

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

JASPER COMMONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made by JASPER COMMONS, LLC, a South Carolina limited liability company (the "Declarant"), on _____, 2008.

Article I Plan of Development; Restrictions Imposed by Declarant

1.1. Purpose and Intent.

Declarant is the owner of the real property (the "Properties") described in Exhibit "A," which is attached hereto and incorporated herein by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general scheme of development for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Properties. In furtherance of that plan, this Declaration provides for the formation of Jasper Commons Association, Inc. (the "Association") to own, operate, and maintain the Common Areas within the Properties and to administer and enforce the provisions of the Governing Documents (which is defined below).

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns.

The capitalized terms used in this Declaration are defined in Paragraph 1.4 below.

1.2. Binding Effect.

(a) This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Declaration is recorded in the Public Records. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless terminated as provided in Section 1.2 (b). If South Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided below. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue for a period of 90 years from the date this Declaration was recorded.

(b) Unless otherwise provided by South Carolina law, this Declaration may be terminated only by an instrument setting forth the intent to terminate this Declaration signed by Owners of at least eighty percent (80%) of the total acreage within the Properties and by the Declarant, if the Declarant owns any portion of the Properties, which instrument must be recorded in the Public Records. Nothing in this section shall be construed to terminate any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The following are the Governing Documents, as amended from time to time: this Declaration; any Supplemental Declarations hereto; the Articles of Incorporation of the Association; the By-laws of the Association; the Rules and Regulations; the Design Guidelines; and the Board Rules (each of which is hereafter defined in Paragraph 1.4).

Any Supplemental Declaration may impose additional, more restrictive provisions on any other portion of the Commercial Properties, in which case the more restrictive provisions will be controlling. The Association shall have standing and the power to enforce such provisions. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Commercial Properties without Declarant's written consent, so long as Declarant owns any property contained within the Properties described in Exhibits "A" and "B." Thereafter, the Association's Board of Directors must consent. Any instrument recorded without the required consent is void and of no force and effect.

If there are conflicts among South Carolina law, the Articles, the Declaration, and the By-Laws, South Carolina law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

The Governing Documents apply to all Owners and occupants of property within the Commercial Properties, as well as to their respective tenants, guests, and invitees. Any lease of a Lot or of any portion of a building located on a Lot shall provide that the tenant is bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration or any of the other Governing Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of the other provisions or applications of such provisions.

1.4. Defined Terms.

The terms used in this Declaration shall generally be given their usual, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

"Area of Common Responsibility": The Common Areas, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or any contract.

"Articles of Incorporation" or "Articles": The Articles of Incorporation of the Jasper Commons Owners Association, Inc., as filed with the South Carolina Secretary of State.

"Base Assessments": Assessments levied on all Lots subject to assessment under Section 8.1 to fund Common Expenses, as more particularly described in Article VIII.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws, and generally serving the same role as a board of directors under South Carolina corporate law.

"Board Rules": The rules, policies, and procedures for internal governance and Association activities and to regulate operation and use of Common Area. Board Rules are adopted by resolution of the Board of Directors.

"By-Laws": The By-Laws of Jasper Commons Owners Association, Inc., attached as Exhibit "F," as they may be amended.

"Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

- (a) when 75% of the total number of Lots permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;
- (b) December 31, 2028; or
- (c) when, in its discretion, the Class "B" Member so determines.

"Association": The Jasper Commons Owners Association, Inc., a South Carolina nonprofit corporation, and its successors and assigns.

"Commercial Properties" or "Properties": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, which includes, but is not limited to, the roadways, walkways, sidewalks, and parking areas located within any of the real property designated as "Common Area" on a recorded plat.

"Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserves, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses for initial development, original construction,

installation of infrastructure, original capital improvements, or other original construction costs incurred in connection with the development of the Properties.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall be established initially by the Declarant and may be more specifically defined in the Design Guidelines, the Use Restrictions, and Rules and Regulations adopted by Board resolutions.

"Covenant to Share Costs": A recorded declaration of easements and covenant to share costs for Jasper Commons, or similarly denominated instrument, if any, which creates certain easements benefiting the Commercial Properties and other portions of Jasper Commons and which obligates the Association and the owners of other portions of Jasper Commons to share the costs of maintaining the property described in such Covenant to Share Costs.

"Declarant": Jasper Commons, LLC, a South Carolina limited liability company, or any successor or assign to whom development rights are transferred for the purpose of development and/or sale of any portion of the property described in Exhibit "A" or "B" and which is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

"Design Guidelines": The design and development guidelines and architectural review procedures adopted pursuant to Article IX and applicable to all Lots within the Properties, as they may be amended.

"Developable Land": All of the real property described in Exhibit "A" and "B" of this Declaration, as it may be amended, exclusive of any wetlands, bodies of water, and property subject to conservation easements or similar easements requiring that it be maintained in its natural state.

"Governing Documents": A collective term referring to this Declaration (including the Use Restrictions contained herein), any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Board Rules, and the Rules and Regulations, as they may be amended from time to time.

"Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for commercial, business, recreational, or retail development, use, and occupancy consistent with this Declaration, any other applicable covenants, and applicable zoning. The term shall refer to the land, if any, which comprises the Lot as well as any improvements thereon. The term shall not include Common Areas or property dedicated to the public. If any Lot is subdivided or re-subdivided, whether by plat or deed, each such subdivided portion thereof shall be considered a Lot hereunder and votes and liability for assessments shall be recomputed for each subdivision in accordance with the formula set forth in Exhibit "C." In the case of a commercial condominium, each condominium unit and its appurtenant interest in the common elements of such condominium shall be a Lot.

"Master Plan": The land use plan for the development of Jasper Commons was prepared by Atlantic International Design Studio, L.L.C. and approved by the City of Hardeeville, South Carolina, as it may be amended, from time to time, which includes all of the property described in Exhibit "A" and all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described on Exhibit "B" from the Master Plan bar its later submission to this Declaration.

"Member": A Person entitled to and required to be a member in the Association, as provided in Section 3.2.

"Mortgage": A mortgage or any other form of security instrument affecting title to a Lot. A "Mortgage" shall refer to the holder of a Mortgage

"Owner": One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides. If a Lot is subject to a written, recorded lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising all privileges of membership under this Declaration and the By-Laws.

