

STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES \$69.50
RECORDED BY monirobl

INSTR # 2016204503

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**SECOND AMENDMENT TO THE DECLARATIONS OF
COVENANTS, CONDITIONS AND RESTRICTIONS
HIGHLAND SQUARE HOMEOWNERS
ASSOCIATION, INC.**

WHEREAS, the members of the Highland Square Homeowners Association, Inc., a Florida not for profit corporation, (the "Association") desires to amend the Declarations of Covenants, Conditions and Restrictions as recorded in Official Records Book 05245, Page 0665, of the Public Records of Polk County, Florida and the Amendment of the Declarations of Covenants, Conditions and Restrictions as recorded in Official Records Book 18443, Page 1662, Public Records of Polk County, Florida (referred herein collectively to as the "Declarations"), and

WHEREAS, the Association desires to comply with Chapter 720, Florida Statutes as it may be amended from time to time, said Declarations shall be amended as follows:

Amend Article IV, Section 8 to read:

Section 8: EFFECT OF NON PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. Any assessment not paid within thirty (30) days after the due date shall also be subject to a twenty-five dollar (\$25.00) per month late fee for each month said assessments remain unpaid. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Amend Article IV, Section 9 to read:

Section 9: SUBORDINATION OF THE LIEN TO MORTGAGES. The lien for Assessments shall not be subordinate to any mortgage including a bona fide first mortgage held by a Lender on any lot, even when the mortgage is recorded in the Public Records prior to the Claim of Lien. The lien for Assessments shall not be affected by any sale or transfer of a lot, except in the event of a sale or transfer by deed in lieu or pursuant to a foreclosure of a bona fide first mortgage, in which event, the mortgagee shall be liable for the unpaid assessments which became due during the twelve (12) month period immediately preceding the requisition of title or one percent (1%) of the original mortgage debt, whichever is less. However, any such remaining unpaid Assessments for which such mortgagee is not liable may be assessed and reallocated to the subsequent owner who receives title from such mortgagee. Nothing herein contained shall be construed as releasing the party liable for any delinquent Assessments from the payment thereof, or the enforcement of collection by means other than foreclosure. A Lender shall give written notice to Association if the mortgage held by such Lender is in default. Association shall have the right, but not the obligation, to cure such default within the time periods applicable to Owner. In the event Association makes such payment on behalf of an Owner, Association

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BRANDON, FL 33509-3470

shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section shall be added to Assessments payable by such Owner with appropriate interest.

Amend Article V, Section 1 to read:

Section 1 VIOLATION. If any person claiming by, through or under the Declarant, or its successors or assigns, or any other person, shall violate or attempt to violate any of the covenants herein:

- A. **LEGAL OR EQUITABLE ACTION.** It shall be lawful for the Association or any person or person owning real estate subject to these covenants to bring any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants, including action to enjoin or prevent him or them from so doing, or to cause the violation to be remedied and to recover damages or other dues for such violation. If the party or parties bringing any such action prevail, they shall be entitled to recover from the person or person violating these restrictions the cost incurred by such prevailing party including reasonable attorney fees. Should the Association be required to take any action against an owner, their tenant, guest, and/or invitee for violation of any of the covenants provided herein, the owner of the property shall be responsible for all costs incurred by the Association in enforcing these Declarations and its Rules and Regulations including but not limited to recovery of attorney fees and pay professional fees at all levels including litigation, appeals, collections and bankruptcy, in connection therewith. Invalidity of any of these covenants by Judgement of Court Order shall in no wise affect any of the other covenants and provision contained herein, which shall remain in full force and effect.
- B. **RIGHT OF ENTRY.** Each lot with a house or other improvement thereon, whether occupied or unoccupied, shall be maintained in good order and repair, clean and free from refuse, debris, unsightly growth or any fire hazard. In the event any lot owner shall fail, neglect, or omit to trim or maintain any lot in the street line, or fail to keep clean and maintain any lot in the manner herein specified for more than ten (10) days after having been given written notice to do so by the Association, addressed via registered or certified mail to such owner at his last known address, the Association through its agents, employees and/or contractors, shall have the right to enter upon such lot for the purpose of remedying said defects and failures stated in said notice, and the expense of so remedying said defects shall be charged to the owner of such lot and shall become a lien upon said lot, collectible and enforceable in the same manner as other charges and liens hereinafter provided.
- C. **FINES.** Association may suspend, for reasonable periods of time, the rights of an Owner or an Owner's tenants, guests and invitees, or both, to use the Common Areas and may levy reasonable fines, not to exceed the maximum amounts

permitted by Section 720.305(2) of the Florida Statutes, against an Owner, tenant, guest or invitee, for failure to comply with any provision of this Declaration including, without limitation, those provisions benefitting the SWFWMD.

1. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. Fines in the aggregate are not capped to any amount.
2. A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) persons (the "Violations Committee") appointed by the Board who are not officers, directors or employees of Association, or the spouse, parent, child, brother, sister of an officer, director or employee. If the Violations Committee does not by a majority vote approve a fine or suspension the same may not be imposed. The written notice of violation shall be in writing to the Owner, tenant, guest or invitee and detail the infraction or infractions. Included in the notice shall be the date and time of the hearing of the Violations Committee.
3. The non-compliance shall be presented to the Violations Committee acting as a tribunal, after which the Violations Committee shall hear reasons why a fine should not be imposed. The hearing shall be conducted in accordance with the procedures adopted by the Violations Committee from time to time. A written decision of the Violations Committee shall be submitted to the Owner, tenant, guest or invitee, as applicable, by not later than twenty-one (21) days after the meeting of the Violations Committee. The Owner, tenant, guest or invitee shall have a right to be represented by counsel and to cross-examine witnesses.
4. The Violations Committee may impose Individual Assessments against the Owner in the amount up to \$100 (or any greater amount permitted by law from time to time) per day for each violation. Each day of noncompliance shall be treated as a separate violation and there is no cap on the aggregate amount the Violations Committee may fine an Owner, tenant, guest or invitee. Individual Assessment fines shall be paid not later than five (5) days after notice of the imposition of the Individual Assessment. All monies received from fines shall be allocated as directed by the Board of Directors. A fine may exceed \$1,000.00 in the aggregate. A fine of \$1,000.00 or more may become a lien against a parcel. A fine of less than thousand dollars (\$1,000.00) may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the Court. The provisions regarding the suspension of use rights does not apply to the portion of common areas that must be used to

provide access to the parcel or utility service provided to the parcel.

Amend Article V, to add Section 19, to read as follows:

Section 19 LEASES. Homes may be lease, licensed or occupied only in their entirety and no fraction or portion may be rented. No bed and breakfast facility may be operated out of a Home. Individual rooms of a Home may not be leased on any basis. No transient tenants may be accommodated in a Home.

1. LEASE REQUIREMENTS. All leases or occupancy agreements of Homes (collectively, "Lease Agreements") are subject to the following provisions:
 - 1.1 All Lease Agreements shall be in writing. All prospective occupants of the Home shall be identified in the Lease Agreement. A copy of all Lease Agreements shall be provided to the Association.
 - 1.2 All Lease Agreements, together with an application signed by both the Owner and tenant, in a form approved by the Association, shall be submitted to the Association at least fifteen (15) days prior to commencement of the lease term;
 - 1.3 The Owner shall pay the lease application fee prescribed by Association. The initial lease application fee shall be seventy five dollars (\$75.00) and may be increased from time to time;
 - 1.4 The Association shall conduct a background check on each prospective tenant and/or occupant at such Owner's cost and expense;
 - 1.5 No Lease Agreement may be for a term of less than one (1) year;
 - 1.6 No Home may be leased more than two (2) times in any calendar year unless otherwise approved by the Association in the case of hardship;
 - 1.7 The tenant, as part of the Lease Agreement, shall agree to abide by and adhere to the terms and conditions of this Declaration together with all Rules and Regulations and all policies adopted by the Association;
 - 1.8 The Owner shall agree to remove, at the Owner's sole expense, by legal means including eviction, his or her tenant should the tenant refuse or fail to abide by and adhere to this Declaration, the Rules

and Regulations and any other policies adopted by the Association. Notwithstanding the foregoing, should an Owner fail to perform his or her obligations under this Section, the Association shall have the right, but not the obligation, to evict such tenant and the costs of the same shall be the responsibility of the Owner;

- 1.9 All Lease Agreements shall require the Home to be used solely as a private single family residence;
 - 1.10 Each Lease Agreement shall contain a uniform attachment (the "Uniform Lease Exhibit") incorporating provisions that require the tenant(s) to abide by the Declarations, the Articles, Bylaws and Rules and Regulations of the Association which govern the Home. The Uniform Lease Exhibit shall contain other provisions deemed necessary by the Board of Directors from time to time. Failure to incorporate such Uniform Lease Exhibit into the terms of any lease shall cause such lease to be void; and
 - 1.11 Each Lease Agreement shall contain the Uniform Lease Exhibit designating the Association's duly authorized officer as the Owner's attorney-in-fact for the purpose of and with the authority to terminate any such Lease Agreement in the event of violations by the tenant of any covenant; provided, however, the Association first shall give the Owner notice of such violations and opportunity to terminate such Lease Agreement within ten (10) days of such notice by the Association.
2. MAXIMUM NUMBER OF TENANT OCCUPANTS PER HOME. Each leased Home shall be occupied by tenants, members of the tenant's family, overnight guests and professional caregivers as a residence and for no other purpose. The maximum number of tenant occupants in any Home, including overnight guests and professional caregivers, shall be as follows:
- 2.1 In the event the Home contains two (2) bedrooms, no more than four (4) persons shall be permitted.
 - 2.2 In the event the Home contains three (3) bedrooms, no more than six (6) persons shall be permitted.
 - 2.3 In the event the Home contains four (4) bedrooms, no more than eight (8) persons shall be permitted.
3. RIGHT TO USE COMMON AREA. During such time as a Home is leased, the Owner of such Home shall not enjoy the use privileges of the

IN WITNESS WHEREOF, the undersigned hereunto set its hand and seal as of this
21 day of October, 2016.

WITNESSES:

Michael Ittleman, President

Highland Square Homeowners Association

Margaret McConkle

Margaret McConkle
Printed Name

Robert Webb

Robert Webb
Printed Name

[Signature]

Secretary

Highland Square Homeowners Association

[Signature]

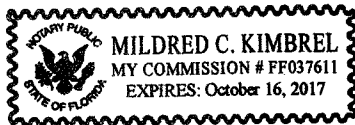
STATE OF FLORIDA
COUNTY OF Polk

BEFORE ME personally appeared Susan MILLER, who executed the
foregoing instrument, and acknowledged to and before me that he/she executed said instrument
for the purposes therein expressed.

Sworn to and subscribed before me this 27th day of Oct., 2016

Mildred C. Kimbrel

Notary Public, State of Florida



Print, Type or Stamp Name of Notary

☒ Personally known to me, or

☐ Produced identification

Type of identification produced:
