Owner, or a Lot Owner's family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed by the Committee ( as defined in Article X) pursuant to the Architectural Design Guidelines, reimbursement to the Committee ( as defined in Article X) for any sums it expends on an Owner's behalf pursuant to the Architectural Design Guidelines, and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article XI; or (iii) for the purpose of reimbursing the Association for costs (including attorney's fees) incurred in bringing the Owner, the Owner's Lot or the Owner's residence into compliance with the provisions of this Declaration, the ByLaws or the Rules and Regulations. The due date of any Special Individual Assessment levied pursuant to this Section 5 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 6. Assessment Rate. Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots subject to Annual Assessments and Special Assessments and shall be collected on such basis as determined from time to time by the Board.

Section 7. Commencement of Annual Assessments and Special Assessments. The Annual Assessment for each Lot, shall commence on the earlier of (a) the first day of the month following the month in which a residence on the Lot is first occupied, or (b) the first day of the second month after the month in which a certificate of occupancy for a residence on the Lot is issued by the governmental authority having jurisdiction. The Annual Assessment for Lots which are first subject to Annual Assessments after January 1 of the applicable year shall be pro-rated for that year, beginning on January 1st of that year. Each Lot owned by an Owner other than an Approved Builder or the Declarant shall also be subject to Special Assessments. Failure to mail notices by the dates required shall not affect the rights of the Association to assess Lots as provided herein.

To the extent, if any, the total amount of Annual Assessments collected by the Association is from time to time insufficient to satisfy in full currently due charges for Common Expenses, excluding reserves ("Current Operating Short-Fall"), until Declarant no longer owns any of the Lots, Declarant shall fund the Current Operating Short-Fall.

Section 8. Non-Payment of Assessment. Any Assessment levied or matured pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, including reasonable attorney's fees, be a continuing lien which shall bind such Lot in the hand of the then Owner, and such Owner's heirs, devisees, personal representative and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them. Interest on delinquent

Assessments shall be charged at the lesser of the rate from time to time established by the Board or the highest rate permitted by the Act.

Any Assessment not paid within thirty (30) days after the due date shall be subject to such late charge as may be from time to time established by the Board or the maximum late charge permitted by the Act, and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the Lot as provided in Section 47F-3-116 of the Act and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by not using the Common Areas or by abandoning such Owner's Lot.

Section 9. Subordination to the Lien of First Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a 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 the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the Assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

Section 11. Reserves. The Annual Assessments may, as determined by the Board, include reasonable amounts as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Areas, Retaining Wall Easement Areas and any improvements located thereon and any improvements which are maintained by the Annual Assessments. All amounts collected as reserves, whether pursuant to this Section 11 or otherwise, shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

## ARTICLE VI

### UTILITIES AND STORM DRAINAGE EASEMENTS

Section 1. Utilities and Storm Drainage in General. Easements for installation and maintenance of water, sanitary sewer, gas, cable television, telephone, electric power and storm drainage facilities and for other utility installations are reserved as shown on each Plat and/or as more particularly set forth in this Declaration. Further, easements ten

(10) feet in width for such purposes are reserved over, under and through and along the front and rear Lot lines of all Lots and easements five (5) feet in width for such purposes are reserved over, under and through and along the side Lot lines of all Lots. In the event it is determined that other and further easements are required over any Lot or Lots in locations not shown on any recorded Plat and not along rear or side Lot lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a Lot or Lots to be affected thereby, the written assent of the Owner or Owners of such Lot or Lots and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements, unless approved in writing by the Committee (as defined in Article X) in accordance with the terms of Article X and all public authorities having jurisdiction. Any improvements or obstructions placed within easements shall be subject to removal or relocation without replacement as may be necessary for emergency service or maintenance operations by the Association or appropriate governmental authority. Such approved improvements shall be done at the Lot Owner's risk of removal. Except for those improvements for which a public authority or utility is responsible and except as otherwise specifically set forth in this Declaration, the easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot

## ARTICLE VII

### INSURANCE

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 2 through 5 of this Article VII set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended or deleted, the insurance requirements set forth in Sections 2 through 5 of this Article VII shall likewise be changed, amended or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

Section 2. Property Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for

Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section 3. Liability Insurance. The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and the Retaining Wall Easement Areas. The liability insurance shall be for the benefit of the Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that the liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage.

