

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR  
SOUTH DONAHUE TOWNHOUSES**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOUTH DONAHUE TOWNHOUSES is made as of the 5<sup>th</sup> day of May, 2017, by Rowhomes of South Donahue, LLC (“Developer”).

**RECITALS:**

Developer is the owner of the Property, as described in Section 1.19 below, and desires to own, develop, improve, lease, and sell the Property for residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements, and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has heretofore caused or shall cause the Association, as defined in Section 1.04 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the harmonious nature of the landscaping and exterior appearance of the Development, establishing annual budgets therefor and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.03 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, covenants, conditions, restrictions, charges, liens, and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any portion of the Property described in *Exhibit A* attached hereto and any of the Additional Property, as described in Section 1.01 below (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

**ARTICLE I  
Definitions**

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

**1.01 Additional Property.** The term “Additional Property” shall mean and refer to any real property and any Improvements situated contiguous to the Property (but which does not presently comprise any part of the Development) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below.

**1.02 Articles of Incorporation.** The term “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

**1.03 Assessment.** The term “Assessment” shall mean the annual and special assessments and any other charges assessed against an Owner by the Association pursuant to Article VIII hereof.

**1.04 Association.** The term “Association” shall mean SOUTH DONAHUE TOWNHOMES OWNERS’ ASSOCIATION, INC., an Alabama nonprofit corporation.

**1.05 Board.** The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

**1.06 Bylaws.** The term “Bylaws” shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

**1.07 Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the association, including, without limitation, those expenses described in Section 8.04(e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

**1.08 Declaration.** The term “Declaration” shall mean and refer to this DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SOUTH DONAHUE TOWNHOMES and all amendments thereto.

**1.09 Developer.** The term “Developer” shall mean Rowhomes of South Donahue, LLC, its successors and assigns.

**1.10 Development.** The term “Development,” with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.02 hereof.

**1.11 Governmental Authority.** The term “Governmental Authority” shall mean any and all city, county, state, and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Development.

**1.12 Improvement.** The term “Improvement,” with an initial capital letter, shall mean and refer to any building, structure, or device constructed, erected, or placed upon any Lot which in any way affects the exterior appearance of any Lot, including the Town Home erected thereon. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, patios, underground utilities, driveways, walkways, paving, curbing, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot.

1.13 **Institutional Mortgagee.** The term “Institutional Mortgagee” shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust, or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot which has been duly and properly recorded in the Probate Office of Lee County, Alabama.

1.14 **Lot.** The term “Lot,” with an initial capital letter, shall mean and refer to each of Lots 1-10, as shown on the Subdivision Plat.

1.15 **Mortgage.** The term “Mortgage,” with an initial capital letter, shall mean and refer to any mortgage, deed of trust, or other security device encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office of Lee County, Alabama.

1.16 **Mortgagee.** The term “Mortgagee,” with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

1.17 **Occupant.** The term “Occupant” shall mean and include any Owner, the family members, guests, tenants, agents, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees, and any other person who occupies or uses any Town Home within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot.

1.18 **Owner.** The term “Owner,” with an initial capital letter, shall mean and refer to the record owner, including Developer, of fee simple title to any Lot whether a corporation, partnership, proprietorship, association, or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser, or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract, or other agreement.

1.19 **Property.** The term “Property,” with an initial capital letter, shall mean and refer to that certain real property situated in Lee County, Alabama, which is more particularly described in *Exhibit A* attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof.

1.20 **Subdivision Plat.** The term “Subdivision Plat” with an initial capital letter, shall mean and refer to the subdivision plat for SOUTH DONAHUE TOWNHOMES recorded in Plat Book 39, at Page 69, in the Office of the Judge of Probate of Lee County, Alabama.

1.21 **Town Home.** The term “Town Home” with an initial capital letter, shall mean and refer to the Improvements constructed on any Lot which is intended to be used for residential dwelling.

## **ARTICLE II**

### **Property Subject to the Declaration**

2.01 **General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof, and each Lot and Town Home shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot and Town Home thereof.

2.02 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer, or by an entity affiliated with or under the common control of Developer or the individual members of Developer, in the manner required for the execution of deeds and recorded in the Probate Office of Lee County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions, and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy, and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Lee County, Alabama, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Town Homes within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions, or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.02 shall not be deemed to inure to

the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

**2.03 Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Town Home, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Development, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors, and assigns.

**2.04 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make improvements and changes to all Lots or Town Homes owned by Developer, including without limitation, (i) changes in the location of the boundaries of any Lots or Town Homes owned by Developer, (ii) installation and maintenance of any water, sewer, and any other utility systems and facilities and (iii) installation of security and trash and refuse facilities.

**2.05 Subdivision Plat.** Developer reserves the right to record, modify, amend, revise, and otherwise add to, at any time and from time to time, the Subdivision Plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, utility easements, drainage easements, access easements, and set-back line restrictions. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide, redivide, combine and/or resubdivide any Lots owned by Developer.

### **ARTICLE III Easements**

**3.01 Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself, the Association and their respective heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all portions of the Property which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining, and operating all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair,

operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.01 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.01 shall not unreasonably interfere with the use or occupancy of any Town Home situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.01 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

**3.02 Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 7.02 below, Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement to enter upon any Lot for the purpose of installing and/or maintaining the landscaping on each Lot and the exterior of each Town Home, including but not limited to painting, replacing roofing shingles (or reroofing, as necessary), and removing trash, so as to maintain the uniform appearance of the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

**3.03 Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Town Home for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Town Home situated on any Lot.

#### **ARTICLE IV Association**

**4.01 Membership.** The Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot owned by Developer in the Development, (b) in the event any Lot is owned by more than one (1) person, then the Owner of such Lot shall designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot owned by such Owner, and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure

of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separate and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

**4.02 Board.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot within the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.02.

**4.03 Voting Rights.** Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, the Owner of each Lot shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot. Such voting rights shall continue to apply to each Lot upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot, consents and agrees to the dilution of his voting interest in the Association by virtue of the re-subdivision of any Lot by Developer or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Town Homes owned by Developer.

**4.04 Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity, or inconsistency between the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the *Code of Alabama*, this Declaration, the Articles of Incorporation, the

Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Town Homes and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same, (ii) subject to the provisions of this Section 4.04, the right to borrow money for the purpose of providing any of the services authorized herein, (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the Lots and Town Homes. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

**4.05 Agreements.** Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation, or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

**4.06 Management by Developer or its Affiliates.** Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot within the Development, at such compensation and on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality, and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot,



shall be deemed to ratify the provisions of this Section 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

**4.07 Rules and Regulations.** The Board may establish and enforce reasonable rules and regulations governing the use of all Lots and Town Homes. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board and such other matters. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled, or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled, or modified unless such action is also approved by Developer for so long as Developer owns any Lot in the Development.

**4.08 Indemnification.** The Association shall and does hereby indemnify, defend, and agree to hold each and every officer, agent, representative, and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid, or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit, or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative, or member of the Board of the Association. The officers, agents, representatives, and members of the Board of the Association shall not be liable for any mistake in judgment, negligence, or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives, and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall and does hereby indemnify, defend, and agree to forever hold each such officer, agent, representative, and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative, or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

## **ARTICLE V**

### **Architectural Standards**

5.01 The Development is a zero lot line development and is intended to remain harmonious as to landscaping and design of all Town Homes and other Improvements on any Lot, including the color scheme, finish, proportions, and style of architecture. Accordingly, no improvement may be constructed on any Lot and no alterations or additions may be made to any Town Home without

the prior written consent of the Board. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the provisions hereof or plans and specifications approved by the Association for such alteration and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of nonconforming work, the completion of uncompleted work, or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any of the enforcement rights specified herein.

## **ARTICLE VI**

### **Use Restrictions**

**6.01 Use Restrictions.** Except as otherwise provided to the contrary herein, each Lot and Town Home shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Town Home; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, duplexes, zero-lot-line homes, and cluster or patio homes for residential dwelling purposes. The use of any portion of a Town Home as an office by an Owner or Occupant shall not be considered a violation of this covenant, if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Town Home for residential purposes only shall not be considered a violation of this covenant.

**6.02 Landscaping.** The Association shall maintain and replace, as necessary, all landscaping and sidewalks within the Development, and no Owner or Occupant may plant additional flowers, trees, bushes, hedges or shrubbery planting, nor any vegetable, herb, or similar gardens, without the prior written consent of the Association. No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses, or other fixtures and accessories shall be placed or installed within any Lot, unless approved by the Association. Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot as soon as such holiday passes. The Association shall install, maintain and pay the expenses of an irrigation system for all landscaping within the Development.