"Person": A natural person, a corporation, a limited liability company, a partnership, a trustee, or any other legal entity.

"Point": A numerical assignment of value given to individually owned Lots of real property within the Properties for allocating Assessments under Article VIII and voting rights under Section 3.3.

"Public Records": The Office of the Register of Deeds of Jasper County, South Carolina.

"Rules and Regulations": Board-adopted Rules and Regulations which establish administrative procedures for internal Association governance and operating procedures for use of the Common Area and of any property included within the Area of Common Responsibility.

"Special Assessment": Assessments levied in accordance with Section 8.5.

"Specific Assessment": Assessments levied in accordance with Section 8.6.

"Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and/or obligations on the real property described in such instrument.

"Use Restrictions": The initial Use Restrictions set forth on Exhibit "D," as they may be supplemented, modified, and repealed pursuant to Article X.

1.6. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the Office of the Register of Deeds for Jasper County, or such other place designated as the official location for filing documents affecting title to real estate in Jasper County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents or by law, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Article II Property Rights

2.1. Common Area.

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board and the membership to adopt, amend, and repeal Rules and Regulations governing the use and enjoyment of the Common Area pursuant to Article X;
- (d) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and
- (e) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided, during the period in which the Declarant has the right to appoint a majority of the Board, at least 51% of the total Class "A" votes in the Association must approve any such mortgage, pledge, or hypothecation.

Any Owner may extend its right of use and enjoyment of the Common Areas to any lessees and other occupants of its Lot and their invitees, subject to regulation in accordance with Article X. An Owner who leases its Lot shall be deemed to have assigned all such rights to the lessee and other occupants of such Lot and their invitees.

2.2. No Partition.

Except as permitted in this Declaration, there shall be no judicial partition of the Common Areas. No Person shall seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of real property which may or may not be subject to this Declaration.

Article III Association Function, Membership, and Voting Rights

3.1. Function of the Association.

The Association shall be the entity responsible for management, maintenance, operation, and control of the Common Area within the Properties. The Association shall also be responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and South Carolina law.

3.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership subject to Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges may be exercised by the Owner, if a natural person, or, in the case of an Owner that is a corporation, limited liability company, partnership, or other legal entity, by any officer, director, manager, managing member, partner, or trustee, or by any other individual designated by the Owner from time to time in a written instrument provided to the Secretary of the Association.

3.3. Voting.

The Association shall have two classes of membership: Class "A" and Class "B."

(a) Class "A." Class "A" Members shall be all Owners other than the Class "B" Member, if any. Each Class "A" Member shall be entitled to the number of votes assigned to its Lot(s) in accordance with the formula set forth in Exhibit "C"; provided, no votes shall be exercised on account of any property which is exempt from assessments under Section 8.11.

If there is more than one Owner of any Lot, the votes for such Lot shall be exercised as such co-Owners determine among themselves and notify the Secretary of the Association in writing prior to the vote being taken. In the absence of such notice, the vote for such Lot shall be suspended if more than one co-Owner seeks to exercise it.

Any Owner may assign the right to cast all or a portion of the votes allocated to his Lot to the lessee of any portion of such Lot by written proxy filed with the Secretary of the Association in accordance with the By-Laws.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration, the By-Laws, and the Articles, are specified in the relevant sections of this Declaration, the By-Laws, and the Articles. The rights of the Class "B" Member to appoint a majority of the members of the Board are specified in the By-Laws. The Class "B" membership shall terminate upon the conveyance of all Developable Land described in Exhibit "B" to a Class "A" Member, or when, in its discretion, the Declarant so determines and declares in a recorded instrument. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot which it owns.

Article IV Rights and Obligations of the Association

4.1. Common Area.

The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Areas and all improvements thereon (including, without limitation, roadways, sidewalks, walkways, parking areas located in the Common Areas, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Area). The Association shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense. The Declarant or Board may enter into covenants or contractual agreements with other association entities which grant use privileges and assign costs and maintenance responsibilities for the Common Area and other property from which the Class "A" Members may derive benefits as set forth in the covenants or contracts.

4.2. Personal Property and Real Property for Common Use.

The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved or unimproved real estate located within the properties described in Exhibit "A" or "B," personal property, and leasehold or other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

The property conveyed to the Association by the Declarant from time to time shall be conveyed subject to all applicable governmental requirements, permits, conditions, and approvals and subject to any conservation easements then in existence affecting the property.

4.3. Enforcement.

Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents (including, without limitation, the Design Guidelines, Use Restrictions, and Rules and Regulations) after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspending any Person's right to use any portion of the Common Area; provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(c) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(d) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(e) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of Article IX and to restore the Lot to its previous condition. Upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(f) precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IX and the Design Guidelines from continuing or performing any further activities in the Properties, without incurring liability to any Person therefore; and

(g) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

The Board may take the following enforcement sanctions to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking Use Restrictions or Rules and Regulations); and

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to entering a dwelling.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs incurred in such action.

The decision to pursue an enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) that although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances and permit Jasper County and the City of Hardeeville to enforce ordinances within the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents and any right or privilege which could be implied from or which is necessary to effectuate any express right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests.

So long as the Declarant owns any property described in Exhibit "A" or "B," the Declarant may designate sites within the Properties for fire, police, utility facilities, public schools and parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification.

The Association shall indemnify, hold harmless, and defend every officer, director, and committee member, including members of the committees established under Article IX, against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, including, without limitation, any and all claims for personal injury, death, or property damage, except that such obligation to indemnify, hold harmless, and defend shall be limited to those actions as to which liability is limited under this section and South Carolina law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify, hold harmless, and defend each such officer, director, and committee member from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in the By-Laws.

In addition to any other rights:

(a) Volunteer officers or directors of the Association shall not be personally liable in excess of the coverage of insurance specified in subparagraph (iv), below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the following requirements are met by the volunteer officer, director, and Association:

(i) the director's or officer's act or omission was performed within the scope of his or her duties;

(ii) the director's or officer's act or omission was performed in good faith;

(iii) the director's or officer's act or omission was not willful, wanton, or grossly negligent; and

(iv) the Association maintained and had in effect (at the time the act or omission of the director or officer occurred and at the time a claim was made) one or more insurance policies which included coverage for general liability of the Association and individual liability of officers and directors for negligent acts or omissions in that capacity, both in the amount of at least One Million Dollars (\$1,000,000.00).