Section 4. Required Provisions for Property and Liability Insurance. Insurance policies carried pursuant to Sections 2 and 3 above shall provide that:

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

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

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

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

Section 5. Insurance Repairs. Any portion of the planned community for which insurance is required under Sections 2 and 3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or

lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owner's Personal Property. The Association or Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, guests or invitees, located on or used at the Common Areas. Further, the Association or Declarant shall not be responsible or liable for any damage or loss to any personal property of any Owner, or such Owner's family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

Section 8. No Obligation to Insure Owners' Property. By virtue of taking title to a Lot within Hennigan Place, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or Improvement (as hereinafter defined) located thereon.

Section 9. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security measures, and maintain or support certain other activities within Hennigan Place designed to make Hennigan Place safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security within Hennigan Place, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Board, Declarant nor any successor of Declarant is an insurer, and each such Owner, and Occupant of a Lot, and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

## ARTICLE VIII

### USE RESTRICTIONS



Section 1. Land Use and Building Type. All Lots shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two (2) stories in height as viewed from the street facing the front façade of the dwelling, and a private garage or garages having combined space for not less than two (2) cars and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers or similar structures during the construction of residences within Hennigan Place as approved by the Declarant.

Section 2. Building Setbacks. All buildings shall be erected within the setback lines shown on the Plat of each Lot. Declarant reserves the right to revise any Plat and change any building setback line shown on the original Plat provided that any minimum setback line shown on a revised Plat shall not be less than applicable zoning ordinances. No building, garage, carport, or other accessory building and structure incidental to the residential use of each Lot shall be located outside of the setback lines shown on the Plat of the Lot or nearer to a side or rear lot line than permitted by applicable City zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Committee (as defined in Article X) in accordance with the terms of Article X. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the Plat of each Lot or reserved herein or upon any other Lot.

Section 3. Fences and Walls. Prior to construction or installation of any fence, wall, or other similar improvement on a Lot, such improvements must be approved by the Committee (as defined in Article X) in accordance with the terms of Article X. The fencing restrictions in this Article shall not be applicable to model homes owned by Declarant or Declarant's assigns.

Section 4. Building Plot Area and Width. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable City zoning ordinances.

Section 5. Temporary Structures and Parking. No residence 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. Mobile house trailers, on or off wheels, recreational vehicles, three or four wheel all-terrain vehicles, motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers" or "trailers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on any public right-of-way within the front or side street setback lines or anywhere on the Lot unless contained within the garage serving the single-family residence on the Lot.

No vehicle of any type which is abandoned, inoperative, non-registered or out of service and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot unless contained within the garage serving the single-family residence on the Lot. Vehicles shall not be parked on the sidewalk or within any public right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within any public right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within Hennigan Place.

The restriction set forth in this Section 5 shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of Hennigan Place and the construction of homes in Hennigan Place.

Section 6.     Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood as determined by the Board. 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 “conventional” or “customary” 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 in number except for newborn offspring of such household pets which are under six (6) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Committee (as defined in Article X). Notwithstanding the foregoing, Pitbulls, Doberman Pinschers and Rottweilers are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and Common Areas and the security measures taken by the Owner with respect to such animal, the Board, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

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 not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property or drainage swales. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Common Area, Lot, drain, drainage ditch or swale or stream. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

Section 7.     Buffers. Each Lot shall comply with all buffer requirements applicable thereto as shown on the Plat of the Lot.

Section 8.     Outbuildings and Pools. No outbuildings of any kind shall be placed on any Lot. No above-ground pool structures shall be erected on any Lot.

Section 9. Signs. Unless approved by the Committee (as defined in Article X) in accordance with the terms of Article X, no sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign previously approved by Declarant for use by Approved Builders to advertise Lots during the construction and sales period.

Section 10. Unintentional Violations. In the event of the unintentional violation of any of the building line restrictions set forth herein, Declarant, or Declarant's assigns, reserve the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction; provided, however, that such change shall not be in violation of any provision of the zoning ordinances of the City, nor serve as precedent for other Lots.

Section 11. Antennas, Satellite Dishes or Discs. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Committee (as defined in Article X) in accordance with the terms of Article X.

Section 12. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of this Declaration and a copy of the By-Laws and Rules and Regulations of the Association. The lease shall also obligate the tenant to comply with the aforementioned documents.

Section 13. Maintenance of Lot, Trash Receptacle, Etc. Each Owner shall keep such Owner's Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. 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.

All trash receptacles, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. Equipment must be stored the same day as collection, following collection. All rubbish, trash and garbage shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within Hennigan Place without the prior written approval of the Association.

Section 14. Firearms. The use of firearms in Hennigan Place is prohibited. The term "firearms" includes, without limitation, "B-B" guns, paint ball guns, pellet guns, airsoft guns, bow and arrows, slingshots and small firearms of all types.

Section 15. Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any plot, unless placed temporarily on the plot by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items are generally not allowed but may be approved by the Committee (as defined in Article X) on a case by case basis in accordance with the terms of Article X.

## ARTICLE IX

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, members, managers, 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 another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, members, managers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not 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 premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, 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 any director or officer or former director or officer of the Association or 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) or liabilities actually and reasonably incurred by him 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 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, bylaw, agreement, vote of members or any 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 make efforts 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 and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him 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 behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article IX, 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 X

### ARCHITECTURAL CONTROL

Section 1. Review by Committee. Notwithstanding anything contained in this Declaration to the contrary, no Improvements (as defined in Section 9 of this Article X), including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property until: (a) during the period of time the Declarant owns any Lot, the Declarant, and thereafter the Board (as applicable, the "Committee") has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural Design Guidelines; and (b) the fees set forth in or contemplated in this Article X have been paid. The provisions of this Article X shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant. In addition, no alteration or modification to an existing dwelling unit or any other structure previously approved by the Committee, whether dwellings, buildings, gazebos, storage sheds, room additions, ramadas, rooms, fences, walls, canopies, statuary, awnings, roofs, devices to be mounted on roofs, exterior lighting facilities, recreational/athletic facilities, changes in exterior paint color, or other similar improvements or attachments shall be constructed and no alteration of the established drainage on a Lot shall be made unless complete plans and specifications

thereof have been first submitted to and approved in writing by the Committee. The Committee shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that all such changes, improvements and alterations requested for properties within the Property conform to and harmonize with the existing surroundings, dwellings, landscaping and structures. Final plans and specifications shall be submitted in duplicate to the Committee. The plans and specifications shall show the nature, kind, shape, height, materials and location of all improvements and landscaping. The documents shall specify any requested variance from the setback lines, garage location or any other requirement set forth in this Declaration. At such time as the plans meet the approval of the Committee, one complete set will be retained by the Committee and the other set shall be marked approved on behalf of the Committee and returned to the Owner or the Owner's designated representative. If disapproved by the Committee one set of such plans shall be returned marked "disapproved" and shall be accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans. If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of receipt of same by the Committee, written approval of the matter submitted shall not be required and compliance with this Article shall be deemed to have been completed, so long as the submission does not otherwise violate or fail to conform to any restrictions or requirements of this Declaration or previously established requirements of the Committee in which event the submission shall be deemed disapproved by the Committee. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

Section 2. Fee. The Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 3. Architectural Design Guidelines and Development Standards. The Committee may develop, publish and promulgate architectural standards and guidelines ("Architectural Design Guidelines" or "Guidelines") which shall be used by the Committee in reviewing any proposed plans, specifications and materials submitted to the Committee for approval. The Architectural Design Guidelines shall establish development standards setting forth the minimum standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping and relevant criteria deemed important by the Committee for the construction of improvements of any nature in the Property. The purpose of such development standards will be to preserve and promote the character and orderly development of the Property. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agrees to be bound by all provisions of such development standards as may be adopted by the Committee and to use diligence in keeping abreast of the provisions thereof and any amendments thereto.

Section 4. No Waiver. The approval or disapproval by the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed: (a) to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent not; (b) to prohibit the

Committee from modifying and amending the Architectural Design Guidelines from time to time to specifically permit any improvement previously prohibited or (c) to prohibit any improvement previously permitted.

Section 5. Variance. The Committee may authorize variances from compliance with the Architectural Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the Committee, and no variance shall (a) be effective unless in writing or (b) estop the Committee from denying a variance in other circumstances.

Section 6. Violation of Approved Plans and Right of Entry. If it is determined by the Committee that a violation exists on a Lot, or that work completed on any Lot has not been completed in compliance with the final plans approved by the Committee, the Committee may notify the Owner in writing of such non-compliance within thirty (30) days of inspection, specifying in reasonable detail the particulars of non-compliance and may require the Owner to remedy the same. The Association shall have the right to enter upon the Lot of any Owner and to perform compliance or remedy non-compliance as ordered by the Committee and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand therefor. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance, Declarant or the Association (as their interests shall appear) shall notify the Owner that it shall take action to remove the non-complying improvements and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed ten percent (10%) of the cost of achieving compliance.

Section 7. Non-Liability for Approval of Plans. Committee approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications, neither the Committee (whether the Declarant or the Board), the members, directors, managers or officers thereof, the Association, any Member thereof, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in any Improvements constructed from such plans or specifications. Neither the Committee (whether the Declarant or the Board), any member, director, manager or officer thereof, the Association, the Board nor Declarant shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 8. Compliance with Laws. Review and approval of plans and specifications by the Committee shall not imply or infer compliance with any law, ordinance or regulation, or structural integrity or safety of any Improvements described in any approved plans and specifications. Review and approval as provided in this Article is for aesthetic purposes only. It is each Owner's sole responsibility to plan and construct

any and all Improvements in a manner which complies with all applicable codes, statutes, laws, ordinance and regulations, including, without limitation, the water quality protection regulations of the City, and in compliance with any approval granted hereunder.

Section 9. Definition of “Improvements”. The term “Improvement” (or “improvement”) or “Improvements” (or “improvements”) shall mean and include any and all man made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; “invisible” pet fencing; pet “runs,” lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; driveways; statuary; ponds; lakes; changes in grade or slope; site preparation; swimming pools; hot tubs; Jacuzzi; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Committee.

Section 10. Duty to Complete Improvements. An Owner shall complete all approved Improvements, subject to unforeseen circumstances and causes beyond the reasonable control of such Owner, as determined by the Committee, within twelve (12) months following commencement of construction of approved Improvements in the case of Improvements consisting of initial construction of a residence and related Improvements (provided, however, notwithstanding the foregoing, the above limitation shall be eighteen (18) months in each case of initial construction of a residence and related Improvements by an Approved Builder) and within six (6) months following commencement of construction of all other approved Improvements.

## ARTICLE XI

### COMMON AREA AND LOT MAINTENANCE

Section 1. Maintenance by Association. The Association shall repair and maintain the Common Areas (including, without limitation, the Common Mailbox); provided, however, the foregoing shall not be construed as obligating the Association to repair or maintain any utility line serving any Lot.

Section 2. Maintenance by Owners. Except for the Association 's specific obligations set forth herein, each Owner shall, at all times, maintain, repair and otherwise be responsible for such Owner's Lot, including all structures, utility lines walkways, fences, landscaping, Storm Drainage Easement Areas, Utilities Easement Areas, and other improvements thereon to the extent not maintained by a public authority. An Owner shall be responsible for replacement and reconstruction of improvements on such Owner's Lot



required because of damage or destruction by fire or other casualty. No structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of drainage facilities, swales and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or any Common Area as established in connection with the approval of any Plat, except to the extent such interference or alteration is approved in writing by the Committee and all public authorities having jurisdiction. All of the aforesaid drainage facilities, swales and appurtenances shall at all times be accessible to Declarant until Hennigan Place is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing the drainage facilities, swales and appurtenances located on the applicable Lot. Declarant may from time to time present for recordation in the official records of the City instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities.

Section 3. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

Section 4. Right to Enter. In addition to the easements set forth in Article XII hereof, after reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any violation, repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to such Owner's Lot subject to such right of access of the Association or its agents. By way of illustration, and not limitation, the Association may repair, maintain and replace drainage facilities and/or drainage swales on a Lot.

Section 5. Failure to Maintain by Owner. All maintenance required by Owners under this Article XI shall be performed in a manner consistent with the Declaration, By Laws, Architectural Design Guidelines and all other applicable rules and regulations. If any Owner of a Lot fails properly to perform such Owner's maintenance responsibilities or removes trees, shrubs or any other vegetation without Committee's approval, the Association, after giving Owner a minimum of seven (7) days' written notice to cure the failure to maintain, shall have the right, but not the obligation, to enter such Owner's Lot to maintain said Lot and assess all costs incurred by the Association against the Lot and the Owner thereof as a Special Individual Assessment as provided in Section 5 of Article V.

## ARTICLE XII

### EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, and its successors and assigns, and grants to the Association and any

other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant hereby reserves unto itself, and its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for Hennigan Place, including, but not limited to, easements in favor of the Declarant, the Association, any designees of the foregoing, and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross Easements on Common Areas. Declarant, for itself, and its designees and the Association, reserve the right to impose upon the Common Areas henceforth and from time to time such easements and cross easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, landscape/irrigation, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, Hennigan Place or any portion thereof.

Section 2. Use of Common Areas. Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and lessees, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right of the Association and Declarant to Enter Upon the Common Areas, Access Areas, Storm Drainage Easement Areas, and Utilities Easement Areas. Declarant hereby reserves for the benefit of itself, and its successors in interest and assigns, and grant to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas, Easement Areas, Storm Drainage Easement Areas and Utilities Easement Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas, Access Areas, Storm Drainage Easement Areas and Utilities Easement Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, except as otherwise specifically set forth herein, nothing contained herein shall be interpreted as imposing any obligation upon the Association or

Declarant to maintain, repair, or replace any areas or any Improvements on any Lot, all of which the Owner of the applicable Lot is required to maintain, construct or repair.

Section 4. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, and its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees,

Section 5. Utility and Drainage Easements. The Property shall be subject to all easements and rights of way for utilities and drainage shown on any Plat.

Such easements are hereby reserved for the use of Declarant and its successors and assigns, and are hereby established for the use of the Association, its successors and assigns. Within the above described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities, unless approved by the Committee. In no event shall improvements change the direction or flow of drainage channels or create erosion problems in the easements. Any improvements or obstructions placed within easements shall be subject to removal or relocation without replacement as may be necessary for emergency service or maintenance operations by the Association or appropriate governmental authority. Such approved improvements shall be done at the Lot Owner's risk of removal. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Committee, over such easements.

Section 6. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by Declarant hereunder. The areas burdened by the easements and rights of way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property. Declarant and/or the Association may exercise the rights reserved in Article XI hereof for the purpose of enforcing the provisions of this Section 6.

Section 7. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot, Common Area or other portion of the Property for the exercise of the easement rights described in this Article XII and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross

negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be. This shall not apply to damages to property or improvements located on or over established easements or rights-of-way that may be damaged, removed or relocated as required for emergency or easement maintenance. The Lot Owner shall be responsible for the repair/replacement of improvements and for identifying and/or locating any underground improvements within easement or right-of-way areas upon request.

Section 8. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights of way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Property, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Property and the preservation and enhancement of Declarant's interests therein.

Section 9. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

### ARTICLE XIII

#### EMINENT DOMAIN (CONDEMNATION)

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

### ARTICLE XIV

#### TERMINATION OF PLANNED COMMUNITY

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

### ARTICLE XV

#### AMENDMENT, RESERVATION OF SPECIAL DECLARANT RIGHTS

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or

impairing Special Declarant Rights may be made without the written consent of the Declarant, the right to exercise any and all Special Declarant Rights being hereby reserved to Declarant.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, 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. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 3. Amendment. Subject to the provisions of Article XV hereof, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina and shall take effect only upon such recording.

Section 4. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 5. Captions. The Captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

Section 6. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 7. Notices. Any notice required to be sent to any Member of Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, post paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By Laws of the Association, this Declaration shall control.

Section 9. Condemnation. Subject to the provisions of Article XIII hereof, in the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

Section 10. Disclaimer. Notwithstanding anything contained herein or in the Articles of Incorporation, By Laws, Rules or Regulations or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, occupant or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortuous or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, agents, parties and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership or occupancy of any portion of the Property.

Section 11. Construction Activities. All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, Approved Builders, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may,

from time to time, conduct blasting, excavation, construction, and other activities within Hennigan Place. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or Hennigan Place generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, Approved Builders, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant and Approved Builders to sell, convey, lease, and/or allow the use of Lots within Hennigan Place.

Section 12. No Liability for Third Party Acts. Owners and Occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property in Hennigan Place. The Association may, but is not obligated to, maintain or support certain activities within Hennigan Place which promote or enhance safety or security within Hennigan Place. However, the Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within Hennigan Place, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

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

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES**

2245 MECKLENBURG AVE, LLC, a North Carolina limited liability company

By: \_\_\_\_\_

\_\_\_\_\_  
Robert S. Lilien, Manager

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, a Notary Public for said County and State, certify that Robert S. Lilien, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally came before me this day and acknowledged he is the Manager of 2245 MECKLENBURG AVE, LLC, a North Carolina limited liability company, and that he, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the limited liability company for the purposes stated therein.

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

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

My Commission Expires:  
\_\_\_\_\_



2245 MECKLENBURG AVE, a North Carolina  
limited liability company

By: \_\_\_\_\_

\_\_\_\_\_  
William E. Saint, Manager

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, a Notary Public for said County and State, certify that William E. Saint, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally came before me this day and acknowledged he is the Manager of 2245 MECKLENBURG AVE, LLC, a North Carolina limited liability company, and that he, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the limited liability company for the purposes stated therein.

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

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

My Commission Expires: \_\_\_\_\_

**Exhibit A**

BEING all of the property depicted on the map entitled "CEDAR VILLAGE SUBDIVISION" recorded in Map Book \_\_\_\_, Page \_\_\_\_, in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

**CONSENT AND SUBORDINATION**

**OF**

**UNITED COMMUNITY BANK**

**AND**

**JAMES, MCELROY & DIEHL, P.A.**

The undersigned, being Beneficiary and Trustee in that certain Deed of Trust Securing Future Advances by 2245 MECKLENBURG AVE, LLC, a North Carolina limited liability company, recorded in Book 31317, Page 64 in the Mecklenburg County Public Registry, (the "Deed of Trust"), do hereby consent to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for Hennigan Place ("Declaration") to which this Consent and Subordination is attached and do hereby agree that the Declaration shall be superior to the lien of the Deed of Trust.

IN WITNESS WHEREOF, the undersigned have caused this Consent and Subordination to be duly executed and sealed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BANK: UNITED COMMUNITY BANK

By: \_\_\_\_\_  
\_\_\_\_\_ President

TRUSTEE: JAMES, MCELROY & DIEHL, P.A.

By: \_\_\_\_\_  
John W. Beddow, Vice President

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

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally came before me this day and acknowledged that (s)he is \_\_\_\_\_ of United Community Bank, and that (s)he, as \_\_\_\_\_ President, being authorized to do so, voluntarily executed the foregoing on behalf of said United Community Bank for the purposes stated therein.

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

(Notary Seal)

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

Printed Name of Notary

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, a Notary Public of the County and State aforesaid, certify that John W. Beddow, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally came before me this day and acknowledged that he is Vice President of James, McElroy & Diehl, P.A., and that he, as Vice President, being authorized to do so, voluntarily executed the foregoing on behalf of said James, McElroy & Diehl, P.A. for the purposes stated therein.

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

(Notary Seal)

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

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_