**6.03 Roofing.** The Association shall maintain and replace the roof of each Town Home, as such are conjoined across property lines and it is the intent herein that all roofs shall remain uniform, therefore no Owner or Occupant shall alter same without the prior written consent of the Association. Repair or replacement of roofing and shingles shall conform to existing roofs and shall be the sole responsibility of the Association. No projection of any type, including but not limited to, solar or other energy collection panel, equipment, or device, shall be installed or maintained on any Lot, including, without limitation, the roof of any Town Home without the prior written consent of the Association.

**6.04 Exterior Lighting.** No additional exterior lighting for any Town Home, including without limitation, free standing lighting and utility (e.g., flood) lights, may be installed, without the prior written consent of the Association.

**6.05 Exterior Materials and Finishes.** The exterior building material and finishes for each Town Home in the Development are intended to remain harmonious. Accordingly, no change may be made to any exterior colors, including, without limitation, the color of roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors, and shutters without the prior written consent of the Association.

**6.06 Garages.** As constructed, each Town Home will provide for parking for one (1) automobile in garages equipped with garage doors. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the Association. All automobiles owned or used by the Owner or Occupant of any Town Home and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein.

**6.07 Fences.** The Developer has constructed a privacy screen along part of the lot line of each Town Home, and no alteration or replacement thereof shall be permitted without the prior written approval of the Association. As it is intended that no Lot or any portion thereof will be enclosed, no fence shall be constructed on any Lot without the prior written approval of the Association.

**6.08 Windows, Window Treatments, and Doors.** The Developer intends to construct each Town Home with uniform doors and windows, which will provide a harmonious design within the Development, and no alteration or replace thereof shall be permitted without the prior written approval of the Association. No burglar bars, screen doors or metal doors with glass fronts (e.g. storm doors) may be installed without the prior written consent of the Association. Reflective glass shall not be permitted on the exterior of any Town Home, and no foil or other reflective material shall be installed on any windows or used for sunscreens, blinds, shades, or other purposes. Appropriate window treatments shall be used on all windows and the view of same from the exterior of the Town Home must be neutral color (e.g. white, off-white, cream). Sheets, bed linens, blankets, and paper or plastic bags are not appropriate window treatments.

**6.09 Mailboxes.** The initial mailbox shall be provided by the Developer and contain only the address of the Lot. Any replacement mailbox is the responsibility of the Owner and shall be identical to the initial mailbox supplied by the Developer in all respects and requirements, including location thereof, unless otherwise approved by the Association.

**6.10 Utility Meters and HVAC Equipment.** All electrical, gas, telephone, and cable television meters, to the extent practicable, shall be located at the rear of all Town Homes. All exterior heating, ventilating, and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of a Town Home and no window mounted heating or air conditioning units or window fans shall be permitted.

**6.11 Satellite Dishes and Antennae.** No satellite, radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or any other portion of the Development, unless the type and location of same is approved by the Association.

**6.12 Outdoor Furniture, Recreational Facilities, and Clotheslines.** No furniture, children's toys, swing sets, jungle gyms, trampolines or other recreational equipment shall be placed, kept, installed, maintained, or located in or on the front yards of any Lot. Basketball backboards shall not be affixed to the Town Home without the prior written consent of the Association. Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. No clothing, rugs, or other items shall be hung or allowed to remain on any railing, fence, or wall.

**6.13 Pets and Animals.** No more than two (2) dogs weighing less than fifty pounds and/or cats may be kept and maintained on a Lot. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Lot without the prior written consent of the Association, as to size, type and location. Each Owner shall be liable to the Association for the costs of repairing any damage to the landscaping within the Development caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Development, including the right to assess fines for violations of such rules and regulations.

**6.14 Trash, Rubbish, and Nuisances.**

(a) No trash, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots or Town Homes within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot, and each Owner and Occupant shall refrain from any act or use of a Lot which would cause disorderly, unsightly, or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation, or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be

located, used, or placed upon any Lot or other portion of the Development. Any Owner or Occupant or any of the respective family members, guests, invitees, agents, employees, or contractors of such Owner or Occupant who dumps, places, or allows trash or debris to accumulate on his Lot or Town Home shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage, and any other refuse or waste shall not be kept on any Lot except in sanitary containers. Trash cans and containers shall at all times be kept at the rear of or inside a Town Home except on trash collection days.

(c) No outdoor burning of trash, garbage, leaves, wood, shrubbery, or other materials shall be permitted on any Lot.

