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SEP 23 2008

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September 18, 2008

Forino Co., L.P.  
Mr. John Smith  
555 Mountain Home Road  
Sinking Spring, PA 19608

Re: Jasper Commons Delcaration of Covenants, Conditions and Restrictions  
For Jasper Commons

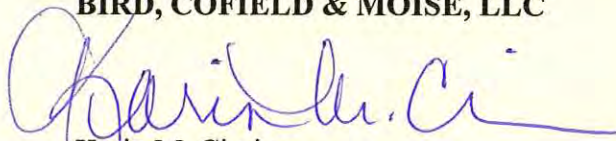
Dear Mr. Smith:

With regard to the above referenced matter, please find enclosed the **original** Covenants recorded in Jasper County Records in Book 0191 at Page 0253.

Please keep these documents in a safe location. Thank you for allowing our office to be of assistance to you in this transaction. If you have any questions, please do not hesitate to call me.

Very truly yours,

**BIRD, COFIELD & MOISE, LLC**



Karin M. Cimino  
Assistant to Stephen S. Bird

/kmc  
Enclosures

63  
69

200800004644 09/04/2008 AT 02:49 PM  
OR Volume 0693 Page 0191 - 0253  
Filed for Record in JASPER COUNTY  
Covenant Fee: \$69.00

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER ) **DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
JASPER COMMONS**

**THIS DECLARATION of Covenants, Conditions and Restrictions** is made this 21 day of August, 2008 by Forino Co., L.P., a Pennsylvania limited partnership (hereinafter referred to as "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania and is the owner of certain real property which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration (hereinafter referred to as the "Property") which Property is located in the East Argent PDD, City of Hardeeville, Jasper County, South Carolina; and

**WHEREAS**, Declarant desires to develop the Property in a coordinated manner into a residential subdivision to be known as "Jasper Commons" with provisions for certain common areas, common access areas, common regulations and cost-sharing, all as more particularly set forth herein; and

**WHEREAS**, the Declaration Of Covenants, Conditions and Restrictions for Argent at New River dated February 1, 2006, and recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Volume 339 at Page 243 ("Master Covenants") requires that Declarant, prior to the conveyance of any lot in the ordinary course of business, record a neighborhood declaration of covenants, conditions, and restrictions for the Property; and

**WHEREAS**, the Master Covenants require that the neighborhood covenants (i) establish the jurisdiction of a mandatory membership owners association for the Property, and (ii) establish the obligation of each owner of any portion of the Property to be a member of such neighborhood association as long as such owner holds title to such portion of the Property, and (iii) establishes the obligation of each owner of the Property to pay assessments to the neighborhood association, which assessments shall include the assessments due from the neighborhood association to

Argent at New River (“Master Association”) and which assessments, including those due to the Master Association, are secured by a lien against each owner’s portion of the Property, and (iv) establishes architectural restrictions requiring approval of Declarant or an architectural review board established by Declarant prior to the installation, placement, or modification of structures and improvements on any portion of the Property by an owner other than Declarant; and

**WHEREAS**, Declarant, in addition to the requirements of the Master Covenants, finds that private controls over the use of land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property, and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the “Declaration” or “Covenants”); and

**WHEREAS**, Declarant deems it desirable to provide a flexible and reasonable procedure for the overall development of the Property, and to provide a mechanism for the proper administration of these Covenants, including, but not limited to, the ownership, operation, maintenance, preservation, use and enjoyment of the common facilities on the Property, the performance of acts of maintenance, administration, assessment, enforcement and other activities set forth in these Covenants and other mandated and discretionary functions consistent with the purpose of these Covenants which benefit the Property and all real property now or hereafter subjected to this Declaration; and

**WHEREAS**, in connection with the need for such a mechanism, Declarant has caused or will cause to be incorporated under the laws of the State of South Carolina a non-profit corporation, the Jasper Commons Property Owners Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth; and

**NOW, THEREFORE**, Declarant hereby declares that all of the property described in Exhibit “A” and any Additional Property (as hereinafter defined) which is hereinafter subjected to this Declaration by Supplemental Declarations (as hereinafter defined) is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burden of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the land herein referred to as the “Property” and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by deed, assignment, succession or inheritance and/or any other method of conveyance.

**ARTICLE I**  
**DEFINITIONS**

When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

Section 1.1 Additional Property. "Additional Property" shall mean and refer to all property which may be contiguous to the Property and/or located nearby, if such property is voluntarily submitted hereunder by Declarant, without the need for consent of the Association, the Board, or any Owner, or by the owner(s) of such Property, if Declarant is not the owner, with the written consent of Declarant hereunder and made subject to this Declaration pursuant to Article X hereof. In addition to the Property described in Exhibit "A" wherever used in these Covenants, the term the "Property" shall also mean and refer to all Additional Property submitted to these Covenants by Declarant. Such submission of Additional Property shall become effective only after filing a document of record in the Office of the Clerk of Court for Jasper County, South Carolina, executed in recordable form by Declarant and, if Declarant is not the owner of the Additional Property, the owners of the Additional Property, describing such Additional Property and stating the intent to be bound hereby and submitted hereunder.

Section 1.2 Architectural Review Board. "Architectural Review Board" or "ARB" shall mean and refer to the Architectural Review Board established by Declarant.

Section 1.3 Articles of Incorporation. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for the Jasper Commons Property Owners Association, Inc. (hereinafter referred to as the "Association"), as filed with the South Carolina Secretary of State, as the same may be amended from time to time.

Section 1.4 Association. "Association" shall mean and refer to the Jasper Commons Property Owners Association, Inc., a South Carolina Non-Profit Corporation organized under the South Carolina Non-Profit Corporation Act of 1994 as the same may be amended from time to time, its successors and assigns, such Association being a Neighborhood Association as required by the Master Covenants.

Section 1.5 Board of Directors. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.6 Builder. "Builder" shall mean and refer to any Person who purchases one or more Homesites (as hereinafter defined) as part of its ordinary and regular trade as a home builder for the purpose of constructing improvements for sale to consumers in the ordinary course of business. The term "Builder" shall also mean (i) any Person who purchases from Declarant one or more parcels of land of the Property and/or the Additional Property for, with the written consent of Declarant, the further subdivision, development, and resale in the ordinary course of business, and (ii) any entity formed by Declarant or its affiliates for the purpose of building product within Jasper Commons.

Section 1.7 Bylaws. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

Section 1.8 Common Expenses. "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

Section 1.9 Common Property. "Common Property" shall mean and refer to collectively (a) those areas of land, including those with improvements thereon, which are designated in deeds of conveyance to the Association by the Declarant from time to time as "Common Property" and shown on a corresponding plat of record or other recorded exhibit referenced by Declarant in such deed or deeds, (b) any personal property acquired by the Declarant, if said property is designated in writing by the Declarant as "Common Property. No property shall become or shall constitute Common Property, even if shown as such on the Master Plan (as hereinafter defined) or otherwise, until such time as such property is deeded by Declarant to the Association as Common Property. The Declarant reserves the right to restrict the use of any part of the Common Property to the exclusive use of a limited number of Owners and such property shall be known as "Limited Common Property"; provided, however, such Owners primarily benefiting from the Limited Common Property shall pay all costs and expenses associated with such Limited Common Property.

Section 1.10 Community Wide Standard. "Community Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard may be more specifically defined by the Board of Directors.

Section 1.11 Declarant. "Declarant" shall mean and refer to Forino Co., L.P., its successors and assigns. The term shall also be applied to any Person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant as hereinafter provided. In addition to any other transfer rights of the Declarant, Forino Co., L.P., its successors and assigns, may assign to a lender in connection with any development loan on the Property and/or the Additional Property the status and all rights of the Declarant. Such transfer may take any form including but not limited to a present assignment that may not be exercised upon until a default occurs. Upon such assignment to a lender, Forino Co., L.P., its successors and assigns, shall continue to be the Declarant and such lender shall only become the Declarant (as well as the Class B Member) upon the earlier to occur of (i) the effective date of both the transfer and the date that such rights may be exercised by the lender under the instrument pursuant to which Declarant assigns such rights and, (ii) the date such lender becomes the actual owner of the Property and/or Additional Property through judicial foreclosure or sale made pursuant to any power of sale contained in a mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant may also transfer all of its rights, privileges and options as Declarant to a successor-in-title or to the Association, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of the Property and/or the Additional Property, and provided further, that in a written instrument, the Association or such successor-in-title is expressly assigned by Forino Co., L.P., the Declarant's rights, privileges and options herein reserved to Forino Co., L.P. Such an assignment may be included as a recital in any deed executed by Declarant that conveys any portion of the Property and/or the Additional Property. The foregoing

shall not preclude and Declarant is specifically authorized to permit other Persons in writing on a one-time or limited basis to exercise any right reserved to Declarant in this Declaration where the Declarant does not intend to transfer the rights of Declarant in its entirety.

Section 1.12 Declaration. “Declaration” or “Covenants” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Jasper Commons, as the same may be amended or supplemented from time to time.

Section 1.13 Design Standards. “Design Standards” shall mean guidelines and standards for architecture, design, construction, landscaping, and all other purposes pursuant to and as more particularly set out in Article VI, Section 6.5, as such guidelines and standards may be amended from time to time.

Section 1.14 Development. “Development” shall mean and refer to the Property, the Common Property, and all improvements located or constructed thereon, and any portion of the Additional Property subjected to this Declaration. The term shall be used generally to describe the residential community of Jasper Commons.

Section 1.15 Homesite. “Homesite” shall mean and refer to any numbered parcel of land shown as a residential building Lot upon any plat of survey recorded by Declarant in the Office of Clerk of Court for Jasper County, South Carolina, or as similarly shown on revised or supplemental surveys of such tracts or such additional tracts as may be added to the Property from time to time as provided herein. The term “Homesite” shall also include the Dwelling or improvement placed or constructed on such parcel of land by or on behalf of Declarant or an Owner. The term “Homesite” shall include both improved and unimproved Lots.

Section 1.16 Lot. “Lot” shall mean and refer to an unimproved Homesite.

Section 1.17 Master Plan. “Master Plan” shall mean and refer to any preliminary development plan for Jasper Commons prepared for the Declarant as the same may be now or hereafter amended from time to time. Inclusion of property as shown on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration. References to the Master Plan are made solely for the convenience of Declarant. THE MASTER PLAN MAY BE REVISED OR CHANGED IN ANY MANNER, AT ANY TIME, AND FROM TIME TO TIME, OR THE MASTER PLAN MAY BE DISCARDED ALL TOGETHER, ALL AT THE SOLE AND ABSOLUTE DISCRETION OF THE DECLARANT.

Section 1.18 Member. “Member” shall mean and refer to a person entitled to Membership in the Association, including Class “A” Members and the Class “B” Member as long as there is a Class “B” Membership. As required by the Master Covenants, each Owner is a mandatory member of the Association as long as such Owner owns any portion of the Property.

Section 1.19 Mortgage. “Mortgage” shall mean and refer to any Mortgage, Deed of Trust, Deed to Secure Debt or other form of security instrument held by a Mortgagee affecting the Property or any Homesite or Lot within the Property.

Section 1.20 Mortgagee. "Mortgagee" shall mean and refer to an institutional holder of a Mortgage who makes mortgage loans in the ordinary course of its business.

Section 1.21 Mortgagor. "Mortgagor" shall mean and refer to any person who gives a Mortgage.

Section 1.22 Owner. "Owner" shall mean and refer to that record Owner (including Declarant) whether one or more persons, of a fee simple title to any Homesite or Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person who would own the Homesite or Lot in fee simple, if such loan were paid in full, shall be considered the Owner.

Section 1.23 Person. "Person" shall mean and refer to a natural person, corporation, partnership, trustec, or any other legal entity.

Section 1.24 Property. "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto, together with such Additional Property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.

Section 1.25 Restrictions. "Restrictions" shall mean and refer to all covenants, conditions, restrictions, easements, liens and other obligations created or imposed by this Declaration.

Section 1.26 Structure. "Structure" shall mean and refer to:

(a) Any material, thing or object of any kind the placement of which upon any Homesite or Lot may affect the appearance of such Homesite or Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, out buildings, greenhouse or bathhouse, pet house, covered or uncovered patio, swimming pool, antennas and satellite dishes, fence, curbing, paving, wall, landscaping, hardscape, lighting, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Homesite or Lot, including, but not limited to, paint colors, materials, shutters, windows, railings, columns, or any other items attached to the exterior of any structure or on the Homesite or Lot;

(b) Any landscaping, change in landscaping and/or naturally occurring trees or plant material, grading and/or excavation on a Homesite or Lot including any tree removal, excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Homesite or Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Homesite or Lot; and

(c) Any change in the grade at any point on a Homesite or Lot of more than 6" whether or not subsection (b) of this Section 1.26 applies to such change.

Section 1.27 Supplemental Declaration. "Supplemental Declaration" shall mean and refer to an amendment or supplement to this Declaration filed pursuant to Article IX and/or Article X which amends this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein and/or subjects Additional Property to this Declaration.

Section 1.28 Turnover Date. "Turnover Date" shall mean and refer to the date that the Class B Membership shall cease and terminate which date is sixty (60) days after the first of the following events to occur: (a) the expiration of twenty five (25) years from the date of recording of this Declaration; (b) the date as of which ninety five (95%) percent of the Homesites or Lots which may be developed on the Property and on the Additional Property shall have been conveyed by both the Declarant (excluding sales to Builders) and by Builders, if any, who purchased Homesites or Lots from Declarant, to an individual owner or owners for residential use or occupancy; or (c) the surrender by the Declarant of the Class B Membership and authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of Court for Jasper County, South Carolina.

## ARTICLE II PLAN OF DEVELOPMENT

Section 2.1 Development of the Property. While Declarant has submitted all of the Property to the terms and provisions of the Declaration, the Property will be developed in phases and consequently, only those phases which are completed and platted shall comprise the Homesites or Lots. Declarant hereby reserves the right, but not the obligation, to be exercised in its sole discretion, to designate the boundaries of all Homesites, Lots, and Common Property in various phases of the Property as they are developed and platted and to construct on any portion of the Property recreational facilities, including, but not limited to swimming pools, playgrounds, clubhouses and related facilities. Declarant shall have the right, but not the obligation, in its sole discretion and without any approval required from any Owner, the Association, the Board, or any other party, to make improvements and changes to all Common Property and to all Homesites or Lots owned by Declarant, including, without limitation, (1) installation and maintenance of any improvements added to the Common Property; (2) changes in the location of the boundaries of any Homesites or Lots owned by the Declarant or of the Common Property; (3) changes in the boundaries between the Property and any portion of property owned by Declarant; (4) installation and maintenance of any storm drainage system and water/sewer or other utility systems and facilities; (5) installation of security and/or refuse facilities; and (6) construction, installation and maintenance of a permanent dwelling unit on any Lot or Homesite without the approval of the Association, the ARB, the Board of Directors or their respective successors or assigns.