(b) The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer.

4.7. Dedication of Common Areas.

The Association may dedicate portions of the Common Areas to the City of Hardeeville, Jasper County, South Carolina, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8. Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. **The Association, the Declarant, or any successor declarant shall not in any way be considered insurers or guarantors of security or safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any safety measure or security system cannot be compromised or circumvented or that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Owner acknowledges, understands, and covenants to inform its tenants that the Association, its Board of Directors and Committees, Declarant, and any successor declarant are not insurers and that each person using the Properties assumes all risks for loss or damage to Persons, to Lots, and to the contents of Lots resulting from acts of third parties.**

Article V Maintenance

5.1. Association's Maintenance Responsibility.

(a) The Association is responsible for maintaining certain areas within the Commercial Properties. In accordance with the Community-Wide Standard, the Association shall maintain the Areas of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, parks, lakes or ponds, signage, structures, improvements, private driveways, and pedestrian walkways situated upon the Common Areas, unless and until any portion of the foregoing is dedicated to, or otherwise maintained by, the City of Hardeeville, Jasper County, or the State of South Carolina;

(ii) roads, parking areas, landscaping, sidewalks, street lights, and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any utility easement within the Properties (subject to the terms of any easement agreement relating thereto), unless otherwise maintained by the City of Hardeeville, Jasper County, or the State of South Carolina;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, covenant, contract, or agreement for maintenance thereof entered into by Declarant or the Association; and

(iv) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property it does not own, including, without limitation, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association may assume responsibility for maintenance of any Lot and assess all costs of such maintenance against the benefited Lot pursuant to Section 8.6, as appropriate. This assumption of responsibility may take place only by contract with the Owner(s) of such Lot or because, in the opinion of the Board, the level and quality of maintenance is not consistent with the Community-Wide Standard. The provision of services in accordance with this paragraph shall not constitute discrimination within a class.

The Association may be responsible for monitoring, maintaining, repairing, reporting, and performing obligations arising out of environmental permits, if any, as may be designated by Declarant from time to time.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless at least 75% of the Class "A" votes in the Association and Declarant, so long as Declarant owns any property described in Exhibit "A" or "B," regardless of whether such property is subjected to this Declaration, agree in writing to discontinue such operation.

(c) There are hereby reserved to the Association perpetual, non-exclusive easements over the Properties as necessary to enable the Association to fulfill the above-described responsibilities.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibilities.

Each Owner shall maintain its Lot and all structures, parking areas, and other improvements comprising the Lot, and any landscaping within any adjacent road right-of-way up to the curb of such road, in a manner consistent with the Community-Wide Standard and all applicable covenants unless such maintenance responsibility is otherwise assumed by or assigned to (and accepted by) the Association. Such maintenance shall include, but is not limited to, the following:

- (a) prompt removal of all litter, trash, refuse, and waste;
- (b) lawn mowing and fertilizing on a regular basis;
- (c) tree and shrub pruning and mulching;
- (d) watering of landscaped areas;
- (e) keeping exterior lighting and maintenance facilities in proper working order;
- (f) implementing and maintaining erosion-sedimentation control measures;
- (g) painting or staining, as appropriate, and regular maintenance and repair of the exterior of all improvements and signage;
- (h) roof repair and replacement as necessary to maintain a neat, uniform appearance over the surface of the roof;
- (i) keeping lawn and garden areas alive, free of weeds, and attractive;
- (j) keeping parking areas and driveways in good repair and free of potholes, excessive cracks, and weeds;
- (k) seal coating parking areas and driveways, and painting such paved surfaces with traffic and parking lines, signals, and directional information;
- (l) complying with all government health and police requirements; and
- (m) prompt repair of any exterior damage to improvements.

5.3. Standard of Performance.

Maintenance, as such term is used in this article, shall include, without limitation, repair and replacement as needed as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance and irrigation shall be performed in a manner consistent with the Community-Wide Standard.

Notwithstanding anything to the contrary contained herein, the Association and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

5.4. Landscape Waste and Recycling Programs.

The Association may cooperate with the City of Hardeeville or other government agency to establish a landscape waste program that provides for the mulching of landscape waste produced from the Commercial Properties. All Owners and occupants of Lots shall collect and dispose of yard waste in a manner that is consistent with the program established by the Board.

In addition, the Board, with the consent of the City of Hardeeville, may establish a recycling program and recycling center within the Commercial Properties, and, in such event, all Owners and occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but is not obligated to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to defray Common Expenses.

The Association may coordinate with the City of Hardeeville to establish the above programs to avoid duplicating waste management efforts.

Article VI Insurance and Casualty Losses

6.1. Association Insurance.

(a) Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available and to the extent the Board deems reasonably necessary: blanket property insurance on any portions of the Area of Common Responsibility for which the Association has maintenance, repair, and/or replacement responsibilities; commercial general liability insurance on the Area of Common Responsibility; directors and officers liability coverage; fidelity insurance; and such additional insurance as the Board, in its business judgment, determines advisable or is required by law. The Board shall annually review the types and amounts of insurance coverage and shall establish the requirements for such coverage.

The Board, in its business judgment, may obtain additional insurance coverage and higher limits. The Board shall consult and coordinate with the Community Council in the

purchase of property insurance in an effort to avoid duplication in coverage, or an absence of coverage, for areas within the Commercial Properties.

In the event of an insured loss, the deductible, in such amount as established by the Board, shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.6. The Association's insurance shall not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually.

(b) Damage and Destruction. In the event of a loss covered by the Association's insurance, the Board or its duly authorized agent shall file and adjust all insurance claims. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss, or such additional time deemed necessary by the Board, not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared and shall be maintained by the Association consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums.

6.2. Owners' Insurance.

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on their Lot, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Article VII Annexation and Withdrawal of Property

7.1. Annexation Without Approval of Membership.

Until all property described in Exhibit "B" has been subjected to this Declaration or 20 years after the recording of this Declaration, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property to be annexed. Such Supplemental Declaration shall not require the consent of Members but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership.

The Association may annex any real property to the provisions of this Declaration with the consent of (i) the owner of such property; (ii) the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose; and (iii) Declarant's consent, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, by the owner of the property being annexed, and by the Declarant, if Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided in the Supplemental Declaration.