**6.15 Recreational Vehicles and Machinery and Equipment.** Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be stored or allowed to remain on any Lot unless approved by the Association; and the Board shall have the right to adopt rules and regulations with respect to same.

**6.16 Signage.** No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Town Home or elsewhere on any portion of any Lot, without the express written permission of the Association; provided however, that the Developer may display such signs as it deems necessary and appropriate to promote the development and sales of the town homes therein, and provided further that one "for rent" or "for sale" sign may be placed on the Lot without permission from the Association.

**6.17 Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit temporary structures for social functions as may be permitted by the rules and regulations adopted by the Association.

**6.18 Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements, and code provisions of the Governmental Authorities.

**6.19 Additional Regulations.** In addition to the restrictions set forth in this Declaration, the Association shall have the right from time to time and at any time to adopt, modify, and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots, and Town Homes.

**6.20 Variances.** The Association, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot. Any variance request submitted to the Association shall be in writing.

**6.24 Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the Association shall have the right, at its option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives, and independent contractors enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Association in connection therewith (i) shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, (ii) shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, (iii) if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any of the enforcement rights specified herein.

## **ARTICLE VII**

### **Maintenance Responsibilities**

#### **7.01 Responsibilities of Owners.**

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots and Town Homes and all other Improvements situated thereon or therein shall be the responsibility of the Owner of each Lot; provided, however, that maintenance and replacement of the roofs of the Town Homes and the lawns, landscaping, sidewalks and grounds on or within a Lot shall be the responsibility of the Association. Each Owner shall be responsible for maintaining his or its Lot, as the case may be, in a neat, clean, and sanitary condition; provided, however, that no exterior changes, alterations, or Improvements shall be made to any Lot or Town Home without first obtaining the prior written approval of the same from the Association.

(b) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Town Home or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Association or (ii) do any work which, in the reasonable opinion of the Association would jeopardize the soundness and safety of any other Town Home within the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every case obtaining the prior written approval of the Association.

## **7.02 Responsibilities of Association.**

(a) Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition the roofs of the Town Homes and uniform landscaping of each Lot. Said responsibility shall include the maintenance, repair, and replacement of all landscaped areas, including all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon any Lot. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, act of God, or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any landscaped area maintained by the Association, or (3) resulting from thief, burglary, or other illegal entry onto any Lot. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair, or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, employees, invitees, or contractors, and the costs of such maintenance, cleaning, repair, or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.09 below.

## **ARTICLE VIII Assessments**

**8.01 Assessments and Creation of Lien.** Each Owner of a Lot, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains

a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in Section 8.04 below, (b) special Assessments, to be established and collected as provided in Section 8.05 below, and (c) individual Assessments against any particular Lot which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 8.09(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.09(a) below, court costs, and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution, or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Lot or Town Home.

**8.02 Purpose of Assessments.** The annual and special Assessments provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development.

**8.03 Uniform Rate of Assessments.**

(a) Both annual and special Assessments, as described in Sections 8.04 and 8.05 below, shall be assessed against each Lot in the Development at a uniform rate, with the Owner of each Lot being required to pay his pro rata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots owned by such Owner and the denominator of which shall be the total number of Lots in the Development at the time such annual or special Assessment is levied. Each Lot shall be subject to equal annual and special Assessments.

(b) Notwithstanding anything provided in Section 8.03(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots within the Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots in the Development, subject to proration as provided in Section 8.08 below.



#### 8.04 Computation of Annual Assessments.

(a) Notwithstanding anything provided to the contrary in this Declaration, the initial annual Assessment for each Lot, which shall be prorated and due at closing, shall be **One Thousand One Hundred Forty and No/00 Dollars (\$1,140.00)**. The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 8.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 8.06 below.

(b) Commencing with the fiscal year of the Association which begins on January 1, 2018 (i.e., from January 1, 2018, through December 31, 2018, which period is hereinafter referred to as the "Base Year"), and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 8.03 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Town Homes for the following year shall be delivered to each Owner.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Assessments the increase of which exceed (without regard to proration or adjustment as provided in Section 8.08 below) the greater of either (i) ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in the United States Consumer Price Index or any successor index thereto for January of the current year over the index for January of the Base Year (i.e., January 2019) then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments. **The limitations on increases in the amount of annual assessments provided in this Section 8.04(c) shall not be applicable to the Base Year; accordingly, the actual annual Assessments for each Lot and Town Home for the Base Year may exceed \$1,140.00 per annum increased by the greater of (1) ten percent (10%) or (2) the percentage increase in CPI from the preceding calendar year.**

(d) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.05 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for

that any such special Assessments shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.03 above.

**8.06 Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, employees, invitees, or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots. The individual Assessments provided for in this Section 8.06 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.06 shall apply, without limitation, to any individual Assessments levied pursuant to any other provision hereof.

**8.07 Notice of Meetings and Quorum.**

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third ( $\frac{1}{3}$ ) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 8.04(c) above.

(b) With respect to all other meetings of the members of the Association, including, specifically, meetings pursuant to which special Assessments are to be levied upon each Lot pursuant to Section 8.05 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

**8.08 Date of Commencement of Assessments.** The annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding special Assessments shall be adjusted for each Lot according to the number of days then remaining in the month in which such Lot is conveyed. Annual and special assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall

commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration according to the number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or special Assessments on any Lots which it owns in the Development.

**8.09 Effect of Non-Payment; Remedies of the Association.**

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner of such Lot shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.09(a) above, together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.01 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Town Home, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.09(a) above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a

demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs, and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default), and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

**8.10 Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 8.09(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Lee County, Alabama, prior to the filing of a claim of lien by the Association

pursuant to Section 8.09(c) above, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot.

**8.11 Certificates.** The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

## **ARTICLE IX**

### **Party Wall, Casualty, Condemnation, and Insurance**

#### **9.01 Party Wall**

(a) *General Rules of Law to Apply.* Each wall which is built as a part of the original construction of the Town Homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) *Sharing of Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) *Destruction by Fire or Other Casualty.* If a party wall is destroyed or damaged by fire or other casualty, the Owners who have use of the wall shall contribute equally to the cost of the restoration thereof; provided, however, that any Owner shall have the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) *Weatherproofing.* Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

**9.02 Damage or Destruction to Lots and Town Homes.** In the event of any fire or other casualty which damages or destroys any portion of any Lot, then the Owner of such damaged Lot shall promptly repair and otherwise restore such Lot to the condition to which the same existed

immediately prior to such fire or other casualty; provided, however, that any such restoration or repair with respect to party walls shall be subject to compliance with all of the terms and provisions set forth above and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

**9.03 Condemnation of Lots or Town Homes.** In the event that all or any portion of a Lot is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild, and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth herein and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition. If such taking or sale in lieu thereof includes all or any part of a party wall, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Owners so affected by such taking; provided, however, that the Owners of any Lot which is subject to any such taking may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on said Owners.

**9.04 Insurance.**

(a) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title, and all other types of insurance with respect to his Lot and Town Home. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Town Homes and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does hereby waive and release Developer, the Association, and their respective agents, employees, representatives, partners, shareholders, members, officers, and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering any damage or injury caused by the negligence of the Association, its Board, and all members, officers, agents, and employees thereof, in such amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability insurance, and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such

amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may determine.

(d) The cost of insurance coverage authorized hereunder and written in the name of the Association shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, the members of the Board, and all officers, agents, and employees of the Association.

## ARTICLE X Term and Amendments

**10.01 Term.** The terms, covenants, conditions, and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors, and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds ( $\frac{2}{3}$ ) or more of the Lots within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Lee County, Alabama; provided, however, that the easements established, granted, and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

**10.02 Amendment by Developer.** For so long as Developer owns any Lot within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 10.04 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or materially and adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Town Homes owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state

or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Town Homes, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Town Homes within the Development.

**10.03 Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 10.02 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds ( $\frac{2}{3}$ ) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title, or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 10.04 below, then the provisions of Section 10.04 below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.03(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds ( $\frac{2}{3}$ ) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Lee County, Alabama.

**10.04 Restrictions on Amendment.** Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to any provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

## **ARTICLE XI Enforcement**

**11.01 Authority and Enforcement.** In addition to the provisions of Sections 5.13, 6.21, 6.22(a), 6.33, 7.02(b), and 8.09 above, in the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Town Home and shall



be a personal obligation of such Owner which is guilty of such violation, or (ii) suspend an Owner's right to vote in the Association, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

**11.02 Procedure.** In the event any of the terms or provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors, or invitees of any Owner or Occupant, the Board shall not impose a fine or suspend voting rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Articles of Incorporation, the Bylaws, or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

**11.03 Nonexclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement, and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

## **ARTICLE XII Miscellaneous Provisions**

**12.01 Control by Developer.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in

accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any Lot within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

**12.02 Legal Expenses.** In addition to all other rights and remedies set forth herein, in the event the Board, its agents and representatives, undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove, or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants, or conditions of this Declaration shall be paid for by the Owner against whom such action was initiated. The Board, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by either the Association to cure such violation or breach.