Section 2.2 Development of Additional Property. In accordance with Article X of this Declaration, Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time, Additional Property or portions thereof to the provisions of this Declaration



and thereby to cause Additional Property or a portion or portions thereof to become part of the Property.

Section 2.3 Removing Declaration. For any part of the Property owned by Declarant, Declarant reserves the right in its sole and absolute discretion, and without any approval required from any Owner, the Association, the Board, or any other party, to remove and fully and completely release the Declaration from any portion of the Property and/or the Common Property owned by Declarant. Declarant may remove and fully and completely release the Declaration from any portion of the Property or Common Property owned by Declarant by filing a Supplemental Declaration which only need be signed by Declarant and Declarant shall not need the approval of the Association, the Board, any Owner, or any other party to so file such Supplemental Declaration.

Section 2.4 Development of the Property. The Declarant does not guarantee in any manner that any view from a Homesite or Lot over and/or across any part of the Common Property (including, but not limited to, any lagoons) will be preserved without impairment and Declarant will not have any obligation to any Owner of a Homesite or Lot to preserve any view over or across the Common Property (including but not limited to any lagoons). In addition, Declarant shall not have any obligation to prune or thin trees or other vegetation on the Common Property. Declarant shall have the right in its sole and absolute discretion to locate, remove, and relocate all structures, signs, hardscape, trees, landscaping, and lighting on the Common Property (including, but not limited to, any lagoons) as the Declarant sees fit. All Owners by accepting a deed to any Homesite or Lot acknowledge that any or all such decisions and/or changes by the Declarant may diminish, change, obstruct, or eliminate any view of a Homesite or Lot over and/or across the Common Property (including, but not limited to, any lagoons). Any expressed or implied view easements and/or easements for the passage of light over, from, and/or across the Common Property (including, but not limited to, any lagoons) are hereby expressly disclaimed.

### **ARTICLE III COMMON PROPERTY**

#### Section 3.1 Conveyance of Common Property.

(a) Conveyance of Common Property. The Declarant may, from time to time, cause to be conveyed to the Association the Common Property (which may include portions of Homesites), including all roadways which shall be privately owned and maintained by the Association including grants of easements as well as personal property for the common use and enjoyment of the Owners (except for Limited Common Property, if any, which shall be for the use and enjoyment of only the Owners so designated in the conveyance by Declarant to the Association). In addition, the Declarant may, from time to time, cause the conveyance of certain real property or grants of easements to other third parties as may be deemed desirable or advisable by Declarant or as may be required by governing authorities in accordance with this Declaration. In any event, the Declarant will convey all Common Property to the Association on or before the Turnover Date.

(b) Street Lights. Declarant may but is not required to enter into an agreement with the applicable utility for the installation, maintenance, and electric power for a system of street lights at Jasper Commons. The applicable utility may own the street lights and provide them to the Association under a lease agreement which would likely extend for a period of fifteen or more years. Lease payments by the Association would equal the costs plus a normal profit margin. Each Owner by accepting a deed to any portion of the Property and the Association specifically recognize that said street lights are not owned by the Association or Declarant and that the Association will accept and assume the lease agreement.

(c) Alteration of Common Property; Limited Common Property. It is contemplated by the Declarant that the Declarant will convey Common Property to the Association where scenic and natural area of preservation and for general recreational use. The Declarant may, at the Declarant's sole discretion, modify, alter, increase, reduce or otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this Declaration at any time prior to the conveyance of such Common Property to the Association. Declarant also reserves the right in its sole discretion to convey Common Property to the Association as Limited Common Property for which the primary access and use of may be restricted to a limited number of Owners and which shall not be available for the use and enjoyment of all Owners of the Property; provided, however, only those Persons allowed to use such Limited Common Property shall be assessed for the maintenance, upkeep, repair and replacement of such Limited Common Property.

(d) Additional Conveyances. In addition to the Property described in subsection (a) of this Section 3.1, the Declarant may convey, or cause to be conveyed, to the Association in accordance with this Section 3.1 and such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(e) Title to Common Property. Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property (or which is designated by any words which similarly signify such properties for the use of the Owners in the Development) whether by recorded plat of survey or otherwise, or designated for public use, shall be reserved to the Declarant and for its use and subject to its disposition until such time as the same shall be conveyed by grant or deed to the Association or to any municipality or other governmental body, agency or authority.

(f) Acceptance of Conveyances of Common Property. The Association hereby covenants and agrees to accept all such conveyances of the Common Property and all Owners by accepting a deed to any Homesite or Lot acknowledge the obligation of the Association to do so. In addition, the Association and each Owner acknowledge that the Association shall be solely responsible for the costs of the maintenance and upkeep of all Common Property, notwithstanding the fact that title has not yet been conveyed to the Association by Declarant. Upon transfer of title of the Common Property or any portion thereof to the Association, the Association shall continue to have the sole responsibility of maintenance and repair of the Common Property. Prior to the Turnover Date, the procedures contained in this Section 3.1(g) shall be followed.

(g) Transfer of Common Property. Prior to the Turnover Date, the Declarant shall appoint a nominating committee comprised of three (3) Members, which shall nominate Members to belong to a five (5) Member Transition Committee. Upon conveyance of any such improved Common Property or upon completion of the improvements, whichever is later, the Declarant shall notify the Transition Committee. Within sixty (60) days after said notification, the Declarant or its representative and the Transition Committee shall jointly inspect the Common Property or portion thereof to the extent hereinafter provided. The Declarant and the Transition Committee shall each be entitled to designate a qualified engineer or other such expert to accompany them during the inspection of the improved Common Property. Such inspection shall not account for any normal wear and tear since the date such improvements were constructed and shall be limited to a visual inspection of the improved Common Property. Promptly after the completion of such inspection, the Transition Committee shall submit a written report (hereinafter "Inspection Report") to the Declarant stating whether the improved Common Property or portion thereof is in a good state of repair and specifying the respects, if any, in which such construction is not in a good state of repair (the "Defective Items"). Except as otherwise required under applicable law, the Inspection Report shall constitute conclusive evidence that, except as otherwise set forth in such report, the Declarant has deeded the improved Common Property in a good state of repair and thereafter the Declarant shall have no further liability, duty, or obligation with respect to such improved Common Property or portion thereof except to perform the work called for by the Inspection Report. The reasonable fees and expenses of any experts hired by the Transition Committee in connection with the inspection and re-inspection provided for by this paragraph shall be borne by the Association. If Declarant does not agree with the Defective Items as set forth in the Inspection Report, the engineer or architect used by Declarant and the engineer or architect used by the Transition Committee shall agree on another engineer or architect to act as an arbitrator (the "Arbitrator"). The Arbitrator shall inspect the improved Common Property and shall identify any portion of the Common Property that is not in a good state of repair, normal wear and tear excepted. Such items as identified by the Arbitrator as defective shall thereafter constitute the Defective Items and shall be substituted for the Defective Items identified by the Transition Committee, and shall form part of the Inspection Report and Declarant shall be required to accept such designation of Defective Items as set forth therein. Following the completion of the Defective Items, the Declarant shall, after fourteen (14) days notice to the Transition Committee, arrange for a re-inspection of the portion of the Common Property that formerly had Defective Items. The Transition Committee shall then issue a written report to the Declarant stating whether the Defective Items have been corrected and specifying the respects, if any, in which such work has not been completed and/or is defective. If Declarant agrees with the Transition Committee, Declarant shall perform any work called for by such report of re-inspection as promptly as practicable. If Declarant disagrees with the Transition Committee, the Arbitrator (or if no Arbitrator has been necessary up to this point, an Arbitrator shall be appointed under the same procedure as set forth above) shall review the corrective work and shall identify the work that has not been completed and/or is defective and such determination by the Arbitrator shall be binding on the Association, the Owners, and the Declarant and Declarant shall correct any such defective work. The reasonable fees and expenses of the Arbitrator in connection with the inspection and re-inspection provided for by this paragraph (f) shall be borne by the Association. EXCEPT AS OTHERWISE REQUIRED UNDER APPLICABLE LAW, ONCE IMPROVED COMMON

PROPERTY IS ACCEPTED BY THE ASSOCIATION THROUGH THE TRANSITION COMMITTEE AND ANY DEFECTIVE ITEMS ARE CORRECTED AS SET FORTH ABOVE, DECLARANT SHALL HAVE NO FURTHER LIABILITY OR RESPONSIBILITY OF ANY KIND WITH RESPECT TO SUCH COMMON PROPERTY.

(h) Certificate of Occupancy. With respect to any improved Common Property, issuance of a Certificate of Occupancy by the local governing authority having jurisdiction over such matters, shall be conclusive evidence that said Property complies with all building and construction standards. The Declarant shall not be responsible for compliance with any requirements called for by said local governing authority after the issuance of a Certificate of Occupancy.

Section 3.2 Right of Enjoyment. Subject to the provisions of this Declaration and the provisions of Section 3.3 below, every Owner shall have a non-exclusive right and easement to use and enjoy the Common Property (excluding Limited Common Property, if any), which right shall be appurtenant to and shall pass for the title to every Homesite or Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 3.2 is subject to those items set forth in Section 3.3 which includes suspension by the Association as provided in Sections 3.3 and 4.8.

Section 3.3 Rights of the Association. The rights and privileges conferred in Section 3.2 hereof shall be subject to the right of the Association acting through the Board to: (a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property (which shall specifically include the right of the Association, acting through its Board of Directors, to allow residents of other developments outside of Jasper Commons to use the Common Property for such fees and charges as determined by the Board); (b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class, but need not be uniform between such classes; (c) suspend the voting rights of any Member, pursuant to Section 4.8 and the right of enjoyment granted or permitted by Section 3.2 (but in no event may the Board deny an Owner access to such Owner's Homesite or Lot); (d) grant easements or rights of way over Common Property to adjoining property owners, to any municipality or other governmental body, agency or authority, to any quasi public agency or to any utility company or cable television system; (e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; (f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by Mortgage or other security interest, any or all of the Association's Property, including Common Property and revenues from assessments, user fees and other sources; (g) dedicate or transfer all or any part of the Common Property or interest therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions

and conditions as may be agreed upon by the Association and such grantee, including a provision that such Property or interest shall cease to be subject to this Declaration or all or any part of these Restrictions while held by any such municipality or other governmental body, agency or authority; and (h) to sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association, once it obtains title of record to the Common Property, shall not sell, encumber by Mortgage or other security interest, convey, dedicate or transfer any Common Property or interest therein (excluding however any dedications required by utilities or governmental authorities having jurisdiction) without the approval of two thirds ( $\frac{2}{3}$ ) of the Class "A" Members and with the written consent of the Class "B" Member as long as there is a Class "B" Membership.

Section 3.4 Types of Common Property. At the time of the conveyance of any real Property or grant of easement by the Declarant to the Association to be used as a Common Property, the Declarant may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real Property or any portion thereof may be used, and in such event, such real Property or a portion thereof, shall not be used for any different purpose of purposes without the affirmative vote of two thirds ( $\frac{2}{3}$ ) of the Class "A" Members and with the written consent of the Class "B" Member as long as there is a Class "B" Membership.

Section 3.5 Entrance Easements and Entrance Monuments. It is contemplated that certain easements for landscaping or for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners may be reserved by the Declarant for itself and for the benefit of the Association and may be set forth on plats of survey of the Property recorded with the Clerk of Court for Jasper County, South Carolina. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas as well as the right to plant grass, plants, flowers, shrubs and trees to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within Jasper Commons. All Owners taking title to any Homesite or Lot upon which such an easement lies, will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in any instrument conveying easement rights to the Declarant and/or to the Association. Such easements shall be Common Property. In addition, or alternatively, such entrance monuments or other similar improvements may be constructed within or upon rights of way within the Development. In all such cases, such improvements shall be maintained by the Association as any other Common Property.

Section 3.6 Encroachment Easements. If any buildings, dwelling units, or other improvements initially constructed by Declarant on any of the Homesites (including, without limitation, any roof overhangs, balconies, siding, porches or other structures which may be attached to the walls or roofs of such buildings) encroach onto or over or extend into the air space or any portion of the Common Property, or conversely, if any such improvements initially constructed on the Common Property by Declarant encroach onto or over portions of any Homesite or Lot, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist in perpetuity.

Section 3.7 Stormwater Management System Responsibilities and Easement. The effective functioning of the stormwater management system of the Development is essential to the protection of the environment and to the long-term values of all property within the Development. The stormwater management system includes all ponds, lagoons, retention and detention areas, all functional swales and all other features of the Property, whether naturally existing or constructed, that serve as an integral part of collecting, retaining, filtering and the ultimate release of stormwater within the Development. All portions of the stormwater management system will be located upon Common Property, both before and after actual conveyance of Common Property to the Association, and shall be maintained in good condition and in functional working order by the Association as a common expense of the Association at all times including the time period that any such property is owned by Declarant prior to being conveyed to the Association as Common Property.

ALL MEMBERS BY ACCEPTING A DEED TO A HOMESITE ACKNOWLEDGE THAT ALL PONDS, LAGOONS AND OTHER PORTIONS OF THE STORMWATER SYSTEM OF THE DEVELOPMENT ARE INTERCONNECTED AND THAT THE ASSOCIATION WILL BE USING THE PONDS AND LAGOONS OF THE DEVELOPMENT FOR IRRIGATION AND OTHER PURPOSES AND THAT THE LEVEL OF SUCH PONDS AND LAGOONS WILL VARY DEPENDING ON THE AMOUNT OF USE BY THE ASSOCIATION AND THE AMOUNT OF RAINFALL.

Section 3.8 Alligators. All Owners by accepting a deed to a Homesite acknowledge that the ponds and lagoons of the Development may contain alligators since alligators are indigenous to this area. Alligators are a protected species and no Owner may feed, molest, or otherwise physically interact with any alligator. OWNERS MUST EXERCISE EXTREME CAUTION AROUND ANY POND, LAGOON, OR OTHER WATER FEATURE OF THE DEVELOPMENT. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE FOR CAPTURING AND/OR RELOCATING ANY ALLIGATOR ON THE PROPERTY. NEITHER THE DECLARANT NOR THE ASSOCIATION NOR MEMBERS OF DECLARANT NOR OFFICERS, MEMBERS, DIRECTORS, AND EMPLOYEES OF THE ASSOCIATION, THE DECLARANT OR ITS MEMBERS SHALL BE RESPONSIBLE FOR ANY DAMAGE, INCLUDING INJURY AND/OR LOSS OF LIFE TO ANY PERSON AND/OR ANIMAL, CAUSED BY AN ALLIGATOR ON THE PROPERTY.

Section 3.9 Wildlife; Nuisance Wildlife. All Owners by accepting a deed to a Homesite acknowledge that wildlife is abundant and thrives in coastal South Carolina, will be located throughout the Property, and can be very destructive to residential landscaping. Owners are also advised to use caution at night when driving through the Property and to be on the alert for wildlife crossing roadways. All Owners are advised to use a landscape plan for Homesites that contain plants known to be wildlife resistant or tolerant. Neither Declarant nor the Association will be responsible for any damage caused by wildlife, whether such damage is to landscaping, automobiles, personal injury, or otherwise. Further, neither the Declarant nor the Association can be required to at any time or in any way control the wildlife population on the

Property; provided, however, the Declarant and the Board reserve the right in its sole discretion to control nuisance wildlife.