7.3. Withdrawal of Property.

Declarant reserves the right unilaterally to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal upon the Declarant's request.

7.4. Additional Covenants and Easements.

The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners through Base Assessments to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration and shall require the written consent of the owner(s) of the subject property, if other than the Declarant. If the additional covenants and easements are applicable to property annexed pursuant to Section 7.1, such Supplemental Declaration may be filed either concurrent with or after the annexation of the subject property. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

7.5. Amendment.

This article shall not be amended without Declarant's prior written consent, so long as the Declarant owns any property described in Exhibit "A" or "B."

Article VIII Assessments

8.1. Creation of Assessments.

The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not less than 10% per annum, subject to the limitations of South Carolina law), reasonable late charges (in such amount as the Board may establish by resolution from time to time), costs, and reasonable attorneys fees, shall be a charge and continuing lien upon the Lot against which each assessment is levied until paid, as more particularly provided in Section 8.8 below. Each such assessment, together with interest, late charges, costs, and reasonable attorneys fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied

on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer, or the Association's designated agent, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a processing fee for the issuance of such certificate.

No Owner may exempt itself from liability for assessments by non-use of Common Areas, abandonment of its Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments.

During the Class "B" membership, Declarant may annually elect either to pay regular assessments on its unsold Lots or to pay the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination thereof.

8.3. Computation of Base Assessment.

At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, which may include a capital contribution to a reserve fund in accordance with a budget separately prepared as provided in Section 8.4. In determining the total funds to be generated through Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. The total budget shall be allocated among all Lots subject to assessment under Section 8.8 in accordance with the formula set forth in Exhibit "C."

So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the Base Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2), which may be a contribution, an advance against future assessments due from

Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and its characterization shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least thirty (30) days prior to the effective date of such budget. There shall be no obligation to call a meeting for the purpose of considering a budget except on petition of the Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within thirty (30) days after delivery of the budget and notice of assessments.

The Board may revise the budget and any assessment from time to time during the year in order to address any unanticipated expenses.

If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution.

The Board may annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the reserve budget, with respect both to amount and timing over the budget period.

8.5. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary, or other expenses which the Board determines to be more appropriately handled outside of the annual operating budget. The Board shall have the authority to levy Special Assessments against a Lot not exceeding the annual Base Assessment for such Lot without a vote of the Lot Owners. Any Special Assessment which exceeds the Base Assessment for that fiscal year shall require the affirmative vote or written consent of Owners representing at least fifty-one percent (51%) of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such class of membership still exists at such time. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6. Specific Assessments.

The Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Properties as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, janitorial service, pest control, courier service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying a Specific Assessment under this subsection.

8.7. Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Lot on the first day following the transfer or conveyance of the Lot from Declarant to a third party. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

8.8. Lien for Assessments.

All assessments authorized in this article shall constitute a lien in favor of the Association against the Lot upon which they are levied until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under South Carolina law.

The Association, acting through the Board, may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot; provided, during the period in which the Declarant has the right to appoint a majority of the Board, at least 51% of the total Class "A" votes in the Association must approve the acquisition and mortgage of such a Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment, including such acquirer, its successors and assigns.

8.9. Failure to Assess.

Failure of the Board to fix the amount of any assessment or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay annual Base Assessments on the same basis as due for the last year for which an assessment was determined, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls.

8.10. Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments pursuant to this Declaration:

- (a) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1(iv); and
- (b) any property dedicated to and accepted by any governmental authority or public utility.

In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under the Internal Revenue Code which may include, without limitation, churches and other tax exempt organizations.

8.11. Capitalization of the Association.

Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant, and upon each subsequent transfer or conveyance (of any type whatsoever), a contribution shall be made by or on behalf of the purchaser to the reserves of the Association in an amount established by resolution of the Board or by a Supplemental Declaration applicable to such Lot. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association upon the closing or other settlement of the transfer or conveyance of the Lot. Any unpaid capitalization assessment shall constitute a lien in favor of the Association against the Lot as provided in this article.

Notwithstanding the foregoing, a capitalization assessment shall not be levied upon the conveyance of an undivided interest in a Lot by the Owner thereof to any then existing co-Owner(s) of such Lot or by an Owner to the trustee of a trust for the Owner's benefit, or for the benefit of such Owner's family, or to a corporation or other entity created by such Owner.

Article IX Architecture and Landscaping

9.1. General.

No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading, and other site work; exterior alterations of existing improvements; or planting or removal of landscaping) shall take place within the Properties, except in compliance with this article and the Design Guidelines. No signage shall be placed, erected, installed, or displayed on any portion of the Properties except for signage installed by the Declarant unless such signage has been approved pursuant to this article.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of any structure within his or her Lot without approval. However, modifications to portions of a Lot visible from outside any structure shall be subject to approval.

All buildings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer unless otherwise approved by the Declarant or its designee in its sole discretion.

This article does not apply to Declarant's activities or to the Association's activities during the Class "B" Control Period.

9.2. Architectural Review.

(a) By Declarant. Until all of the property described in Exhibits "A" and "B" has been developed, constructed, and granted a certificate of occupancy, the Declarant shall have the exclusive right to exercise architectural review under this article, unless earlier terminated in a written instrument executed by Declarant and recorded in the Public Records. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties preserve its reputation and do not impair the Declarant's ability to market its property. Therefore, each Owner covenants and agrees that no activity within the scope of this article ("Work") shall be commenced on such Owner's Lot unless and until the Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant and its designee shall owe no duty to any other Person.

The Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this article to (i) an architectural review committee appointed by the Board of Directors (the "ARC"); or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has any rights under this article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by the Declarant.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of the Declarant's rights under this article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters hereunder. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals whose compensation, if any, shall be established from time to time by the Board.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or the Declarant's rights under this article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Reviewer may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines, which are intended to provide guidance to Owners and builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

The Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has a right to expand the Properties pursuant to Section 7.1, notwithstanding a delegation of reviewing authority to the ARC, unless the Declarant also delegates the power to amend to the ARC. Upon termination or delegation of

Declarant's right to amend, the Board may amend the Design Guidelines with the Community Council's consent, which consent may not unreasonably be withheld, conditioned, or delayed. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any Work within the scope of this article, an Owner shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable or as required by the Design Guidelines. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall, within 45 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within 45 days, approval shall be deemed to have been given, subject to the Declarant's right to veto approval by the ARC pursuant to this section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 9.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited in the U.S. Mail. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant, or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

(c) Signage Criteria. Owners must comply with the applicable sign ordinances of the City of Hardeeville. In addition, Declarant shall prepare signage criteria ("Signage Criteria") regulating the existence, location, size, content, illumination, and all issues related to signs and advertisements within the Properties. No sign or advertisement shall be permitted within the Properties unless approved by the Reviewer and consistent with the Signage Criteria. The entity holding the authority to amend the Design Guidelines shall also have sole and full authority to amend the Signage Criteria to make them more or less restrictive, as it shall deem appropriate.

9.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

9.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability.

The standards and procedures established by this article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, or size or of similar design. The Declarant, the Association, the Board, the Community Council, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; or for any defects in plans revised or approved hereunder; or for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association as provided in Section 4.6.

9.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that on such Owner's Lot there are no known violations of this article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Article X Use Restrictions

10.1. Plan of Development; Applicability; Effect.

Declarant has established a general plan of development for the Properties in order to enhance all Owners' collective interests and the aesthetics and environment within the Properties and the surrounding communities. To accomplish this objective, the Properties are subject to the Design Guidelines enacted in accordance with Article IX, other Rules and Regulations adopted by the Board, and individual restrictions on conduct and use of or actions upon the Properties promulgated pursuant to this article which establish affirmative and negative covenants, easements, and restrictions on Properties and which shall apply in addition to any restrictions applicable to a particular Lot or Lots pursuant to a Supplemental Declaration filed in accordance with Section 7.2. With respect to the Use Restrictions promulgated pursuant to this article, the Board and the Members shall have the ability, in the manner set forth below, to respond to changes in circumstances and needs within the Properties.

All provisions of the Governing Documents and supplements shall apply to all Persons on the Properties. The lessee and all occupants of leased Lots shall be bound by the terms of the Governing Documents and supplements, whether or not the lease so provides. **ALL OWNERS SHALL BE RESPONSIBLE FOR INSERTING A PROVISION IN ANY LEASE INFORMING THE LESSEE AND ALL OCCUPANTS OF THE LOT OF ALL**

APPLICABLE USE RESTRICTIONS AND RULES AND REGULATIONS AFFECTING THE LOT AND THE COMMON AREA.

10.2. Authority to Promulgate Use Restrictions.

Initial Use Restrictions applicable to all of the Properties are attached as Exhibit "D." Lots may be subject to additional recorded restrictions and conditions on the use and activities permitted on such Lots, including but not limited to those contained in the Development Agreement with the City of Hardeeville recorded in Record Book ??? at Page ???, as amended in Record Book ??? at Page ???.

Subject to the terms of this article, the Use Restrictions contained in Exhibit "D" may be modified in whole or in part, repealed, or expanded as follows:

(a) Subject to its duty to exercise business judgment on behalf of the Association and its Members, the Board may adopt Use Restrictions that modify the initial Use Restrictions set forth in Exhibit "D." The Board shall conspicuously publish notice of any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any Use Restriction adopted by the Board shall become effective unless disapproved at a meeting by Members representing at least fifty-one percent (51%) of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) The Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt Use Restrictions that modify the Use Restrictions by a vote of at least 66% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this section, the Board shall send a copy of the Use Restrictions to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions to any requesting Member or Mortgagee.

(d) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Use Restrictions shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Developable Land.

(e) Nothing in this article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines or any covenant, condition, or restriction set forth in a Supplemental Declaration. All matters of architectural control and aesthetics shall be governed by the Design Guidelines.

(f) The provisions set forth in this article shall be applicable to Use Restrictions only and shall not apply to Board adopted Rules and Regulations.

10.3. Owners' Acknowledgment.

All Owners and occupants of Lots are given notice that use of their Lots is limited by the Use Restrictions as they may be modified. Each Owner, by accepting a deed or entering into a recorded contract of sale, acknowledges and agrees that the use, enjoyment, and marketability of its property may be affected by this provision and that the Use Restrictions may change from time to time.

10.4. Rights of Owners.

Except as may be specifically set forth in this Declaration (either initially or by amendment), by separately recorded restriction, or in Exhibit "D," neither the Board nor the Members may adopt any Use Restriction in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated equally.

(b) Alienation. No Use Restriction shall prohibit leasing or transfer of any Lot or require consent of the Association or Board for leasing or transfer of any Lot.

(c) Abridging Existing Rights. If any Use Restriction would otherwise require Owners or occupants of Lots to dispose of personal property which they maintained in or on the Lot prior to the effective date of such Use Restriction, and in compliance with all Use Restrictions in force at that time, such Use Restriction shall not apply to any such Owners without their written consent unless the Use Restriction was in effect at the time such Owners or occupants acquired their interest in the Lot.

(d) Rights to Develop. No Use Restriction or action by the Association or Board shall impede Declarant's right to develop the Properties.

The limitations in Subsection (a) through (c) shall not apply to amendments to this Declaration adopted in accordance with Article XV.

Article XI Easements

11.1. Easements of Encroachment.

There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or between adjacent Lots, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet (3'), as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing

conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) The Declarant reserves, so long as the Declarant owns any property described in Exhibit "A" or "B" of this Declaration, easements for the following purposes throughout all of the Properties, on behalf of itself and its nominees, successors, and assigns, and shall include the right of access in order to exercise the reserved easements:

(i) installing, operating, maintaining, repairing, and replacing infrastructure to serve the Properties, including, without limitation, roads, deceleration lanes, walkways, pathways and trails, street lights, drainage facilities, and signage. Such easements shall be exclusive to the Declarant unless and until granted or conveyed to the Association or a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats. With regard to the easement reserved for installation of signage, Declarant retains the right and easement to construct or erect a single monument sign for the benefit of Declarant, its successors and assigns, subject to the following conditions: the owner of the affected portion of the Property has the right to approve the location and design of the sign, provided that: (i) the sign must be located along the S.C. Highway 278 or Interstate 95 frontage and within the Owner's property lines, and (ii) the property owner has the right to participate in the sign. Additionally, each entity utilizing the sign, as a successor or assign of Declarant, shall be responsible for: (i) all costs related to the design and construction of their portion of the signs on the monument; and (ii) their pro-rata share of the constructions of the monument base to which the signs are affixed; and (iii) their prorata share of all utilities, maintenance and repair of the sign and monument. The approval of the design and location of the sign shall not be unreasonably withheld;

(ii) installing, operating, maintaining, repairing, and replacing utilities to serve the Properties and each Lot, including, without limitation, gas, electricity, CATV, security and similar systems. Such easements shall be exclusive to the Declarant unless and until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(iii) installing, operating, maintaining, repairing and replacing pipes and systems to transport and distribute potable water and irrigation water to serve the Properties and each Lot and pipes and systems for sewage disposal. Such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats; and

(iv) installing, operating, maintaining, repairing and replacing telephone, cable television, telecommunications, and other systems for sending and receiving data and/or other electronic signals, to serve the Properties and each Lot. Such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual, and

irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats.

(b) Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of any of the items addressed in Section 11.2(a) and to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." Any such contract, agreement, or easement may, in the Declarant's sole discretion, grant the exclusive right to access or use of such system, including the portions of the systems installed on or in the Lots, dwellings, and other structures constructed on Lots and Common Areas within the Properties. The Owner of any property to be burdened by any easement granted pursuant to this section shall be given written notice in advance of the grant. The location of any easement granted pursuant to this section shall be subject to the written approval of the Owner of the property burdened by that easement, which approval shall not be unreasonably withheld, delayed, or conditioned. Upon the grant of any easement pursuant to this section, the grantee shall: (a) cause all work associated with that easement to be performed with the least possible interference to the use and enjoyment of the property burdened by that easement; and (b) upon completion of all work associated with that easement, cause the property burdened by that easement to be restored, to the extent reasonably possible, to its condition prior to the commencement of the work.

(c) All work associated with the exercise of the easements described in Section 11.2(a) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Notwithstanding anything to the contrary contained in this section, no above ground sewer lines, electrical lines, water lines, or other utilities may be installed or relocated on the Properties except: (a) as may be approved by the Declarant, as long as it has the unilateral right to subject additional property to this Declaration, or by the Board after the expiration of such rights; (b) as may be constructed as a part of the original development and/or sale by the Declarant; or (c) as may be permitted by the terms of any easement affecting the Properties and recorded prior to the recording of this Declaration.

The easements provided for in this section shall in no way adversely affect any other recorded easement on the Properties, and such easements shall not be exercised in any manner that materially restricts or interferes with the use and development of the Lot.

11.3. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over Road A, B & C and the "Access Road", which is the Common Area road lying between Lots 1 thru 12, as shown on the Master Plan, for the purposes of enjoyment, use, access to, and development of adjacent

property owned by Declarant or by others, whether or not such property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over such portion of the Common Areas for pedestrian and vehicular access to such adjacent property and for tying into, and installation of, utilities within such Common Areas. Declarant agrees that it or its successors or assigns shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of the adjacent property. Declarant also agrees that if the easement is exercised for permanent access to such adjacent property and such adjacent property or any portion benefiting from such easement is not made subject to this Declaration, Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of such private roadway.

11.4. Maintenance and Right of Entry.

Declarant grants to the Association easements over the Commercial Properties as necessary to fulfill all maintenance responsibilities under this Declaration.

The Association has the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, and to inspect it for the purpose of verifying compliance with the Governing Documents. This right may be exercised by any member of the Board, any officer, manager, agent, or employee of the Association acting with the permission of the Board, and all police, fire, and similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon a Lot to perform maintenance or cure any condition which may increase the possibility of a fire or other hazard, in the event that the Owner fails or refuses to perform such maintenance or cure such condition within a reasonable time after request by the Board. Except in an emergency situation to avoid an imminent threat of personal injury or property damage, entry into any portion of a Lot not generally open to the public shall only be authorized during reasonable hours and after receipt of the Owner's or occupant's consent.

11.5. Easements over Common Areas.

In addition to the easements specifically described herein, Declarant does hereby reserve to itself, its successors and assigns, a perpetual, non-exclusive easement over all of the Common Areas for ingress, egress, access, use, and enjoyment and for such other purposes as Declarant, in its sole discretion, determines appropriate, together with the right to grant additional easements over, across and under the Common Areas to any other Person and for such purposes as Declarant deems appropriate in its sole discretion.

11.6. Shared Access Easements.

Declarant grants to each Owner and occupant of a Lot to which access is provided by a shared access easement, as shown on a recorded plat, and their respective guests, invitees, and licensees, a perpetual, non-exclusive easement over such shared access easement for access to and from the Lot. The cost of maintenance of any driveway or similar improvements constructed within the shared access easement shall be shared equally between the Owners of the Lots benefited by the shared access easement. In the event a dispute arises between such Owners with

regard to the maintenance of the improvements within the shared access easement, the dispute shall be handled in accordance with the provisions of Article XIV.

11.7. Easements for Bike/Pedestrian Paths.

Declarant and the Association have the right to grant easements for the installation, maintenance, repair and replacement of pedestrian and bicycle pathways within buffer areas of Lots or Common Areas along Highways 278, the Access Road and Interstate 95.

Article XII Declarant's Rights

12.1. Transfer of Declarant Rights.

Any or all of the special rights and obligations of the Declarant reserved in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation or enlarge a right beyond that contained in this Declaration or the By-Laws, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case, it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

12.2. Use of Common Areas.

The Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, maintenance of signs and sales/rental offices. The Declarant and its designees shall have an easement for access to such facilities.

The Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

12.3. Approval of Additional Covenants.

No Person shall record any declaration of covenants, conditions, and restrictions or declaration of condominium or similar instrument affecting any portion of the Properties without first obtaining Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

12.4. Right to Approve Changes in Community-Wide Standards.

No amendment to or modification of any Use Restrictions, Design Guidelines, or Rules and Regulations shall be effective without prior notice to and the written approval of Declarant

so long as the Declarant owns property subject to this Declaration or within the areas shown on the Master Plan.