**12.03 Severability.** If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

**12.04 Captions and Headings.** The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

**12.05 Pronouns and Plurals.** All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

**12.06 Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant, and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors, and assigns of each Owner, Occupant, and Mortgagee, and shall inure to the benefit of Developer, the Association, all of the Owners, and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

**12.07 Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

12.08 **No Reverter.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

12.09 **Interpretation.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

12.10 **Rights of Third Parties.** This Declaration shall be recorded for the benefit of Developer, the Association, the Owners, and their respective Mortgagees, and by such recording, no other adjoining property owner or third party shall have any right, title, or interest whatsoever in the Development or its operation and continuation, in the enforcement of any of the provisions of this Declaration, or the right to consent to or approve any amendment or modification to this Declaration.

12.11 **No Trespass.** Whenever the Association, Developer, and their respective agents, employees, representatives, successors, and assigns are permitted by this Declaration to enter upon or correct, repair, clean, maintain, or preserve or do any other action within any portion of a Lot, the entering thereon and the taking of such action shall not be deemed a trespass.

12.12 **No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Development.

12.13 **Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance, or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

12.14 **Standards for Review.** Whenever in this Declaration, Developer, or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer or the Association, as the case may be.

**12.15 Oral Statements.** Oral statements or representations by Developer, the Association, or any of their respective employees, agents, representatives, successors, or assigns, shall not be binding on Developer, the Association.

**12.16 Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot within the Development. All notices to the Association shall be delivered or sent in care of Developer to the following address:

Rowhomes of South Donahue, LLC  
Post Office Box 2707  
Auburn, Alabama 36831-2707

or to such other address as the Association may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

**12.17 Assignment.** Subject to the provisions of Section 12.13 above, Developer shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations, and duties as Developer.

**12.18 Further Assurances.** Each Owner covenants and agrees to execute, sign, and deliver, or cause to be executed, signed, and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts, or things, supplemental, conformity, or otherwise, which may be reasonably requested by Developer or the Association for the purpose of or in connection with clarifying, amending, or otherwise consummating any of the transactions and matters herein.


**12.19 No Waiver.** All rights, remedies, and privileges granted to Developer and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

[Signatures appear on the following page]

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed as of the day and year first above written.

**ROWHOMES OF SOUTH DONAHUE, LLC**  
an Alabama limited liability company

By: David D. Crum Family Partnership, Ltd.  
an Alabama limited partnership,  
its Sole Member

By:  (L.S.)  
David D. Crum, Its General Partner


STATE OF ALABAMA

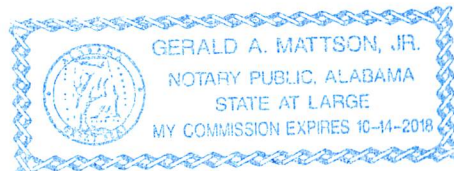
LEE COUNTY

I, Gerald A. Mattson, Jr., a Notary Public in and for said County in said State, hereby certify that David D. Crum, whose name as General Partner of David D. Crum Family Partnership, Ltd., the sole member of ROWHOMES OF SOUTH DONAHUE, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such General Partner and with full authority, executed the same voluntarily for and as act of said limited liability company.

Given under my hand this the 5<sup>th</sup> day of May, 2017.

NOTARY SEAL

  
Notary Public: Gerald A. Mattson, Jr.  
My commission expires: October 14, 2018



Prepared by:  
Gerald A. Mattson, Jr.  
MUNCIE & MATTSON, P.C.  
987 Drew Lane  
Post Office Box 3208  
Auburn, Alabama 36831-3208  
(334) 821-7301

1317 164  
MISC Book & Page

**EXHIBIT "A" TO  
SOUTH DONAHUE TOWNHOMES  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

Lots Numbered 1 through 11 of South Donahue Townhomes, according to and as shown on that certain map or plat of said subdivision of record in Town Plat Book 39, at Page 69, in the Office of the Judge of Probate of Lee County, Alabama.

Book/Pg: 1317/134  
Term/Cashier: SCAN3 / CO  
Tran: 18267.263184.351431  
Recorded: 05-10-2017 10:23:18  
REC Recording Fee 98.00  
Total Fees: \$ 98.00