3.10 Streets. The roads of the Property will be owned, maintained, repaired, and replaced by the Association and shall be subject to the rules and regulations of the Association. Because of the private nature of the roads within the Property subject to this Declaration, the Association shall be entitled at its option, but shall not be required, to provide control over vehicular access to various sections of the Property which it deems necessary or desirable for the health, safety or welfare of persons within the Property; provided, however, prior to the Turnover Date, Declarant shall be entitled in its sole discretion to provide control over vehicular access to various sections of the Property which it deems necessary or desirable for the health, safety or welfare of persons within the Property. Said functions may include, but shall not be required, without limitation, constructing, operating and maintaining access road control gates (including card controlled entrance gates of a type deemed appropriate, if any, by Declarant or the Association) and restricting vehicular traffic including commercial vehicular traffic within the Property, thus admitting only Members, lessees or their guests and invitees and such other persons as Declarant or the Association elects to have access. Any entrance gates, if any, shall remain open at such times as required under agreements with applicable governmental authorities and/or as provided under the rules and regulations of the Association adopted by the Board. All Members and lessees may be required to keep the Association informed of all persons who have overnight accommodations at such Member's or lessee's Homesite in order to allow the Association to enforce its vehicular access rules and regulations appropriately. The Association, to the extent permitted by law, shall have the right to post speed limits on the roads of the Property as it deems appropriate and may enforce the posted speed limits, including fining violators. Declarant and/or the Board may prohibit excessively noisy vehicles, may prohibit vehicles with more than four wheels, may restrict or prohibit two-wheel vehicles with engines in excess of one brake horsepower, and may adopt any and all rules and regulations deemed necessary or desirable by the Declarant and/or the Board concerning vehicular access to and use of the Property. The use of off road or unlicensed vehicles of any type including but not limited to four (4) wheel all terrain vehicles, go carts, and dirt bikes are prohibited on the roads of the Property except as specifically allowed by the Association. DECLARANT AND THE ASSOCIATION EACH RESERVE THE RIGHT BUT NOT THE OBLIGATION TO CHARGE A FEE ON SUCH BASIS AS DETERMINED BY DECLARANT AND/OR THE ASSOCIATION, IF ANY (WHETHER A DAILY FEE, YEARLY FEE, OR SOME OTHER BASIS) FOR THE ENTRY OF ALL APPROVED COMMERCIAL VEHICLES INTO THE PROPERTY (EXCLUDING DECLARANT, ANY BUILDERS SO DESIGNATED BY DECLARANT, AND THEIR SUBCONTRACTORS WHO MAY NOT BE CHARGED AN ENTRY FEE OF ANY TYPE AS LONG AS DECLARANT AND/OR A BUILDER SO DESIGNATED BY DECLARANT OWNS ONE (1) OR MORE HOMESITES OR LOTS IN THE DEVELOPMENT), INCLUDING BUT NOT LIMITED TO ALL CONTRACTORS, MOVERS, AND ALL OTHER COMMERCIAL SERVICE PROVIDERS.

Section 3.11 Delegation of Use. Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Homesite subject to compliance with the provisions of this Declaration and compliance with applicable rules and regulations of the Association. Tenants who reside on a Homesite shall have

the same rights of delegation as an Owner subject to compliance with the provisions of this Declaration and compliance with applicable rules and regulations of the Association. If an Owner is not occupying his Homesite as a primary residence and has leased his Homesite to tenants, the Owner shall not have the right to use and enjoy the Common Property, which right may only be exercised by the tenants. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

ALL OWNERS BY ACCEPTING TITLE TO A HOMESITE ASSUME FOR THEMSELVES AND THEIR FAMILIES, GUESTS, TENANTS, AND INVITEES ALL RISKS ASSOCIATED WITH USING THE COMMON PROPERTY AND HEREBY RELEASE THE ASSOCIATION, THE DECLARANT, MEMBERS OF DECLARANT, AND ALL OFFICERS, MEMBERS, DIRECTORS, AND EMPLOYEES OF THE ASSOCIATION, THE DECLARANT AND ITS MEMBERS FROM LIABILITY OF ANY KIND FOR ANY PROPERTY DAMAGE AND/OR PERSONAL INJURY INCURRED IN THE USE OF THE COMMON PROPERTY BY A OWNER AND/OR THEIR FAMILIES, GUESTS, TENANTS, AND/OR INVITEES.

#### **ARTICLE IV PROVISIONS FOR THE JASPER COMMONS PROPERTY OWNERS ASSOCIATION, INC.**

Section 4.1 Purposes, Powers and Duties of the Association. The Association shall be formed as a mutual benefit, non-Profit corporation for the primary purpose of performing certain functions for the common good and general welfare of the residents of Jasper Commons. To the extent necessary to carry out such purpose, the Association: (a) shall have all the powers of a corporation organized under the South Carolina Non-Profit Corporation Act of 1994, as may be amended from time to time; and (b) shall have the power to exercise all of the rights, powers, and privileges of the Association as set forth in this Declaration.

Section 4.2 Membership in the Association. Declarant, and every person or entity who is a record Owner of a Lot or Homesite, or an undivided interest in any Homesite or Lot which is made subject to this Declaration, shall be a Member of the Association (subject to the provisions relating to multiple Ownership or joint ownership set forth in Section 4.3), provided that any such person or entity holding such title or interest merely as the security for performance of an obligation shall not be a Member of the Association. As required by the Master Covenants, each Owner, by accepting a deed to any portion of the Property, acknowledges that membership in the Association is mandatory for each Owner as long as such Owner owns any portion of the Property.

Section 4.3 Voting Rights. In recognition of the fact that Declarant finds it essential to maintain effective control of the Association during the development stages, Declarant hereby establishes two classes of voting Membership, Class "A" Members and Class "B" Member.

(a) Class "A" Members. The Class "A" Membership shall include all those Owners described in Section 4.2 above, including Declarant, of any Lot or Homesite within the



Property. Each Class "A" Member shall have one vote for each Lot or Homesite owned by such Member. When more than one person is a Class "A" Member by virtue of an Ownership interest in the same Homesite or Lot, the vote for such Homesite or Lot shall be exercised as they among themselves determine, but in no event, shall more than one (1) vote be cast with respect to any one Homesite or Lot. In the event of disagreement among such co-Owners in an attempt by two or more owners to cast the vote of such Homesite or Lot, such co-owners shall not be recognized and the vote of such Homesite or Lot shall not be counted. The Membership of a Class "A" Member shall automatically terminate upon the Member's sale of his Homesite or Lot. However, no termination of Class "A" Membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there shall be no refund for assessments paid for periods falling after the date of such termination.

(b) Class "B" Member. The Declarant (and any successor Declarant) shall be the sole Class "B" Member. The Class "B" Membership shall be a full voting membership and, during its existence, the Class "B" Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to votes equal to the number of votes cumulatively held by all Class A Members (including Declarant) multiplied times three (3). The Class B membership shall cease sixty (60) days after the first of the following events to occur: (a) the expiration of twenty five (25) years from the date of recording of this Declaration; (b) the date as of which ninety five (95%) percent of the Homesites which may be developed on the Property and on the Additional Property shall have been conveyed by both the Declarant (excluding sales to Builders) and by Builders who purchased Homesites from Declarant, to an individual owner or owners for residential use or occupancy; or (c) the surrender by the Declarant of the Class B Membership and the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of Court for Jasper County.

Section 4.4 Quorum for any Action Authorized. Except as otherwise required in this Declaration, the presence at the meeting of any Members, or of proxies, entitled to cast forty (40%) percent of the total vote of the Class "A" Membership and, until the Class "B" Membership terminates, as provided for herein, the presence of a representative of the Class "B" Member, shall constitute a quorum. If the required quorum is not forthcoming in any meeting, the meeting shall be adjourned and another meeting shall be scheduled for a date not less than ten days nor more than thirty days subsequent to the initial meeting. Written notice of the time and place of the adjourned meeting shall be provided to all Members as provided in the Bylaws. The quorum requirement for the adjourned meeting shall be the presence of Class "A" Members, or proxies entitled to cast 25% of the total vote of the Class "A" Membership and the presence of a representative of the Class "B" Member so long as such Class "B" Membership exists. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting.

Section 4.5 Bylaws. The Bylaws of the Association have been drawn and approved by Declarant to govern meetings, duties, and related aspects of the Association. Declarant may, in

its sole discretion, cause them to be recorded in the Office of the Clerk of Court for Jasper County, South Carolina as a supplement to this Declaration. The recordation shall be deemed to be notice to the Association and all Members thereof. Declarant is not required, however, to record the Bylaws, but may provide notice thereof to the Members by such manner as it deems appropriate.

Section 4.6 Powers and Duties Prior to Activation of Association; Time of Activation. Prior to activation of the Association by Declarant, Declarant shall possess all powers and rights described herein as belonging to the Association. Declarant may activate the Association at any time before or after the date of the recording of these Covenants, at the sole discretion of Declarant.

Section 4.7 Board of Directors and Officers.

(a) Board. The affairs of the Association shall be managed by the Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the South Carolina Non-Profit Corporation Act of 1994, as may be amended from time to time, or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners or Members.

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, officers of the Association shall be nominated by Declarant and shall be appointed by the Board from such nominations until such time as Declarant no longer has the right to appoint Members to the Board of Directors.

(c) Adjustment of Votes. It is the intention of the Declarant that the Development of Jasper Commons will be developed in phases; each phase consisting of Homesites and/or Common Property. Each such phase will be platted of record in the Office of the Clerk of Court for Jasper County, South Carolina. By acceptance of a deed conveying a Lot or Homesite, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases and the sale of Homesites shown thereon, the total votes outstanding in the Association will automatically adjust based upon the number of Lots and Homesites in the phases added and in accordance with the formulas set forth in Section 4.3; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.

(d) Casting of Votes. The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

Section 4.8 Suspension of Membership. The Board may, but shall not be obligated to, suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.2 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions, or of Design Standards as may be adopted by the ARB within thirty (30) days after having received notice of the same pursuant to the provisions of Sections 6.17 or 8.2 of this Declaration.

(b) shall be delinquent in the payment of any assessment, fine or penalty levied by the Association pursuant to the provisions of this Declaration; or

Any suspension shall be for the balance of the period in which said Member or Person shall remain in violation, breach or default, as aforesaid. No such suspension shall prevent an Owner's ingress or egress from his Homesite or Lot.

Section 4.9 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the South Carolina Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

Section 4.10 Control by Declarant and Appointment of the Board. Until such time as Declarant's Class "B" Membership terminates, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, the Declarant hereby retains and shall have the right to appoint all members to the Board as long as Declarant is the Class "B" Member. The right of Declarant to appoint members of the Board also includes the right to remove and replace appointees until such time as Declarant's rights to appoint members to the Board ceases. Members of the Board appointed by Declarant need not be Members of the Association and may be employees of Declarant. Declarant shall retain the right to appoint and remove members of the Board until sixty (60) days after the first of the following events shall occur: (a) the expiration of twenty five (25) years from the date of recording of this Declaration; (b) the date as of which ninety five (95%) percent of the Homesites which may be developed on the Property and on the Additional Property shall have been conveyed by both the Declarant (excluding sales to Builders) and by Builders, if any, who purchased Homesites from Declarant, to an individual owner or owners for residential use or occupancy; or (c) the surrender by the Declarant of the Class B Membership and the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of Court for Jasper County, South Carolina. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association, a special meeting of the Association shall be called. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the

Association, and any agreements or contracts executed by or on behalf of the Association during such period, which Declarant has in its possession. Notwithstanding any other language to the contrary, the Board of Directors appointed by the Declarant shall retain the power and authority to act on behalf of the Association, and to exercise all rights available to Board Members until such time as a new Board of Directors has been elected. Each Owner by acceptance of a deed to or other conveyance of a Lot or Homesite expressly vests in Declarant such authority to appoint and replace directors and nominate officers of the Association as provided in this Section and in the Bylaws.

Section 4.11 Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, and dwellings and Lots within the Property, and the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, Members, occupants, tenants, invitees, and licensees, if any, until and unless revised or canceled by the Board of Directors or overruled, canceled, or modified in a regular or special meeting of the Association with a quorum present by the vote of Members representing two thirds of the total Class "A" Member votes in the Association and by the affirmative vote of the Class "B" Member, so long as such Class "B" Membership shall exist.

Section 4.12 Enforcement. The Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or rules and regulations adopted by the Association. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Property. In addition, the Association through the Board, in accordance with Article VIII of the Declaration, shall have the right to exercise the Right of Abatement as set forth in Section 8.2 to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Homesite or Lot in the event that such Owner is more than thirty days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. The Association, through the Board, by contract or other agreement, shall have the right to enforce county and town ordinances, if applicable, and to permit the City of Hardeeville and Jasper County to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 4.13 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws. The Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 4.14 Governmental Interests. For so long as the Declarant owns any Property described on Exhibits "A" or Additional Property submitted to this Declaration, the Declarant has authority and the Association expressly authorizes the Declarant to designate sites within the Property for fire, water and sewer facilities, and other required public facilities. The sites may include Common Property owned by the Association.

Section 4.15 Security. The Association shall maintain, repair and replace any security and/or card gates installed by Declarant on the Property, if any, and may, but shall not be obligated to, maintain or support other activities, if any, within the Property designed to make the Property safer than it otherwise might be. ALL OWNERS BY ACCEPTING TITLE TO A HOMESITE ACKNOWLEDGE THAT NEITHER THE DECLARANT NOR THE ASSOCIATION IS UNDER ANY OBLIGATION TO INSTALL ANY SECURITY MEASURES SUCH AS CARD GATES OR ANY OTHER TYPE OF SECURED ACCESS. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY HOMESITE, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ARB DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ARB MAY NOT BE COMPROMISED OR CIRCUMVENTED. FURTHER, THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ARB DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY HOMESITE, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY HOMESITE AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO HOMESITES AND STRUCTURES LOCATED THEREON, AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY AND/OR CARD GATES, FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

**ARTICLE V**  
**ASSESSMENTS AND MAINTENANCE CHARGES**

Section 5.1 Covenant for Assessments and Creation of Lien and Personal Obligations.

Each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Homesite or Lot, whether or not the Covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association, which assessments by the Association will include the assessments due from the Association to the Master Association, pursuant to this Declaration against all Homesites or Lots owned by such Owner;

(b) to pay to the Association any special assessments, specific assessments, and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Homesites or Lots owned by such Owner;

(c) that there is hereby created a continuing charge and lien upon all Homesites owned by such Owner against which all assessments, fines, penalties and other charges are made to secure payment of such items and any penalties and interest thereon as provided in Section 5.6 hereof and costs of collection, including reasonable attorneys' fees, including but not limited to the assessments due to the Master Association;

(d) that such continuing charge and lien on such Homesites and Lots binds such Homesites and Lots in the hands of the Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Homesites or Lots whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) the lien or charge of all first and second Mortgages of record made in good faith and for value and (iii) the lien of the Master Association;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Homesite or Lot from liability for any assessment thereafter assessed;

(f) that all annual, specific, and special assessments (together with interest thereon and late charges as provided in Section 5.6 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Homesite or Lot owned by such Owner shall be (in addition to being a continuing charge and lien against such Homesite or Homesites as provided in Section 5.1(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Homesite or Lot owned by such Owner provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor-in-title unless expressly assumed by such successor.

Section 5.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the

residents of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the restrictions contained in this Declaration, the enforcement of the Design Standards of the ARB, the payment of operating costs and expenses of the Association, the payment of all principal and interest when due on all debts owed by the Association, the payment of the assessments due from the Association to the New River Property Owners Association, Inc., and also other purposes set forth or contemplated by this Declaration.

Section 5.3 Annual Assessment or Maintenance Charge; Specific Assessments.

(a) Subject to the terms of this Article, each Homesite and Lot in the Property is hereby subjected to an annual assessment or maintenance charge, which assessment or maintenance charge will be paid by the Owner or Owners of each Homesite within the Property or Additional Property. Payment of such assessments will be made in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board of Directors. In addition to the annual assessments, the Association is hereby authorized to levy specific assessments against a Owner to cover costs incurred in bringing the Homesite into compliance with this Declaration, the Design Standards, the Bylaws, or the rules and regulations adopted by the Board or costs incurred and/or fines imposed as a consequence of the conduct of the Owner or occupants of the Homesite, their agents, contractors, employees, licensees, invitees, or guests.

(b) The annual maintenance charge and assessment will commence as to each Homesite or Lot on the first day of the month following the conveyance of the Homesite or Lot to an Owner by Declarant or a successor in title to Declarant; provided, however, Declarant in its sole discretion as long as it is the Class B Member may waive in writing the annual assessment for a Homesite sold by Declarant to a Builder until such time as the Homesite is sold and occupied by a third party purchaser.

(c) Beginning on the date this Declaration is executed through December 31, 2009, the annual maintenance charge and assessment will not exceed Seven Hundred Twenty dollars (\$720.00) per annum, said rate of charge being the "maximum annual assessment" for 2009. Beginning January 1, 20\_\_\_\_\_, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors but not more than the greater of fifteen percent (15%) above the maximum annual assessment for the previous year or an amount equal to the initial annual assessment compounded annually at fifteen (15%) percent per annum (unless such greater increase is approved by the Membership in the same manner as a special assessment).

(d) The annual assessment for each year shall be determined by the Board of Directors as the needs of the Development may in the judgment of the Directors require; however, the annual assessment for each year shall not exceed the maximum annual assessment allowed for that year (unless such greater increase is approved by the Membership in the same manner as a special assessment). In addition, if for any reason the Board of Directors shall fail to determine the annual assessment for any successive year, the annual assessment for the previous

year shall continue for such successive year until a new annual assessment is determined by the Board of Directors.

(e) Assessments may be used by the Association to provide for, by way of clarification and not limitation, any and all of the following:

(i) normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for the existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such areas; provided that the Association shall have no obligation (except as expressly provided in this Declaration) to make capital improvements to the Common Property;

(ii) payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which said assessments apply;

(iii) payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment;

(iv) employment of security guards or watchmen, if any and if determined necessary;

(v) caring for vacant Lots; and

(vi) doing any other thing or things necessary or desirable in the opinion of the Board or Membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members, the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith.

The Association may also establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property, including but not limited to all roads of the Development.

(f) Unless required as a matter of law, the Declarant shall not at any time be subject to any assessments; however, the Declarant hereby agrees that until such time as Declarant's Class "B" Membership terminates, Declarant shall pay to the Association the difference between the costs and expenses incurred by the Association and the amounts levied against the Owners subject to assessments. Such subsidization shall not extend to an amount properly levied against Owners but not collected therefrom. Further, in determining the amount of subsidization, "costs and expenses" shall not include non-cash expenses, such as depreciation, nor allocations for capital or other reserves. Beginning the first day of the month subsequent to the termination of Declarant's Class "B" Membership, Declarant shall pay (in lieu of all other



charges) an annual maintenance charge and assessment in an amount equal to the annual assessment multiplied by a factor of twenty percent (20%). This same percentage shall also apply to any special assessments levied by the Association.

Notwithstanding the preceding, the full annual assessment will commence as to each Homesite or Lot owned by Declarant, predecessor Declarants, or a Builder upon its lawful occupancy for residential use.

(g) The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 5.4 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments and specific assessments authorized by this Article V:

(a) upon the first sale of a Homesite by Declarant to any owner and upon the further sale of each Homesite thereafter, a working capital assessment shall be payable by each purchaser equal to three (3) months of the then current annual assessment for a Homesite, which shall be collected at the closing of such sale for the benefit of the Association. The funds so collected may be commingled with the other funds of the Association and may be used by the Association as part of its working capital for recurring and/or nonrecurring expenses. Notwithstanding the foregoing, the Declarant may exempt in writing a Builder from the payment of such special assessment but such special assessment will be applicable upon the sale of a Homesite by a Builder to a third party retail customer; and

(b) the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of the Class A Members of the Association who are present in person or by proxy at a meeting duly called for such purpose with a quorum present, and, as long as there is a Class B Membership, by the Class B Member in writing.

Section 5.5 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action requiring vote under Section 5.3 or 5.4 shall be sent to all members, or delivered to their residence, not less than fourteen (14) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of the Class A Membership and 100% of the Class B Membership (for so long as the Class B Membership exists) shall constitute a

quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the total vote of the Class A Membership and, until the Class B Membership terminates, the presence of the Class B Member. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Effect of Nonpayment of Assessment. If any assessment or installment is not paid within fifteen (15) days after that due date there shall be imposed in the discretion of the Board a late or delinquency charge of up to the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due, whichever is greater.

Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the due date of the assessment in the discretion of the Board shall bear interest (from the due date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at a rate as established by the Board from time to time not to exceed eighteen percent (18%) per annum; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of South Carolina. If any one or more installment of any assessment is not paid within thirty (30) days after the due date the Board may declare any remaining balance of the assessment at once due and payable.

In event that an Owner shall fail to pay fully any portion of any assessment or installment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Homesite or Lot, and reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Homesite or Lot enforceable in accordance with the provisions of this Declaration. The obligation of an Owner at the time of the assessment to pay such assessments, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors-in-title unless expressly assumed by them; provided, however, the assessments due by such Owner shall remain a lien against the applicable Homesite or Lot unless a certificate has been obtained from the Association by the purchaser of the Homesite or Lot pursuant to Section 5.7 below and the amount as shown on said certificate has been collected at closing by the closing attorney and forwarded to the Association.

In addition to the above, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the due date of the assessment or installment, the Association shall have the right to notify any or all Mortgagees having a security interest in such Owner's Homesite or Lots that such Owner is in default in the performance of his obligations under these Covenants, and of those actions taken or proposed to be taken by the Association as a result of the default.

Further, the sale or transfer of any Homesite that is subject to any recorded Mortgage, pursuant to a decree of foreclosure under such Mortgage or any proceeding or conveyance in lieu of foreclosure thereof, shall extinguish any lien for assessments, fines, and other charges as to the Homesite (but not such Owner's personal liability for such assessments, fines, and other charges) due prior to such sale or transfer; provided, however, no such sale or transfer pursuant to a decree of foreclosure under such Mortgage or any proceeding or conveyance in lieu of foreclosure thereof shall relieve the Homesite from liability for any assessments and other charges or from the lien thereof from the date of such transfer going forward.

Section 5.7 Certificate of Payment. In connection with a closing, upon written demand by an Owner and/or the purchaser of a Homesite or Lot, the Association shall within a reasonable period of time (but in any event prior to the applicable closing as long as the written request is received at least ten (10) days prior to the applicable closing) issue and furnish to such Owner or purchaser a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Homesite or Lot owned by said Owner as of the date of such certificate, or if all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Homesite or Lot in question but shall not be binding as to the Owner in question.

Section 5.8 Contributions by Declarant. In accordance with Subsection 5.3(f) above, it is the Declarant's intention to support the Association by funding deficits during such time as the Declarant has the right to appoint members to the Board of the Association. It is not, however, the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by an Owner or Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, the following covenants shall apply:

(a) Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by an Owner or Owners;

(b) Declarant shall be promptly reimbursed by the Association for all refundable deposits made by Declarant on behalf of the Association upon the Association's receipt of any and all such deposits;

(c) For the calendar year in which the Declarant's right to appoint members to the Board of the Association expires or is terminated, Declarant shall be reimbursed for all advance payments made by Declarant on behalf of the Association for which the actual expense is covered in the annual budget. In other words, at the end of the calendar year, the Association shall owe the Declarant an amount to be determined as follows:

(i) Begin by determining the difference between the amount of regular annual assessments actually collected for the calendar year (not including portions allocated to capital reserves) and expenses actually incurred for the calendar year;

(ii) If the difference determined in (i) above is equal to or greater than zero, then Declarant shall be reimbursed for all deficit payments made by Declarant for the calendar year;

(iii) If the difference determined in (i) above is negative, said difference shall be multiplied by a fraction, the numerator of which equals the number of days Declarant had the right to appoint members to the Board of the Association for the calendar year, and the denominator of which equals 365. Any deficit payments by Declarant in excess of the resulting product shall be reimbursed to Declarant.

(d) Declarant shall be entitled to reimbursement from the Association in accordance with the covenants contained in this Section 5.8 at the time Declarant's right to appoint members to the Board of the Association expires or terminates. With regard to uncollected assessments, Declarant shall not be entitled to reimbursement until the assessment is actually collected. With regard to refunds of deposits, Declarant shall not be entitled to reimbursement until any such refund is received by the Association. The Declarant, however, shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. With regard to amounts owed to Declarant as provided for in this subsection 5.8, said amount owed to Declarant shall be fully due and payable by January 31<sup>st</sup> of the year next following the end of the calendar year in which Declarant's right to appoint members to the Board expires or terminates. In addition, at the time Declarant's right to appoint members to the Board of the Association expires or terminates, Declarant shall have the right to withdraw from the Association reserve account provided for in subsection 5.3(e) an amount which is a reasonable estimate of the amount due Declarant but such amount shall not to exceed one-half of the amount on deposit at that time to cover Declarant's good faith estimate of amounts which shall be owed to Declarant in accordance with subsection 5.8 above. If for any reason the amount withdrawn exceeds the actual amount owed to Declarant as determined at the end of the calendar year then Declarant shall promptly refund such excess to the Association.

(e) In no event shall the Association's obligation to reimburse the Declarant as set forth in this Section 5.8 relieve the Declarant of the obligation to pay an annual maintenance charge and assessment in accordance with subsection 5.3 above; however, the Declarant may set off amounts due as assessments against amounts owed Declarant hereunder.

(f) This Section 5.8 may only be amended with the prior written consent of the Declarant. Each Owner, by acceptance of a deed to a Homesite or Lot in the property, and the Association, shall be deemed to have approved of the reimbursements to Declarant required by this Section 5.8.

## ARTICLE VI

## **ARCHITECTURAL CONTROL; GENERAL COVENANTS AND RESTRICTIONS**

Section 6.1 Declarant's Rights and Architectural Review Board. Each Owner, by accepting a deed or other instrument conveying a Homesite or Lot, acknowledges and agrees that Declarant has a substantial interest in ensuring that all improvements within the Property meet Declarant's standards and do not impair Declarant's ability to market, sell or lease its property. Therefore, each Owner agrees that no activity of any kind, including those as more specifically discussed in Section 6.6 below, shall commence without the prior written consent of Declarant. Declarant hereby reserves this right to approve all activities as more fully discussed in Section 6.6 below so long as Declarant owns any Homesite and/or Lot of the Property notwithstanding whether or not Declarant's Class B Membership has expired or has been terminated. While all approval rights as set forth in this Article VI vest and belong to Declarant, Declarant may establish an Architectural Review Board (the "ARB") for the purpose of reviewing and approving those activities that are made subject to development and architectural approval by these Covenants. The ARB shall have such powers as delegated to the ARB by the Declarant. If established, the ARB shall consist of at least three (3) individuals to be appointed by the Declarant and all submittals shall be made to the ARB instead of to Declarant. Any establishment of an ARB by Declarant and the delegation of authority thereto shall be expressly subject to (i) Declarant's right to revoke such delegation at any time and to reassume jurisdiction over the matters previously delegated, and (ii) Declarant's right to veto any decision of the ARB which Declarant determines in its sole discretion is inappropriate or inadvisable for any reason provided such veto is issued in writing by Declarant to the ARB within three (3) business days from the date of the decision of the ARB. Unless and until such time as Declarant delegates all or a portion of its reserved rights hereunder to the Association, the Association shall have no jurisdiction over architectural matters and the Association shall have no right to impose any architectural restrictions on Declarant and/or upon the Property without the prior written consent of Declarant. Upon the sale of the last Homesite or Lot owned by Declarant, the Association acting through an architectural review board appointed by the Board of Directors of the Association shall assume jurisdiction over architectural matters and shall have the same rights of approval as those that vested in Declarant.

Section 6.2 Purpose, Powers and Duties of the ARB. The purpose of the review by Declarant, or, the ARB if established, is to review and approve any proposed installation, construction or alteration of any Structure on any Homesite or Lot, including the location thereof on the Homesite or Lot. All plans shall be submitted to the Declarant, or if established, to the ARB (instead of Declarant) for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing Community-Wide Standard and/or the Design Standards and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the Declarant, or, if established, the ARB shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Homesite.

Section 6.3 Officers, Subcommittees and Compensation. The members of the ARB shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ARB as they shall from time to time determine necessary. The members of the ARB may, with the approval of the Board, be reimbursed by the Association for out-of-pocket costs incurred in the performance of their duties as members of the ARB. An architect or other design professional may be engaged by the ARB to assist in reviewing all Structures and the fees of such architect or design professional shall be paid by the Association as a Common Expense.

Section 6.4 Operations of the ARB.

(a) Meetings. The ARB may hold regular meetings as may be established by the ARB; provided, however, that during such time as Declarant controls the architectural review function, the frequency of regular meetings will be established by the Declarant or, if not established by Declarant, by the Board. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ARB then in office. Regular and special meetings of the ARB shall be held at such time and at such place as the ARB shall specify. No written notice shall be required for regular meetings of the ARB. Notice of each special meeting of the ARB shall be mailed to each member of the ARB at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. The notice of special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ARB who signs a waiver of notice either before or after the meeting. Attendance of a member of the ARB at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ARB, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ARB present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ARB. In the absence of a quorum, any member of the ARB present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any meeting which was adjourned but which is rescheduled to a time when a quorum becomes present, any business may be transacted which might have been transacted at the meeting originally called. The ARB shall maintain both a record of votes and minutes for each of its meetings. The ARB shall make such records and minutes available at reasonable places and times for inspection by Members of the Association. Any action required to be taken at a meeting of the ARB, or any action which may be taken at a meeting of the ARB, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ARB and be filed within the minutes of the proceedings of the ARB. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ARB.