12.5. Easement To Inspect and Right To Correct.

(a) Declarant reserves for itself and such other Persons as it may designate perpetual non-exclusive easements throughout the Properties to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, or correcting any portion of the Properties, including Lots and the Area of Common Responsibility. In its sole discretion, Declarant shall have the right, but not the obligation, to redesign or correct any part of the Area of Common Responsibility and the right to redesign or correct any deficiency on any Lot.

(b) Entry onto a Lot shall be after reasonable notice except in an emergency. Entry into a structure on a Lot shall be only after Declarant notifies the Lot's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Lot to perform such activities.

(c) Any damage to a Lot or the Area of Common Responsibility resulting from the exercise of the easement or right of entry described in subsections (a) and (b) of this section shall promptly be repaired by, and at the expense of, the Person exercising the easement right. The exercise of these easements shall not unreasonably interfere with the use of any Lot and entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

12.6. Termination of Rights.

The rights of the Declarant contained in this article shall not terminate or be amended until the earlier of: (a) ten (10) years from the date this Declaration is recorded in the Public Records; or (b) recording by Declarant of a written statement that all of its sales/leasing activities in connection with the development of the Properties has ceased.

Article XIII Dispute Resolution and Limitation on Litigation

13.1. Consensus for Association Litigation.

Except as provided in this section, the Association shall not commence a judicial or administrative proceeding without the approval at least fifty-one percent (51%) of the Members. This section shall not apply, however, to: (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to *ad valorem* taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

13.2. Alternative Method for Resolving Disputes.

The Declarant; the Association its officers, directors, and committee members; the Community Council, its officers, directors, and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to

this article (collectively the "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances, or disputes described in Section 13.3 ("Claims") to the procedures set forth in Section 13.4 prior to filing suit in any court.

13.3. Claims.

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents; the rights, obligations, and duties of any Bound Party under the Governing Documents, or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 13.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.4:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII;

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other equitable remedies as only a court may deem necessary in order to maintain the status quo and to preserve the Association's ability to enforce the provisions of Article IX and Article X.

(c) any suit between Owners, that does not include Declarant or the Association as a party if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.4(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.4.

13.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) Claimant's proposed remedy; and
- (iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may, but is not obligated to, appoint a representative to assist the Parties in negotiation. If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation.

(c) Mediation.

(i) Upon submission to mediation, the Claim shall be heard by a mediator obtained through the auspices of a mediation agency retained by the Association to provide such services within the community, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Jasper County area. The mediator shall be licensed or certified as may be required by the State of South Carolina.

(ii) If Claimant does not submit the Claim to mediation within such time or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice that the proceedings have ended in impasse ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(iv) Within five (5) days of a Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "E" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This subsection (d) is an agreement to arbitrate and is specifically enforceable under the applicable South Carolina arbitration laws. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under South Carolina law.

13.5. Allocation of Costs of Resolving Claims.

(a) Subject to the terms of Section 13.5(b), each Party shall bear its own costs, including attorneys fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

13.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 13.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to comply again with the procedures set forth in Section 13.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

13.7. Prerequisites to Actions.

Prior to filing a civil action against Declarant, the Association must notify the Declarant, participate in alternative dispute resolution, and give the Declarant an opportunity to inspect and make a settlement offer prior to instituting a suit.

13.8. Retention of Expert For Litigation Purposes.

Prior to the Association's or any Member's retaining an expert for litigation purposes related to the construction or design of any portion of the Properties or any improvements thereon, including Lots and Common Area, the Association or Member, as appropriate, shall notify the Declarant and any builder involved in the design or construction of such portion of the Properties.

Article XIV General Provisions

14.1. Amendment.

(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose so long as such amendment does not substantially conflict with the Master Plan. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. In addition, so long as the Declarant owns property described in Exhibit "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least two thirds (2/3) of the total Class "A" votes in the Association and the consent of the Declarant, so long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). Additionally, no amendment may remove, revoke, increase, decrease, or modify any Community Council right or privilege without the Community Council's written consent.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision

in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

14.2. Severability.

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect any other provisions or applications.

14.3. Mortgagee Rights.

Notwithstanding any other provision contained in this Declaration:

In the event that any Owner or Mortgagee furnishes a written request to the Association specifying the name and address of the Mortgagee and of the Lot in which it holds an interest, the Association shall give written notice to the Mortgagee of any default of the Owner of such Lot in performing or observing any of the terms, conditions, or agreements contained in this Declaration prior to taking any enforcement action. The Mortgagee shall have the right (but not the obligation) to remedy the default.

14.4. Cumulative Effect; Conflict.

The covenants, restrictions, and provisions of this Declaration shall be cumulative. Nothing in this section shall preclude any Supplemental Declaration or other covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.5. Use of the Words "Jasper Commons".

No Person shall use the words "Jasper Commons" or any derivative thereof in the name of any building or any business or enterprise or in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Jasper Commons" in printed or promotional materials solely to specify that particular property is located within the Properties, and the Association shall be entitled to use the name "Jasper Commons" in its name.

14.6. Ownership of Lot by Government.

Declarant shall have the right to exempt the United States; the State of South Carolina; Jasper County, South Carolina; or any related entity, as the Owner of a Lot, from any of the restrictions contained in this Declaration, the By-Laws, or Rules and Regulations of the

Association, but only if such exemption is required by the United States, the State of South Carolina, Jasper County, or any related entity.

14.7. Compliance and Indemnification.

Every Owner and occupant of any Lot shall comply with the Governing Documents. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Lot Owner(s), to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3 and in the By-Laws.

Each Owner shall indemnify, hold harmless, and defend the Association from any loss, damages, and expenses, including counsel fees, which it may incur as a result of the failure of such Owner, any occupant of such Owner's Lot, or any contractor, employee, or agent of such Owner acting within the scope of his contract, agency or employment, to comply with the Governing Documents.

14.8. Notice of Sale or Transfer of Title.

Any Owner desiring to sell or otherwise transfer title to its Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.9. Exhibits.

Exhibits "A," "B," "C," "D," and "E" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of this Declaration. Exhibit "F" is attached for informational purposes and may be amended as provided therein.