(b) Activities.

(i) The Declarant and the ARB, if formed, may adopt and promulgate Design Standards, as that term is defined below, and where appropriate, shall make findings, determinations, rulings, and orders with respect to the conformity and harmony with the external design and the general quality of the Community-Wide Standard and any Design Standards adopted by the Declarant or the ARB, of plans and specifications to be submitted for approval to the Declarant or the ARB pursuant to the provisions of this Declaration. The Declarant, and as applicable the ARB, shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ARB may be authorized by the ARB to exercise the full authority of the ARB with respect to all matters over which the ARB has authority as may be specified by resolution of the ARB, except with respect to the adoption or promulgation of Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ARB and upon any applicant for an approval, permit or authorization; subject, however, to review and modification by the ARB on its own motion or review and modification by Declarant or appeal by the applicant to the ARB as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members concerning a submittal shall be given to the applicant pursuant to the provisions of Section 6.09 hereafter. The applicant may, within ten (10) days after receipt of notice of any decision that he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ARB. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by the ARB, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ARB with respect to such matter shall be final and binding subject to the veto right of the Declarant provided such veto is issued in writing by Declarant to the ARB within three (3) business days from the date of the decision of the ARB.

#### Section 6.5 Design Standards.

(a) The Declarant, or if established, the ARB, may from time to time (but shall not be required to) adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(iii) governing the form and content of plans and specifications to be submitted to the ARB for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of all Structures (excluding those installed by Declarant) including but not limited to acceptable Structures, design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the Declarant or the ARB pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and the general quality of the Development.

(b) The Declarant, or if established, the ARB, may publish copies of any current Design Standards adopted by it, in which case they shall be made readily available to Owners and to all applicants seeking the Declarant's, or if established, the ACC's approval. Notwithstanding any other provision of this Declaration, any Design Standards published are intended to provide guidance to Owners and their builders regarding matters of particular concern to the Declarant, or as applicable, the ARB, in considering applications; provided, however, the Design Standards are not the exclusive basis for a decision by the Declarant, or as applicable, the ARB, concerning a submittal and compliance with the Design Standards does not guarantee approval of any application.

Section 6.6 Submission of Plans and Specifications. No Structure (excluding Structures by Declarant) shall be commenced, erected, placed, moved onto or permitted to remain on any Homesite or Lot nor shall any existing Structure upon any Homesite be altered in any way which materially changes the exterior appearance of the Structure or Homesite or Lot, including changes in the paint color of any dwelling, unless plans and specifications therefor shall have been submitted to and approved in writing by Declarant, or if established, by the ARB (instead of the Declarant). Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by Declarant, or if established, the ARB, including where applicable, and without being limited to:

(a) a site plan with topographical information and a clearing plan as required by the Design Standards showing the location of all proposed and existing Structures on the Homesite including any out buildings and building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures, including a drainage plan;

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(f) plans for landscaping, lighting and grading, including but limited to, the handling of drainage.

Each submission shall be accompanied by the review fee to be charged by the Declarant, or if established the ARB, to review the submission package; provided, however that Declarant in its sole discretion may exempt any Builder from such review fees. Such fee may include the charge of an architect, engineer, or other professional that may assist the Declarant, or as applicable, the ARB. Each Owner by accepting a deed to a Homesite acknowledges and agrees that the Declarant, or if



established the ARB, does not have to take any action on any submission until such time as a complete package has been submitted as required by this Declaration and the Design Standards and until all review fees (such review fees will not be applicable to a Builder who has been exempted by Declarant) have been paid in full.

Section 6.7 Approval of Plans and Specifications. Final approval of a complete submittal (i.e. approval which is binding on the ARB and the time for the Declarant to veto such action by the ARB has expired) for use in connection with any Homesite or Lot or Structure of any plans and specifications shall not be deemed a waiver of the Declarant's right, or if established, the ARB's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Homesite or Lot or Structure. Such final approval of a complete submittal of any plans and specifications relating to any Homesite or Lot or Structure shall be final only as to that Homesite or Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval. It is recognized that plans may be submitted and approved by Declarant or, if established, the ARB in preliminary form or final form at any time. Preliminary or partial plans approved shall be deemed approved plans only to the extent of the matters covered therein; however, no construction, except as specifically authorized in writing by the Declarant, or if established, the ARB, shall begin on a Homesite or Lot until the entire plan has been approved by Declarant or, if established, the ARB for all matters covered in Section 6.6 and/or the Design Standards. EACH OWNER ACKNOWLEDGES AND AGREES THAT APPROVALS BY THE DECLARANT OR, IF ESTABLISHED, THE ARB INVOLVE SUBJECTIVE DETERMINATIONS AND THAT OPINIONS MAY VARY AS TO THE DESIRABILITY OR ATTRACTIVENESS OF PARTICULAR IMPROVEMENTS. EACH OWNER ACKNOWLEDGES AND AGREES THAT PRIOR APPROVAL OF ANY IMPROVEMENT DOES NOT GUARANTEE FUTURE APPROVAL OF A LIKE IMPROVEMENT AND THAT THE DESIGN STANDARDS MAY BE CHANGED TO PROHIBIT IN THE FUTURE IMPROVEMENTS SIMILAR OR LIKE IMPROVEMENTS PREVIOUSLY APPROVED. DECLARANT OR, IF ESTABLISHED, THE ARB MAY IN ITS SOLE DISCRETION AUTHORIZE VARIANCES FROM COMPLIANCE WITH THE DESIGN STANDARDS, INCLUDING ALL SETBACK REQUIREMENTS AS SET FORTH THEREIN OR AS SHOWN ON A SUBDIVISION PLAT, AND PROCEDURES WHEN THE DECLARANT OR, IF ESTABLISHED, THE ARB IN ITS DISCRETION DETERMINES THAT CIRCUMSTANCES SUCH AS TOPOGRAPHY, NATURAL OBSTRUCTIONS, HARDSHIP, OR AESTHETIC CONSIDERATIONS, ENVIRONMENTAL CONDITIONS, OR OTHER CONSIDERATIONS SO REQUIRE BUT NO VARIANCE SHALL BE EFFECTIVE UNLESS IT SHALL BE IN WRITING.

Section 6.8 Disapproval of Plans and Specifications. The Declarant, or if established, the ARB shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

(c) any other matter which, in the judgment of the Declarant, or if established, the ARB, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the Community-Wide Standard, or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the Declarant, or if established, the ARB shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the general grounds upon which such action was based. In any such case the Declarant, or, if established, the ARB shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

Section 6.9 Obligation to Act. Upon receipt of (i) all items required pursuant to Section 6.6, including payment in full of all review fees and (ii) all items required by the Design Standards including payment in full of all deposits, the Declarant, or if established, the ARB shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the Declarant, or if established, the ARB, if granted, together with all conditions imposed by the Declarant or if established, the ARB, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Declarant or, if established, the ARB to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

For any submission that is ultimately approved by Declarant, or as applicable, the ARB, whether conditionally or unconditionally, such approval shall only be good for one year from the date of the written approval. If construction is not commenced within one year from the date of the written approval, such approval shall automatically be deemed terminated and such Owner shall be required to reapply, including paying all prevailing review charges, and obtaining a new approval before undertaking any activities for which approval is required. All construction, including landscaping, must be completed within twelve (12) months from the start of construction or the Owner must apply to the Declarant, or, as applicable, the ARB for an extension of the construction time. As a condition of the extension, the Declarant, or as applicable, the ARB may require that a performance bond be posted in an amount not to exceed 150% of the cost of completing construction. If the approved work is not completed within the required time, as such time may have been extended in writing, the Homesite shall be nonconforming and the Owner shall be subject to an enforcement action by Declarant, the Association, or any aggrieved Owner. Notwithstanding any other provision of this Declaration, Declarant in its sole discretion may waive the above requirements with respect to a Homesite provided Declarant does so in writing. Further, any pre-approval of house plans or other matters for a Builder by Declarant, or if established, the ARB, shall have no time limits at the discretion of Declarant or the ARB.

Section 6.10 Inspection Rights. Any employee or agent of the Declarant or, if established, the ARB may, at any reasonable time or times, enter upon any Homesite or Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Homesite or Lot or Structure is in compliance with the provisions of this Declaration; and neither the Declarant, nor the ARB, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

Section 6.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Homesite or Lot, otherwise than in accordance with the plans and specifications approved by the Declarant or, if established, the ARB pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If, in the opinion of the Declarant, or if established, the ARB, such violation shall have occurred, the Declarant, or, if established, the ARB shall notify the Association. The Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action with twenty one (21) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof.

Section 6.12 Fees for Inspections. The Declarant, and if established, the ARB may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 6.10. The fee may be established from time to time by the Declarant, or if established, the ARB and published in the Design Standards. Declarant, in its sole discretion, may exempt in writing any Builder who purchases a Homesite or Lot from this inspection fee requirement (but may not exempt the Builder from the inspection itself).

Section 6.13 Nondiscrimination by Declarant or ARB. The Declarant, and if established, the ARB shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the Declarant, or if established, the ARB in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons or a particular race, color, sex, religion, age or national origin.

Section 6.14 Acknowledgment of Compliance. Any Owner in connection with the sale of a Homesite may request in writing that the Declarant, or as applicable, the ARB issue, for a reasonable administrative fee, an acknowledgment of compliance for exterior improvements including disclosure of any known violations of this Declaration or the Design Standards for the Homesite in question (excluding matters for which written variances have been issued). Such acknowledgment of compliance, for a reasonable administrative fee, shall be issued within thirty (30) days of receipt of the written request from the Owner or his authorized agent. Failure to timely issue the acknowledgment of compliance shall be deemed acknowledgment of no known violations. The only effect of such acknowledgment of compliance shall be that neither the Association nor any Owner may take any enforcement action against the Homesite once closed on by a bona fide third party purchaser for violations existing on the date of issuance of the

acknowledgment but not disclosed on the acknowledgment of compliance. Such acknowledgment of compliance is in no way a warranty to the third party purchaser of any kind concerning the Homesite and/or its actual compliance with this Declaration or the Design Standards.

Section 6.15 Builders. Declarant, or if established, the ARB, may in its sole discretion pre-approve in writing at one time for a Builder purchasing one or more Homesites (i) a number of house plans, (ii) applicable setback requirements contained in this Declaration, and (iii) any other matters as Declarant, or if established, the ARB, deems appropriate or desirable (such as a typical landscaping plan, a typical site plan, etc.), including but not limited to any matters requiring approval under Article VI and Article VII of this Declaration. Any such approvals by Declarant, or if established, the ARB, will be final and may not be challenged by any party. Declarant in its sole discretion may also exempt in writing any Builder from (i) review fees as required under Section 6.6 above and (ii) the inspection fee as required under Section 6.12 above (but may not exempt the Builder from the inspection itself), and (iii) the requirements of Section 6.9 above.

Section 6.16 Disclaimer as to Declarant or ARB Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Declarant nor its members, nor their directors, officers, employees and agents, nor the ARB, nor the members thereof, nor the Association, nor its directors, officers, employees and agents, assume liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant nor its members, nor the Association, nor the ARB, nor the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable for costs, expenses, and/or damages of any kind to (i) anyone submitting plans and specifications to any of them for approval, or (ii) to any Owner of property affected by these Covenants by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that they will not bring any action or suit against Declarant, the Association, the ARB, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, action, approval, or nonfeasance in connection with the architectural review process and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given. DECLARANT SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY FOR THE ACTIONS OR INACTIONS OF THE ARB IF ESTABLISHED. ALL OWNERS AGREE TO HOLD DECLARANT, THE ARB, THE ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS HARMLESS IN THE EVENT OF ANY COSTS, CLAIMS, EXPENSES, AND/OR DAMAGES SUFFERED THEREBY AND AGREE THAT ANY SUCH COSTS, CLAIMS, EXPENSES AND/OR DAMAGES, IF ANY AND IF FINALLY ESTABLISHED AFTER ALL APPEALS, SHALL BE EXPENSES PAYABLE SOLELY BY THE ASSOCIATION OUT OF ASSESSMENTS. EACH OWNER SHALL HAVE SOLE RESPONSIBILITY FOR ENSURING THAT ANY IMPROVEMENTS APPROVED BY THE DECLARANT OR THE ARB OTHERWISE MEET ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, RULES, AND REGULATIONS, INCLUDING BUT NOT LIMITED TO

APPLICABLE HEIGHT RESTRICTIONS, SETBACKS, FLOOD RESTRICTIONS OR REQUIREMENTS, SQUARE FOOTAGE LIMITATIONS, LANDSCAPE REQUIREMENTS, BUFFERS AND PARKING REQUIREMENTS.

Section 6.17 Maintenance. Notwithstanding the rights and easements reserved by Declarant in Section 7.1(c)(iv), each Owner shall keep and maintain each Homesite or Lot or Structure owned by such Owner, as well as all landscaping located thereon, in good condition and repair, including, but not limited to, (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not unsightly and/or not obstructive of a view by motorists or pedestrians of street traffic; provided, however, nothing herein shall impose on an Owner any obligation to disturb any natural buffer on a Homesite approved by the Declarant, or the ARB as applicable, as part of the landscape plan approved for such Homesite. If, in the opinion of the Declarant, or if established, the ARB, any Owner shall fail to perform the duties imposed by this Section, the Declarant or, if established, the ARB shall notify the Association. The Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such conditions. If the Owner shall fail to take reasonable steps to remedy the condition within fourteen (14) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof. In the event the Board provides written notice to an Owner of a failure by said Owner to perform its lawn care duties under this Section more than twice during any twelve (12) month period, then the Board shall have the right, but not the obligation, as part of its Right of Abatement to hire a local lawn care service company to perform such Owner's duties under this Section and the cost of such lawn care service shall be a specific assessment of such Owner payable by such Owner as required by this Declaration. Guidelines relating to the maintenance of Homesites, whether vacant or improved, including Structures and landscaping, may be included in the Design Standards of the Declarant or, if established, the ARB. If any Owner rents or leases a Homesite, the Board in its discretion may require such Owner to contract with a local lawn care service company to perform Owner's lawn care duties as required under this Declaration as long as such Owner rents or leases the Homesite. If such is required by the Board, the Owner shall provide the Association with proof of such lawn care service contract within thirty (30) days of renting or leasing the Homesite. In the event that such Owner does not comply with the requirements of the Board, then the Association may, after providing written notice to such Owner and providing such Owner with ten (10) days to comply with this Section, as part of its Right of Abatement, hire a local lawn care service company to perform such Owner's duties under this Section and the cost of such lawn care service shall be a specific assessment of such Owner payable by such Owner as required by this Declaration. In addition, the Association may in its discretion elect to require the Owners of all Lots (unimproved Homesites) to pay an annual fee as a specific assessment as provided below to allow the Association to underbrush Lots on a periodic basis. As part of such under brushing, the Association shall have the right but not the obligation to remove any stumps or debris and to thin or remove underbrush and thin out small trees under six (6") inches in diameter to the degree necessary to permit tractor drawn mowers to mow underbrush and weeds on the Lots.

Notwithstanding the obligations above, as an additional charge, all Owners of Lots (unimproved Homesites) shall pay the sum of TWO HUNDRED DOLLARS (\$200.00) per year to the Association, said sum to be used specifically to have Lots mowed. Said sum may be increased from time to time as the Board of Directors of the Association deems reasonably necessary.

Section 6.18 Restriction of Use. Homesites may be used for single-family residential purposes only, or if conveyed or dedicated to the Association as Common Property, for such purposes as the Association sees fit (subject to such restrictions as may be contained in grant or conveyance of said Homesite or Lot) and for no other purposes provided that Declarant may operate sales offices and/or model homes on any Homesite or Lot owned by Declarant. In addition, Declarant may authorize a Builder in writing to operate, upon such terms and conditions as imposed by Declarant, a model home and/or sales office on a Homesite or Lot owned by such Builder.

Section 6.19 Resubdivision of Property. Once a Lot or Homesite has been conveyed by Declarant to an Owner, the Lot or Homesite shall not be split, divided, subdivided, or combined nor shall its boundary lines be altered, without the prior written approval of the Board of such split, division, subdivision, combination or boundary line alteration. Two or more Homesites or Lots may not be legally combined of record into one Homesite or Lot (except by Declarant which Declarant shall have the right to do at any time in its sole discretion) unless Declarant or the Association has consented in writing to such combination, such combination is approved by the City of Hardeeville and Jasper County as applicable, and the party requesting such combination pays all costs associated therewith including the costs of a revised or amended plat in a form approved by the City of Hardeeville and Jasper County as applicable and by Declarant or the Association in writing and recorded in the Office of the Clerk of Court for Jasper County, South Carolina, making such Homesites or Lots a single Homesite or Lot. Such combined Homesite or Lot shall continue to be treated as separate Homesites for purposes of voting and assessments unless the Declarant or the Association otherwise agrees in writing. This provision shall not apply to the Declarant who shall have the right, at its sole discretion at any time, to alter boundary lines of any Homesite or Lot or acreage of any Homesite or Lot owned by Declarant. Nothing herein contained shall be construed to prohibit the Declarant the right to re-plat any Homesites or Lots into one (1), two (2) or more Homesites or Lots which are owned by the Declarant, by subdivision, consolidation or reconfiguration, and the Declarant may take such other steps as are reasonably necessary to re-plat such Homesites or Lots. Such steps may include, but are not limited to, the relocation of easements, walkways and rights-of-way to conform to the new boundaries of said re-platted Homesites or Lots.

Section 6.20 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Homesite or Lot without the prior written approval of the ARB of plans and specifications for the prevention and control of such erosion or siltation. The ARB may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices of controlling the run-off and drainage of water, special precautions in grading and otherwise change the natural landscape, and required landscaping.

Section 6.21 Trees. No living tree having a diameter of more than six (6) inches (measured from a point two (2) feet above ground level) shall be removed from any Homesite or Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.6 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ARB.

Section 6.22 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Homesite except as may be approved in writing by the Declarant or, if established, by the ARB. Declarant and/or an affiliate of Declarant may use temporary structures, such as construction trailers, sales trailers, leasing trailers and other temporary facilities deemed necessary or desirable by Declarant in its sole discretion while developing Jasper Commons and while selling Homesites or Lots.

Section 6.23 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the prior written approval of plans and specifications therefor by the Declarant, or if established, the ARB, be installed, altered or maintained on any Homesite or Lot, or on any portion of a Structure visible from the exterior thereof, except for such signs as may be required by legal proceedings;

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the Declarant or, if established, the ARB;

(c) Notwithstanding any other provision in this Declaration, the Declarant may erect and place such signs on any portions of the Property and/or Homesites owned by Declarant or on any Common Property, which Declarant in its sole discretion deems desirable or appropriate, for so long as Declarant owns at least one (1) Homesite or Lot on the Property or the Additional Property. This exemption shall also apply to any successor Declarants for so long as any such successor Declarants own at least one (1) Homesite or Lot for sale on the Property or the Additional Property. This Section 6.23(c) may only be amended with the prior written approval of the Declarant or, if applicable, any successor Declarant;

(d) All Owners acknowledge and agree that no "For Sale" signs of any kind will be allowed on any Homesite (excluding Homesites owned by Declarant) without the prior written consent of the Association and, as long as there is a Class B Member, the written consent of the Declarant, which consents may be withheld for any reason.

Section 6.24 Setbacks.

(a) Each dwelling which is erected on a Homesite or Lot shall be situated on such Homesite or Lot in accordance with the building and setback lines as set forth in the Design Standards. For purposes of this requirement, all reasonable shutters, awnings, eaves, gutters and

other such overhangs will not be considered in violation thereof, even though such parts of a Structure may extend beyond the building and setback lines, unless the Declarant or, if established, the ARB has established such a requirement as part of its approval of a Structure or has otherwise established setback requirements. HVAC equipment may be located in the setbacks (but all HVAC equipment must be located in a service yard with such screening as may be required by the Design Standards) unless the Design Standards require otherwise; however, the Declarant, or if established the ARB, may require large, packaged HVAC systems (where the air handler and compressor are in one unit) to be located outside any setback lines and/or to have additional screening satisfactory to the Declarant or ARB.

(b) In approving plans and specifications for any proposed Structure, the Declarant or, if established, the ARB, may establish setback requirements for the location of such Structure which may be stricter than setbacks that may be shown on any recorded plat.

(c) Declarant or, if established, the ARB may in its discretion authorize variances from compliance with all setback requirements when the Declarant or, if established, the ARB in its sole discretion determines that circumstances such as topography, natural obstructions, hardship, or aesthetic considerations, environmental conditions, or other considerations deemed appropriate by Declarant or, if established, the ARB, so require but no variance shall be effective unless in writing.

(d) Any setbacks approved in writing by Declarant in connection with the pre-approval of house plans for a Builder shall apply, shall be final, and shall not be subject to change by the ARB, the Board, any Owner, or any other party.

Section 6.25 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Homesite or Lot without the prior written approval of the Declarant or, if established, the ARB, of the location, materials, design, and plans and specifications for such fences and walls.

Section 6.26 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Declarant or, if established, the ARB of plans and specifications for the landscaping to accompany such construction or alteration. In all utility easement areas, functioning of drainage swales and access to transformers, pedestals, and other above ground utility equipment cannot be impeded by fencing or landscaping other than that approved by Declarant in writing or as allowed in the Design Standards and with any required approval of any affected utility company.

Section 6.27 Entrance and Driveways. No entrance or driveway shall be constructed or altered on any Homesite or Lot without the prior written approval of the ARB. The Declarant, however, shall have the right to construct, or to authorize the construction of, such entrances, driveways, and roads as may be convenient for the development of the Property or the Additional Property through any Homesite or Lot owned by Declarant.

Section 6.28 Antenna/Satellite Dish. No outside television or radio aerial, antennae, tower, or other device for the reception or transmission of radio or television or other electronic



signals shall be erected or maintained on any Homesite except as otherwise allowed below or in the Design Standards. No ham radio towers or antennae of any type will be allowed on the Property. The Declarant or if established, the ARB, shall approve any application for the installation of no more than two (2) satellite dishes less than three feet in diameter per Homesite so long as the application indicates that the installation is for the personal use of the Owner and provided the location of the satellite dish(es) meets the requirements of the Design Standards and will not be visible from the street. In addition, the Declarant, or if established the ARB shall have the power to require specific forms of screening such as fences or shrubbery as it deems appropriate in order to render the installation as inoffensive as possible to other Owners. All installations must comply with local zoning requirements and building codes, if applicable.

Section 6.29 Clotheslines, Garbage Cans, Mailboxes. No clotheslines visible from any street, sidewalk or public area shall be permitted. All equipment, garbage cans, and woodpiles shall be kept in a garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets. Standard mailboxes shall be provided and installed by Declarant at each Homesite improved by Declarant at Declarant's sole cost and expense. With respect to unimproved Homesites purchased from Declarant, Declarant may elect in its discretion to provide and/or install standard mailboxes for such Homesites with the owners of such Homesites being required to pay Declarant the cost thereof. Until such time as Declarant's Class B Membership expires or terminates, Declarant may elect to supply replacement mailboxes at the current replacement cost for such mailboxes and thereafter, the ARB shall approve duplicate mailboxes.

Section 6.30 Parking and Related Restrictions.

(a) No vehicles of any type whatsoever shall be permitted to park on the streets of the Property except on a temporary basis as may be permitted in writing by Declarant or, if established, the ARB or as permitted in the Design Standards.

(b) No school bus, truck or commercial vehicle over three-quarters (3/4) ton capacity, house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, trailers of any kind, or like equipment shall be permitted on any Homesite or Lot unless enclosed within an approved out building so that it is not visible from the street or as otherwise may be permitted in writing by Declarant or, if established, the ARB or as permitted in the Design Standards.

(c) Any trash, firewood, wood scraps, building materials (excluding during construction of a Structure), or other such materials shall be covered from view as required in writing by Declarant, or if established, the ARB or as permitted in the Design Standards.

(d) The purpose of this Section 6.29 is to help maintain the neat and attractive appearance of the Development by requiring the streets of the Development to remain cleared, and for larger vehicles and equipment to be either hidden from view or eliminated altogether if intended to be stored on more than a temporary basis. In effectuating the purpose of this Section, the Board or the ARB may adopt guidelines, rules and regulations which shall give greater

substance to its provisions, as for example, by defining what shall be considered temporary or permanent in the case of each subsection above.

- (e) The provisions of this Section shall not apply to Declarant.

Section 6.31 Recreational Equipment. Recreational and playground equipment must be approved by the Declarant or, if established, the ARB and shall be placed or installed only upon the rear yard of a Homesite so as to not be visible from the street unless another location is otherwise allowed by the Design Standards. Specifically prohibited under this provision are air powered guns and any associated equipment, paint ball guns and any associated equipment, and any other recreational equipment considered potentially hazardous by Declarant or the Association.

Section 6.32 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Homesite or Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

Section 6.33 Lagoon Front and Wetlands. For Homesites or Lots adjacent to a lagoon/pond, wetland, and/or wetland buffer and/or required buffer next to a road right-of-way:

- (a) no refuse of any kind shall be placed on or disposed of into the adjacent waters, wetland, and/or wetland buffers which are to be kept clean and free of pollution;
- (b) no water shall be removed from a lagoon/pond by any Owner, it being the intention that lagoons be maintained at their natural level, subject to the control of governmental authorities; provided, however, the Association may access water from lagoons/ponds for irrigation and other purposes;
- (c) Owners shall not disturb wetland buffers and/or wetlands and/or required buffer next to a road right-of-way in any manner;
- (d) no boats or devices of any type shall be used or permitted therein, except as may be approved by the Board;
- (e) subject to that easement for maintenance provided for in Section 7.1(e), and except as may be included as part of any Common Property including or adjacent to a lagoon/pond, no alteration may be made by an Owner of a lagoon bottom or edge, nor shall any board canals be dug or excavated, nor shall any bulkheading, barges, docks, pilings, or other marine structures be erected adjacent thereto or thereupon; and

(f) follows the amended Section 6.34



Property, to prevent the spread of worms and infectious diseases on the Property, and to maintain a proper respect for other Property Owners and users of the Property, each person that keeps a pet within the Property shall abide by the following restrictions, conditions, and affirmative obligations and any other supplemental or additional rules and regulations promulgated by the Company:

- (a) No pets may be kept, bred, or maintained for any commercial purpose.
- (b) The owner of a pet will not allow the pet to roam unattended on the Property, it being the responsibility of each pet owner to either leash or otherwise physically restrain their pets or, retain other suitable control while the pets are out of doors. The pet owners shall also be required to promptly clean up after their pets following any out of doors activity.
- (c) The pet owner shall muzzle any pet which consistently barks or makes noises which might be reasonably expected to disturb other Property Owners or the Members of the Company. Any pet that makes an unreasonable amount of noise or becomes a nuisance may be ordered removed by the Association.
- (d) The owner of a pet shall not leave the pet unattended for any period longer than normal care and maintenance would permit and the area in which the pet is kept must be maintained at all times in a sanitary condition free of excessive odor.
- (e) Pets shall only be allowed on the Common Property or on property not owned by the Property Owner, in accordance with the rules and regulations of the Association.

Upon written request of any Property Owner, the Association may conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular pet is a generally recognized house pet or whether a pet is a nuisance or dangerous species, and the Association shall have the right to require the owner of the particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Association shall have the further right to fine any Property Owner for the violation of these pet restrictions by such Property Owner, his family, tenants, guests or invitees, and any Property Owner shall be liable to the Company for the cost or repair or any damage to any Hearthstone Lakes Community Property caused by the pet of such Property Owner, his family, tenants, guests or invitees or of any occupant of such Property Owner's Lot or Dwelling Unit. Any such fine or cost of repairs shall be considered an individual assessment pursuant to the provisions of Section 7.9 of these Covenants to which such Property Owner is subject.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed the day and year above first written.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

**FORINO CO., L.P.,**  
a Pennsylvania limited partnership

Dabara Jamal

By: John G. Smith

Eileen Hauptly

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF Berks )

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that John G. Smith,  
as Vice Pres. of Forino Co., L.P., a Pennsylvania limited partnership, by and on  
behalf of the limited partnership personally appeared before me this day and acknowledged the due  
execution of the foregoing instrument.

Witness my hand and official seal this 26 day of June, 2013.

(4) Eileen Hauptly (SEAL)  
NOTARY PUBLIC FOR PENNSYLVANIA  
My commission expires: 4-25-2017

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Eileen Hauptly, Notary Public  
S Heidelberg Twp, Berks County  
My commission expires April 25, 2017

(f) unless the Board determines otherwise in its discretion, Owners of Homesites adjacent to a lagoon/pond shall be required to maintain the area between the Owner's property line and the waterline of a lagoon.

**SECTION 6.34 HAS BEEN AMENDED AND REPLACED**

Section 6.35 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Homesite or Lot or on Common Property.

(b) Except for building materials employed during the course of construction of any Structure approved by the Declarant or, if established, the ARB, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Homesite or Lot unless screened or otherwise handled in manner approved in writing by the Declarant or, if established, the ARB.

(c) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, closed containers may be placed in the open on any day that persons for that Homesite are making pick-ups. At all other times such containers shall be screened or enclosed.

(d) Except for Declarant and its contractors and Builders that have been authorized by Declarant in writing, no burning of any trash, debris, or materials of any kind shall be allowed on a Homesite or Lot except as otherwise approved in writing by Declarant, or as applicable, the ARB, or as permitted in the Design Standards.

Section 6.36 Nuisances. No noxious or offensive activity shall be carried on upon any Homesite or Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community.

Section 6.37 Landscape and Monument Easements. On Homesites or Lots subject to a Landscape or Monument Easement as set forth on any recorded plat of survey of the Development, such Homesites are subject to those easements rights set forth in Section 3.5.

Section 6.38 Water/Sewage. Declarant shall make provisions with the appropriate entity for water for each Homesite prior to sale of that Homesite by Declarant. No private water wells for domestic water use may be drilled or maintained on the Property by anyone other than Declarant or the Association except as specifically authorized by Declarant or the Association in writing. Declarant shall make provisions for sewage collection for each Homesite with the appropriate entity prior to sale of any Homesite by Declarant. No septic tank shall be permitted on the Property.

Section 6.39 Occupancy Restrictions. Except as otherwise approved by the Board in writing, no Homesite may be used or occupied as a primary residence by more than seven (7) Persons in the main structure and two (2) Persons in any approved out building, if any, nor may a Homesite be used or occupied by more than two (2) Persons who are not Family Members (as defined below) of the Owner of the Homesite. Any Person who rents or leases a Homesite is subject to the same occupancy restrictions as provided in this Section (i.e. – no more than seven (7) Persons in the main structure and two (2) Persons in any out building nor more than two (2) Persons who are not Family Members of the Person leasing or renting the Homesite may occupy or use the Homesite during the rental or lease term). For the purposes of this Section, “Family Members” shall include: (i) the Owner of the Homesite (or any Person who rents or leases a Homesite), (ii) the spouse of an Owner (or the spouse of any Person who rents or leases a Homesite), (iii) the dependent children of an Owner (or of any Person who rents or leases a Homesite) age 24 or younger, and (iv) the parents of the Owner or Spouse (or of any Person who rents or leases a Homesite).

Section 6.40 Declarant. Notwithstanding any other provision of this Declaration and/or the Bylaws, the provisions contained in this Article VI, as well as all other architectural control provisions and/or general covenants and restrictions, including but not limited to building setbacks contained in this Declaration, the Articles of Incorporation or the Bylaws, shall not apply to Declarant, or to any entities affiliated with Declarant or to any successor Declarants. This Section 6.39 may only be amended with the prior written consent of the Declarant, and, any successor Declarants, while Declarant or any successor Declarant still owns at least one (1) Homesite or Lot.

Section 6.41 Prohibition on Mining. Notwithstanding any other provision of this Declaration, the mining or extraction of any oil, gas or minerals of any type are prohibited on any portion of the Property.

Section 6.42 Buffers. The Owners of all Homesite subject to buffers of any type (including but not limited to wetland buffers and buffers required for lots adjacent to any road

right-of-ways as shown on any subdivision plat and/or other plats of the Property recorded by Declarant or its predecessors and/or in any recorded restrictive covenants) shall respect such buffers and shall not disturb such buffers in any manner without the express prior written consent of Declarant or the ARB. The Owner of any Homesite that disturbs any such buffers in any manner except as expressly allowed in writing by Declarant or the ARB shall be subject to fines and other remedies deemed appropriate to Declarant or the Board, including but limited to being required to re-establish at such offending Owner's expense such buffers in a manner approved in writing by Declarant or the ARB.



**ARTICLE VII  
EASEMENTS, ZONING AND OTHER RESTRICTIONS**

Section 7.1 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, perpetual easements in, on, over and under any part of the Property or the Additional Property for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, retention lagoons, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the slopes of all lagoons/ponds and including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and

(v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along, and at entrances to, the Development and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

(c) The Declarant hereby expressly reserves to the Declarant, its successors and assigns, across the Property, and across each portion of any Additional Property subsequently submitted to this Declaration by annexation as provided in Article X hereof, perpetual easements appurtenant to all or any portion of the Property and to all or any portion of the Additional Property not subject to this Declaration for the following uses and purposes:

(i) an easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the initial phase of the Property and such portions of the Additional Property as are submitted to this Declaration, and (2) such drives, roadways, walkways and paths as may be constructed in the future;

(ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to connect with and to use in common with the Owners in the initial phase of the Property and portions of the Additional Property subsequently submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners; and

(iii) easements for accessing and maintaining all lagoons/ponds which are part of the stormwater system for the Development and an easement for the purpose of creating and maintaining satisfactory drainage across Homesites or Lot in the development of up to ten (10) feet in width along each side line and up to ten (10) feet in width along the rear line of each Homesite or Lot; however, said easement shall not include any portion of a Homesite upon which the foundation of any dwelling is located;

(iv) an easement for landscaping and maintenance purposes over and under that portion of each Homesite or Lot comprising the front yard for the purpose of maintaining and landscaping such portions of each Homesite or Lot. This right and easement to landscape and maintain the front yard of each Homesite or Lot shall not obligate the Declarant to maintain or landscape any portion of any Homesite or Lot, nor shall it relieve Owner from its obligation to maintain such areas as a portion of his Homesite or Lot. Any maintenance or landscaping performed shall be undertaken with a minimum of interference to the quiet enjoyment of the Homesite by the Owner. Declarant's rights under this Section 7.1(c)(iv) shall terminate for Declarant whenever Declarant shall voluntarily terminate such rights or whenever Declarant shall cease to own at least five (5%) of all Homesite within the Property, whichever shall first occur.

(d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the initial phase of the Property, and across each portion of any Additional Property subsequently submitted to this Declaration by annexation as provided in Article X hereof, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

(e) The Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successors and assigns for the use and enjoyment of the surface waters of those portions of any pond, Lagoon or Wetland submitted as part of the Property, as well as a perpetual easement for the maintenance of lagoons, ponds, or wetlands which are within the Development or which are made available for the use and enjoyment of the Owners within

the Development. The easement to maintain any Lagoon created hereby shall not relieve any Owner of a portion of a Lagoon from maintaining said area as a portion of his Homesite. The Declarant, its successors and assigns, shall be under no duty to maintain any portion of any Lagoons or Wetlands; however, such an easement is reserved in case maintenance is necessary to facilitate the use and enjoyment of the surface waters. Any maintenance performed shall be undertaken with a minimum of interference to the quiet enjoyment of Property adjacent to any Lagoon or Wetland. The easement area for maintenance shall extend to twenty (20) feet above the shoreline of the Lagoon or Wetland which shall be determined at any time by the water level of the Lagoon or Wetland and shall include those portions of the Lagoon or Wetland which extend over any Homesites adjoining the Lagoon or Wetland. The easement for use and enjoyment created hereby will not include any portion of a Homesite, if any, above the water level, it being the intention of this easement of use and enjoyment to be limited to the waters of any Lagoon or Wetland. The right to use and enjoyment of said water shall be subject to the restrictive covenants set forth in Article VI of this Declaration as well as those regulations which may be promulgated by the Board of the Association from time to time.

(f) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements or record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

Section 7.2 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Homesite with respect to which easements are provided for in a recorded deed or grant of easement, or shown or noted on any filed or recorded map or plat relating thereto, or as otherwise set forth in Section 7.1.

Section 7.3 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and carrying out of such purposes. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Homesite in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Section 7.1.

Section 7.4 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control. Notwithstanding the foregoing, if these Covenants are included as part of any zoning ordinance or resolution, the adoption of the same shall not prevent the later modification or amendment of these Covenants in accordance with the provisions for amendment contained in this Declaration.

Section 7.5 Landscaping. In all utility easement areas, access to transformers, pedestals, and other above ground utility equipment cannot be impeded by additional fencing or landscaping other than that approved by Declarant and the affected utility company.

Section 7.6 Easement Across Adjacent Residential Lot. The proximity of some Dwellings to the Lot line necessitates the entry into adjacent Lots by Property Owners for the purpose of maintaining their own Dwellings and landscaping. By acceptance of a Deed, each Owner of a Lot (for purposes of this Section 7.6, "Servient Lot") grants the adjacent Property Owner whose Dwelling runs within five feet of the Lot's common boundary line (for purposes of this Section 7.6, "Dominant Lot"), a maintenance easement which shall run parallel to and five feet inside of the Lot's common boundary lines. This maintenance easement is to permit the maintenance and repair of the Dwelling and landscaping on the Dominant Lot, and to permit reasonable water runoff and general drainage for the Dominant Lot, but for no other purpose. Therefore, this five foot deep maintenance easement shall extend in length only along the distance of the Dwelling plus five additional feet on each end of the Dwelling, and this maintenance easement shall not extend along the entire distance of the common boundary line. All use of this easement shall be in a reasonable manner and at reasonable hours. Any dispute regarding the exercise of such easement rights shall be settled by decision of the Declarant, its successors and assigns. Any damage caused to the Servient Lot or Dwelling thereon by use of this easement by the Owner of the Dominant Lot, shall be repaired or replaced at the expense of the Owner of the Dominant Lot.

Section 7.7 Easements for Eaves, Landscaping and other Projections. Due to the proximity of some Dwellings to the Lot lines, the eaves and other similar projections of some Dwellings or garages may encroach upon adjacent Lots. Therefore, the Declarant hereby reserves and the Owner of each Lot (for purpose of this Section 7.7, the "Servient Lot"), by acceptance of a Deed, grants to the Owner of each adjacent Lot (for purposes of this Section 7.7., the "Dominant Lot") a perpetual easement over such portions of each Servient Lot as is necessary to accommodate the eaves, landscaping and other similar projections as originally constructed or approved by the Declarant to permit the existence of such encroachments. The easement granted hereby, however, shall not intrude more than three feet into any Servient Lot. In the event of destruction of the Dwelling on the Dominant Lot, the easement granted hereby shall permit the eaves and other similar projections of any replacement Dwelling constructed on the Dominant Lot in accordance with this Declaration to encroach upon the adjacent Servient Lot to the same extent as the Dwelling originally constructed on the Dominant Lot by the Declarant.

Section 7.8 Roads. The Declarant hereby reserves for the benefit of the Association and all Owners, their guests and invitees and has granted, bargained, sold and released and by these presents does hereby grant, bargain, sell and release to the Association and all Owners, their guests and invitees a perpetual non-exclusive easement appurtenant to the Property (including all Additional Property annexed hereunder) for vehicular and pedestrian access of ingress and egress to and from all access points to the Property established by Declarant over all roads constructed on the Property, whether now existing or hereafter built. The easement granted by the Declarant herein shall be subject to the right of the Declarant to borrow money and encumber any roads and the right of the Declarant and/or the Association to adopt, enforce, and

amend from time to time, reasonable, non-discriminatory rules and regulations pertaining to the use of all roads; provided, however, in no event will Declarant and/or the Association be permitted to charge the Owners or their guests and invitees any use charge to use such roads other than a reasonable charge for vehicle decals and a reasonable charge for any cards, strips, or other devices to be used in connection with any gates at the entrances of the Property, if any (however, in no event shall reserves that are part of the assessments payable by all Owners for road maintenance, repair, and replacement be deemed a use charge prohibited herein). Notwithstanding the foregoing, the Association may impose reasonable charges for commercial vehicles to access the Property (excluding Declarant, Declarant designated Builders, and their subcontractors).

## **ARTICLE VIII ENFORCEMENT**

Section 8.1 Right of Enforcement. This Declaration and the restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it owns any portion of the Property or maintains the right to annex Additional Property in accordance with Article X hereof, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns; provided, however, no Owner shall have the right to enforce any provision of this Declaration for which the Declarant and/or the Association is seeking the enforcement of and no Owner shall interfere in any way with such enforcement efforts of the Declarant or the Association. In all enforcements of the provisions of this Declaration, the Declarant and the Association shall have the exclusive right to handle such enforcement proceedings without interference from any other party.

No Owner, his heirs, successors, or assigns, shall have the right to object, to challenge, and/or to commence any legal proceeding concerning this Declaration, the Bylaws, or any rules and regulations of the Association under any act, power, or authority now in force or hereafter to be enacted except after following such procedures as may be established by the Board by rule or regulation consistent with the provisions of this Declaration. The Board or a committee as may be appointed by the Board shall hear claims from Owners regarding alleged violations of the Declaration, Bylaws, and any rules and regulations (except for violations with respect to assessment obligations) of the Association. The Board or such committee shall hold a hearing on any such claim within forty-five (45) days after receipt by the Board of a written notice of claim and request for a hearing from a Owner. A decision shall be issued in writing by the Board or such committee (which decision may at the Board's or committee's discretion, but shall not be required, to include the rationale supporting the decision) within twenty (20) days after the conclusion of the hearing, unless the parties involved agree to extend the timeframe for the decision. Unless the internal remedies provided by this section, or by any rules and regulations as may be promulgated by the Board shall be expressly waived by the Association, or the Association fails or refuses to act, no legal proceeding shall be commenced by any Owner until such internal remedy is pursued to exhaustion.

## Section 8.2 Right of Abatement.

(a) Except where different notice provisions are provided in Article VI, in the event of a violation or breach of any restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within fourteen (14) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all Mortgagees having a security interest in the Owner's Homesite or Lot that such Owner is in default in the performance of his obligations under these Covenants, and of those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and in Article VI hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Homesite or Lot, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions of this Declaration or the rules and regulations adopted by the Association, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions; provided such entry and such actions are carried out in accordance with the provisions of this Section or as otherwise provided in this Declaration, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or a rate to be established by the Board not to exceed 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Homesite or Lot enforceable pursuant to the provisions of Section 8.5 hereof. Such lien shall be superior to any and all charges, liens, or encumbrances which may in any manner arise or be imposed upon the Homesite or Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 5.1 hereof, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages with first or second priority over other Mortgages) made in good faith and for value.

## Section 8.3 Fines and Penalties and Creation of Lien.

(a) Except for nonpayment of any annual, specific, or special assessments, which are controlled by Section 5.6, in addition to all other remedies set forth in this Declaration, the Association, acting through its Board of Directors, may establish fines and penalties for any or all violations of these Covenants.

(b) The Association, acting through its Board of Directors, shall have the authority to establish different degrees or categories of violations and to further establish fines or penalties which vary in amount, or method of application, from category to category. All fines within any one category shall be set at a standard amount and shall be applied by a standard method.

(c) Except for violations of rules governing the use, operation and maintenance of the Common Property, no fine or penalty provided for herein shall begin to accrue unless the Owner has been given notice in accordance with Section 8.2(a). This provision shall not supersede any other provision of this Declaration requiring different notice.

(d) Due to the recognition that fines and penalties are often not established until after a violation has occurred, the Association, acting through its Board of Directors, shall have the authority to assess any fines or penalties established in accordance with these provisions against any and all violations of these Covenants, regardless of when the violation occurred; however, no fines or penalties can begin accruing until after they are adopted and notice of the penalty has been given to the Owner.

(e) Any fines or penalties assessed pursuant to this Section 8.3 for violations of these Covenants, including any fines or penalties assessed for violation of rules and regulations relating to the use, operation and maintenance of the Common Property, together with the cost of collection and reasonable attorneys' fees, shall be a binding personal obligation of the Owner enforceable in law, as well as a lien on such Owner's Homesite enforceable pursuant to the provision of Section 8.5 hereof. Such lien shall be superior to any and all subsequent charges, liens or encumbrances which may in any manner arise or be imposed upon the Homesite whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 5.1 hereof, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages with first or second priority over other Mortgages) made in good faith and for value.

Section 8.4 Specific Performance. Except for the provisions and limitations of Section 8.1, nothing contained in this Declaration shall be deemed to affect or to limit the rights of the Declarant, the Association or any Owner to bring suit for and collect damages. However, it is hereby declared that it may be impossible to measure accurately the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 8.5 Collection of Assessments and Enforcement of Lien. If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against any Homesite or Lot subject to the lien,

or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

Section 8.6 No Waiver. The failure of the Declarant, the Association, or the Owner of any Homesite, his or its respective legal representatives, heirs, successors and assigns, to enforce these Covenants shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## ARTICLE IX DURATION AND AMENDMENT

Section 9.1 Duration and Perpetuities. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of Declarant, for a period of forty (40) years from the execution of this Declaration, subject to the right reserved unto Declarant, its successors and assigns, to add additional restrictive covenants with respect to the Property subject to this Declaration and the further right to limit or amend the application of these Covenants. After the initial forty (40) year period of duration, all said covenants, restrictions and obligations shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of Homesites or Lots has been recorded agreeing to terminate this Declaration, in whole or in part.

If any of the covenants, conditions, restrictions, easements or other provisions of these Covenants shall be unlawful, void or voidable for violation of the Rules Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of those decedents of Her Majesty Queen Elizabeth II, the Queen of England, which are living as of the date this Declaration is executed.

### Section 9.2 Amendment.

(a) By Declarant. So long as Declarant is the Class "B" Member, these Covenants may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Homesites or Lots subject to these Covenants, (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Homesites or Lots subject to these Covenants, (iv) if such amendment would enable any governmental agency, such as the Veterans Administration or reputable private mortgage insurance company to insure Mortgage loans on the Homesites and Lots subject to these Covenants, (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration, (vi) if such amendment is for the purpose of deleting from this Declaration any portion of the Property owned by Declarant as provided in Article II of this Declaration, (vii) if such amendment is for the purposing of



annexing Additional Property pursuant to Article X of this Declaration, and/or (viii) if such amendment is deemed necessary or desirable by Declarant; provided any such amendment shall not in Declarant's sole opinion materially adversely affect any existing Owner's rights under this Declaration and/or materially adversely affect the title to any Owner's Homesite or Lot. EVERY OWNER BY ACCEPTING A DEED TO A HOMESITE ACKNOWLEDGES THE RIGHT OF THE DECLARANT TO UNILATERALLY AT ANY TIME AND FROM TIME TO TIME TO AMEND THESE RESTRICTIONS AND THIS DECLARATION AS SET FORTH ABOVE WITHOUT ANY INTERFERENCE FROM THE OWNERS AND/OR THE ASSOCIATION OR THE BOARD AND WITHOUT ANY SIGNATURE REQUIRED ON ANY SUCH SUPPLEMENTAL DECLARATION TO ACCOMPLISH SUCH AMENDMENT BUT DECLARANT'S SIGNATURE.

(b) By Owners and Declarant. Except as otherwise provided in this Declaration, these Covenants may be amended at any time and from time to time by the affirmative vote of at least two-thirds (2/3) of the Owners present in person or by proxy at a special or annual meeting of the Owners, where a quorum is present; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the Owner of any real property subject to these Covenants or any portion of the Additional Property; and provided further, however, no amendment affecting the Declarant's right to add Additional Property and/or to delete property shall be effective unless also signed by the Declarant.

(c) Effect. No amendment to the provisions of these Covenants shall materially and adversely alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Homesite or Lot affected thereby unless such holder shall consent in writing thereto. Notwithstanding the foregoing, nor the other provisions contained in this Declaration, no amendment to the Declaration, the Articles of Incorporation or the Bylaws, which modifies or affects the rights, privileges, options or exemptions of the Declarant shall be effective unless consented thereto in writing by the Declarant. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of Court for Jasper County, South Carolina. When the written consent of a Mortgagor is required as set forth above, such written consent thereto shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Covenants, by acceptance of a deed or other conveyance thereof, thereby agrees that these Covenants may be amended as provided in this Section 9.2.

## **ARTICLE X ANNEXATION**

Section 10.1 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 10.2 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof as may be submitted, to become part of the Property. This option may be exercised by

the Declarant in accordance with the conditions and limitations set out in Section 10.2 of this Article, which are the only conditions and limitations on such right.

Section 10.2 Conditions of Annexation. Any annexation as permitted in Section 10.1 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of Additional Property may be exercised at any time and from time to time until ten (10) years from the date of this Declaration is recorded; provided, however, that the Owners of Homesites to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Homesites or Lots then owned by Declarant, may consent to the extension of such option.

(b) Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Homesites or Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential purposes (subject to the right of Declarant and/or Builders to other uses as provided in this Declaration), in accordance with Article VI of this Declaration, unless otherwise used as Common Property. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar further exercise of this option as to other portions or the balance of the Additional Property.

(d) If the Additional Property or any portion thereof is subjected to this Declaration, Declarant reserves the rights to designate the boundaries of the Homesites, Lots, and Common Property, if any, of the Additional Property in accordance with Article II of this Declaration.

(e) The option reserved by Section 10.1 of this Article may be exercised by the Declarant alone (without the consent of the Association, the Board, or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of Court for Jasper County.

(f) In addition to the procedure outlined hereinabove, the option reserved by Section 10.1 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by Persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment expressly submitting such property to this Declaration, which amendment shall be filed for record in the Office of the Clerk of Court for Jasper County. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to the Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as

embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(g) Should the option to add Additional Property or any portions thereof, not be exercised within the term specified herein or be otherwise released or terminated by Declarant, Declarant shall not be obligated to impose on the Additional Property or any portion thereof any covenants, conditions or restrictions whatsoever.

Section 10.3 Effect of Annexation.

(a) From and after the date of annexation of any portion of any Additional Property, each Homesite and Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges afforded every other Homesite or Lot previously comprising part of the Property. Upon annexation of each portion of the Additional Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owner, the covenant to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is the subject of annexation.

(b) Each Owner, by acceptance of a deed to a Homesite or Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

Section 10.4 Proposed or Future Development of Additional Property. Notwithstanding any other provision contained in this Declaration, or any language contained upon any plat of survey of the Development, Declarant is under no obligation to submit any portion of the Additional Property to the Declaration, or to develop any portion of the Additional Property. Any references to "proposed" or "future" development are for the Declarant's reference only, and any portion of the Additional Property may be developed by Declarant as Declarant in its sole discretion sees fit.

Section 10.5 Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as Declarant holds an unexpired option to expand the Development pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing any portions of the Development then owned by the Declarant from the provisions of this Declaration, including to the extent originally included in error or as a result of any changes whatsoever in the plans for the Development desired to be effected by the Declarant.

**ARTICLE XI  
MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Homesites and Lots in the Development. The provisions of this Article apply to both this Declaration and to the Bylaws notwithstanding any other provisions contained therein.

Section 11.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provided written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Homesite or Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Homesite or Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owned by an Owner of a Homesite or Lot subject to the Mortgage of such eligible holder if such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Homesite or Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or a material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible Mortgagees.

Section 11.2 Right to Records. Upon written request in accordance with Section 11.1, all eligible holders shall:

(a) be entitled to attend and observe all meetings of Owners, but not meetings of the Board;

(b) be furnished with copies of annual financial reports made to the Owners;  
and

(c) be entitled to inspect the financial bonds and records of the Association during reasonable business hours.

Section 11.3 Insurance.

(a) Policies. At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property insured to the extent deemed necessary by the Board by a reputable insurance company authorized to transact business in the State of South Carolina with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvement in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders are and continue to be insured by giving thirty (30) days prior written notice of any cancellation of such policies.

(b) Destruction or Damage. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section 11.3, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

(c) Reconstruction. Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, for so long as the Declarant owns at least one (1) Homesite or Lot, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(d) Special Assessments. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

(e) No Reconstruction. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event, the Property

shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(f) Deductible Allocation. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

Section 11.4 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Homesite or Lot in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 11.5 Professional Management. Any agreement for professional management of the Association, or any other contract providing services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee with ninety (90) days written notice.

Section 11.6 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Homesite or Lot.

Section 11.7 FHA/VA Approval. As long as there is a Class "B" Membership, the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration, if either such agency is insuring or guaranteeing a Mortgage on any Homesite or Lot: annexation of any property other than property which is defined as Additional Property, dedication of Common Property, mortgaging of Common Property, or material amendment of this Declaration.

Section 11.8 Amendment by Board. Should the Veterans' Administration, the Federal Housing Administration, the National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which may have necessitated the provisions of this Article XI or make such requirements less stringent, the Board, without approval of any Owner, may cause an amendment this Article XI to be recorded to reflect such changes.

Section 11.9 Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or South Carolina law for any of the acts set out in this Article.

Section 11.10 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

**ARTICLE XII  
MISCELLANEOUS**

Section 12.1 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 12.2 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provisions hereof.

Section 12.3 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

Section 12.4 Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ARB, the Owner, or any other Person, shall be in writing. Unless and until a different address is provided in writing to the party seeking to provide notice, all such writings shall be delivered, as may be appropriate, to the following addresses:

- (a) Declarant: Forino Co., L.P.  
555 Mountain Home Road  
Sinking Spring, Pennsylvania 19608
- (b) Owners: Each Owner's address as registered  
with the Association in accordance  
with this Declaration or the Bylaws.

Any written communication transmitted by the United States Mail, with sufficient postage affixed, shall be deemed received on the third (3<sup>rd</sup>) day following the day such written notice is deposited in the United States Mail.

Section 12.5 Throughout this Declaration, the masculine gender shall be deemed to include the feminine and vice versa, and the singular shall be deemed to include the plural and vice versa.

Section 12.6 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that the Association and each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every all Owners. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by the Association and/or an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and

each and every Owner, by acceptance of a deed conveying a Homesite or Lot, acknowledges that Declarant shall have no such liability.

Section 12.7 Leases.

(a) Application. In order to assure a community of congenial Owners and thus protect the value of Homesites within the Development, the leasing of a Homesite, or any portion thereof, by any Owner (other than as provided herein for Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions. Notwithstanding any other provision of this Declaration, the provisions of this Section 12.7 shall not apply to Declarant and/or to any affiliates of Declarant and/or to any party exempted from these provisions by Declarant in writing.

(b) Notice and Regulation. The Board in its discretion may require any Owner (excluding Declarant, any affiliates of Declarant, and any party exempted from these provisions by Declarant in writing) intending to lease his improved Homesite, or any portion thereof, to give written notice of such intention to the Board of Directors, stating the name and address of the intended lessee and such other information as the Board may reasonably require. The Board of Directors shall have the authority to make and enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Homesite being leased.

(c) Required Lease Provisions. The Board of Directors may set the minimum lease term for all Owners (excluding Declarant, any affiliates of Declarant, and any party exempted from these provisions by Declarant in writing); however, regardless of whether or not the Board establishes such minimum, the minimum term of any lease shall not be set for less than six (6) months (i.e., all Owners (excluding Declarant, any affiliates of Declarant, and any party exempted from these provisions by Declarant in writing) may only rent Homesites for periods of six months or greater and may not rent Homesites for periods of less than six months; provided, however, such minimum period may be increased by the Board). All leases and lessees (except for leases of Declarant, any affiliates of Declarant, and any party exempted from these provisions by Declarant in writing) are subject to the provisions of the Declaration and Bylaws. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Homesite, or a portion thereof, shall be deemed to contain the provisions of this Section 12.7, whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Homesite shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of these Covenants on the Homesite. Any lessee, by occupancy of a Homesite, agrees to the applicability of this Declaration and its incorporation as part of the lease along with the following provisions:

(i) Lessee acknowledges and agrees that all promises deemed made by the lessee to the Association under this Article XII, Sections 12.7 of the Declaration are incorporated by reference and made a part of the applicable lease agreement and are made for the benefit of the Association for the purpose of discharging lessor's duties to the Association through lessee's performance. In order to enforce those provisions made for the benefit of the Association,



the Association may bring an action against lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(ii) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the rules and regulations adopted by the Association pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges the violation by lessee or any occupant or person living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of lessor, as lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by lessee.

(d) Enforcement. For the purpose of enforcing the provisions of Section 12.7, which shall be incorporated in the provisions of any leases of a Homesite, each Owner (excluding Declarant and its Members and their affiliates), by acceptance of a deed or other conveyance of a Homesite, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said owner against the lessee should lessee default in performance under the lease agreement. Further, each Owner acknowledges and agrees that any unpaid fines by a lessee shall constitute a lien against the Homesite of the Owner/lessor.

(e) Rights of Lessee. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations of the Association is entitled to the same rights to which the Owner is entitled as provided in this Declaration or the Bylaws.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 21 day of August, 2008.

WITNESSES:

DECLARANT:

FORINO CO., L.P.

[Signature]  
Eileen Hauptly

By: Anthony Forino

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Berks

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ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that Anthony Forino, the Managing Member of Forino Co., L.P., a Pennsylvania limited partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 21 day of August, 2008.

Eileen Hauptly  
Notary Public of Pennsylvania  
My Commission Expires: 4-25-2009

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Eileen Hauptly, Notary Public  
South Heidelberg Twp., Berks County  
My Commission Expires Apr. 25, 2009  
Member, Pennsylvania Association of Notaries

## Exhibit "A"

All that certain piece, parcel and tract of land situate, lying and being in the City of Hardeeville, Jasper County, South Carolina, being shown and described as Parcel 8 (181.828 acres of uplands and 19.511 acres of wetlands for a total of 201.339 acres); said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of a Portion of Parcel 8, Being a Portion of The East Argent Tract," dated January 18, 2006, last revised 11/21/07, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Jasper County Records in Plat Book 30 at Page 290. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Also,

All of that certain piece, parcel and tract of land situate, lying and being in the City of Hardeeville, Jasper County, South Carolina, more particularly known as Lot 1, containing 7.743 acres, and being depicted on a plat entitled "Property Line Revision Plat," dated March 15, 2007, prepared by Andrews & Burgess Inc., certified by Gary Blair Burgess, RLS (SC# 15229), and recorded in the Jasper County Records in Plat Book 31 at Page 61. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Save and Except

All that certain piece, parcel and tract of land situate, lying and being located in the City of Hardeeville, Jasper County, South Carolina, being more particularly known as Lot 2, containing 7.743 acres, and being depicted on a plat entitled "Property Line Revision Plat" dated March 15, 2007, prepared by Andrews & Burgess Inc., certified by Gary Blair Burgess, RLS (SC# 15229), and recorded in the Jasper County Records in Plat Book 31 at Page 61. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.