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SIGNATURE ON FOLLOWING PAGE]

TABLE OF EXHIBITS

Exhibit	Subject Matter	Page First Appearing
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	3
"C"	Formula for Assessments and Voting Rights	4
"D"	Initial Use Restrictions and Rules	5
"E"	Rules of Arbitration	39
"F"	By-Laws of Jasper Commons Owners Association, Inc.	2

EXHIBIT "A"

Land Initially Submitted

ALL those certain pieces, parcels or tracts of land situate, lying and being in the City of Hardeeville, Jasper County, South Carolina, being shown and designated as Parcel A, containing 224 acres, more or less, and Parcel B, containing 2 acres, more or less, as more fully shown on the plat prepared by ATM Engineering Co., dated June 30, 2008, last revised "April 4, 2006, which is recorded in the Office of the Register of Deeds for Jasper County in Plat Book 114 at Page 126.

EXHIBIT "B"

Land Subject to Annexation

EXHIBIT "C"

Formula for Assessments and Voting Rights

I. Assessments. Assessments shall be levied on all Lots subject to a particular assessment according to the following formula:

Each Lot, whether or not shown upon a recorded plat, is assigned one point ("Point") for each 3,000 square feet of allowable gross air-conditioned floor area as set forth in the Supplemental Declaration applicable to the Lot. If the allowable floor area of a Lot exceeds that increment for allocation of a Point by one half or more, the Points allocated to such Lot shall be rounded up. If the allowable floor area of a Lot does not exceed that increment for allocation of a Point by one half, the Points allocated to such Lot shall be rounded down. Notwithstanding the foregoing, all Lots shall be allocated at least one Point.

The percentage of the total assessment to be levied on a particular Lot shall be computed by dividing the sum of Points assigned to the Lot by the total sum of all Points for all Lots subject to assessment.

II. Votes. Votes for each Lot shall be computed using the same formula as set forth above for assessments.

III. Cutoff Date for Computation. The Point totals for all Lots, the percentage of the total assessment to be levied on each Lot subject to assessment, and the percentage vote attributable to each Lot shall be computed annually by the Board of Directors as of a date which is not less than 60 days prior to the beginning of each fiscal year. Notice of the percentages for each Lot (including a summary of the computations) shall be sent to each Owner together with the annual notice of any assessment. The notices of the percentages for each Lot shall include the Board's estimation of when additional Lots, if any, shall be made subject to this Declaration between annual cutoff dates for computation of assessments and voting rights.

EXHIBIT "D"

Initial Use Restrictions

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by Use Restrictions of the Association adopted pursuant to Article X of the Declaration.

1. General. The Properties may generally be used for any lawful purpose unless prohibited by the provisions of this Declaration, any applicable Supplemental Declaration, or by Jasper County, South Carolina.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of trucks or other vehicles on streets or thoroughfares for delivery, loading, unloading, or otherwise, and parking of any vehicles in any parking areas for such an extended period of time as to amount to storage of the vehicle(s) in the reasonable determination of the Board of Directors of the Association.

(b) Any activity that tends to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot;

(c) Any activity that emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot or that creates noise, unreasonable risk of fire or explosion, or other conditions that tend to disturb the peace or threaten the safety of the occupants and invitees of other Lots, provided, nothing herein shall preclude normal and customary operation of any restaurant or hospital facility;

(d) Any activity that violates local, state, or federal laws or regulations;

(e) Outside burning of trash, leaves, debris, or other materials;

(f) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right;

(g) Outdoor storage or business operations of any kind, except that: outdoor storage of building materials shall be permitted during construction on the Lot on which such materials are stored; and outdoor dining facilities are permitted;

(h) Subdivision of a Lot into two or more Lots or changing the boundary lines of any Lot without Declarant's approval so long as Declarant owns any property described in Exhibit "A" or "B"; and

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Sprinkler or irrigation systems or wells of any type that draw water from creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except as provided by the Declarant or its subsidiaries, affiliates, successors, or assigns;

(c) Any fence, wall, hedge, or shrub planting that creates or tends to create a traffic or sight obstruction;

(d) Tents, trailers, or any structure of a temporary nature, such as a tent, shack, or utility shed, except for construction trailers during ongoing construction on the Lot and temporary party tents for special events or tents, booths, and trailers for artistic, cultural, or community festivals approved by the Board in advance; and

(e) Overhead service entrance conductors, except for temporary lines as required during construction and high voltage distribution lines.

4. Prohibited Uses. In addition to uses which are inconsistent with any ordinances or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Properties:

(a) trailer courts, mobile home parks, and recreation vehicle campgrounds;

(b) junk yards, scrap metal yards, automobile used parts and/or dismantling operations and sanitary landfills, except that nothing herein shall preclude recycling centers established solely for the collection and sorting of household recyclable materials;

(c) commercial excavation of building or construction materials, except in the usual course of construction of improvements;

(d) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, dead animals, medical waste, toxic waste, or refuse;

(e) lumberyards, sawmills, or outdoor storage of building or construction materials (except in the usual course of construction on the site where stored);

(g) flea markets, and fire and bankruptcy sale operations;

(h) truck terminals and truck stop-type facilities; and

(i) message parlors and businesses primarily engaged in the sale of obscene or pornographic materials or in the provision of entertainment featuring topless or nude performers.

EXHIBIT "E"

Rules Of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought, and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select an arbitrator to hear the dispute.

3. If the arbitrator is not selected under Rule 2 within twenty-one (21) days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint an arbitrator, notifying the appointed arbitrator and all Parties in writing of such appointment.

4. No person may serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of an arbitrator after receipt of that arbitrator's Bias Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.

5. The arbitrator shall fix the date, time, and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the arbitrator may not enter an award by default, but shall hear Claimant's case and decide accordingly.

7. All persons who, in the judgment of the arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. Unless otherwise agreed by the Parties, there shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the arbitrator may retain the services of an independent expert who will assist the arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the arbitrator in the arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the arbitrator.

11. Unless otherwise ordered by the arbitrator, no formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim and which is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The arbitrator shall declare the hearings closed when satisfied the record is complete.

13. Unless otherwise ordered by the arbitrator, there will be no post-hearing briefs.

14. The award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The award shall be in writing, shall be signed by the arbitrator and acknowledged before a notary public. If the arbitrator believes an opinion is necessary, it shall be in summary form.

15. Each Party agrees to accept as legal delivery of the award the deposit of a true copy in the U.S. Mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

EXHIBIT "F"

By-Laws of Jasper Commons Owners Association, Inc.

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
JASPER COMMONS**