

FILED 4-28-04

FILED IN

BOOK

*Book NA92 page 1*

HARVEY, CASTERLINE & VATTIM, L.L.P.  
ATTORNEYS AND COUNSELORS AT LAW  
401-C SEACON  
MOUNT PLEASANT, SC 29522-3133

**SEVENTH AMENDMENT TO, AND RESTATEMENT OF, DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
PARK WEST MASTER ASSOCIATION**

THIS SEVENTH AMENDMENT TO, AND RESTATEMENT OF, DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK WEST MASTER ASSOCIATION (the "Restatement") is made effective as of the 30<sup>th</sup> day of March, 2004 (the "Effective Date"), by LandTech Charleston, LLC, a South Carolina limited liability company (hereinafter referred to as the "Declarant") and Park West Master Association, Inc., a South Carolina not-for-profit corporation (hereinafter referred to as the "Association").

**WITNESSETH:**

WHEREAS, Declarant executed and recorded on December 17, 1997, at Book P294, Page 275, et seq., in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina (hereinafter, the "RMC"); the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK WEST MASTER ASSOCIATION (the "Initial Declaration"); and

WHEREAS, a First Amendment to the Initial Declaration was recorded on June 16, 1998, at Book Y304, Page 606 et seq., in the RMC; a Second Amendment to the Initial Declaration was recorded on January 5, 1999, at Book Y317, Page 81 et seq., in the RMC; a Third Amendment to the Initial Declaration was recorded on July 12, 1999, at Book H330, Page 22 et seq., in the RMC; a Fourth Amendment to the Initial Declaration was recorded on January 4, 2000, at Book K340, Page 696 et seq., in the RMC; a Fifth Amendment to the Initial Declaration was recorded on October 12, 2001, at Book Y-384, Page 233 et seq., in the RMC; and a Sixth Amendment to the Initial Declaration was recorded on November 13, 2001, at Book R-387, Page 536 et seq., in the RMC, all of which amendments and the Initial Declaration are hereinafter referred to as the "Declaration";

WHEREAS, pursuant to Section 8.1, the Association and the Declarant desire to amend the Declaration to provide for a new category of Assessments for Flexible Non-Residential Units; and

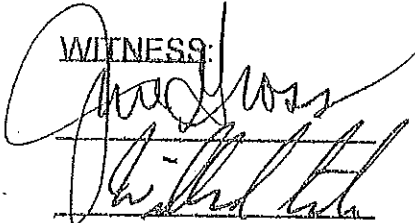
WHEREAS, the Board of Directors of the Association has approved the provisions set forth in this Seventh Amendment, as required by Section 8.1 of the Declaration, and the Declarant concurs that such provisions comply with Section 8.1 of the Declaration; and

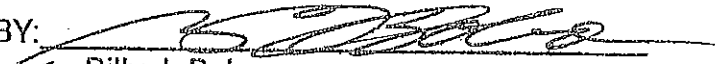
WHEREAS, because there have been numerous amendments to the Declaration since its original recordation, in 1997, the Association and the Declarant have

determined that consolidation of all such amendments in a single Restatement will be beneficial to all Owners and persons referring to the Declaration.

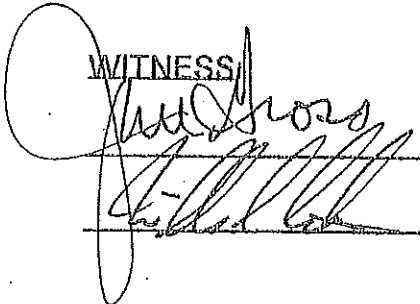
NOW THEREFORE, (a) the Declaration is amended as set forth in **Exhibit 1** attached hereto and incorporated herein, and (b) the Declaration, including the current and all past amendments thereto, is restated as set forth in **Exhibit 2** attached hereto and incorporated herein.


**LANDTECH CHARLESTON, LLC**  
A South Carolina Limited Liability Company.

WITNESS:  
  
\_\_\_\_\_

BY:   
Billy J. Bobo  
Its Manager

**PARK WEST MASTER ASSOCIATION, INC.**

WITNESS:  
  
\_\_\_\_\_

BY:   
Larry C. Ridlehoover  
Its President

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

ACKNOWLEDGEMENT

I, William C. Earle, the undersigned Notary Public for the State of South Carolina, do hereby certify that Billy J. Bobo, as Manager of LandTech Charleston, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30<sup>th</sup> day of March, 2004.

(SEAL)

William C. Earle  
Notary Public for South Carolina

My commission expires: June 29, 2008

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

ACKNOWLEDGEMENT

I, William C. Earle, the undersigned Notary Public for the State of South Carolina, do hereby certify that Larry C. Ridlehoover, as President of Park West Master Association, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30<sup>th</sup> day of March, 2004.

(SEAL)

William C. Earle  
Notary Public for South Carolina

My commission expires: June 29, 2008

**EXHIBIT 1: AMENDMENT TO SECTION 6.1.3.3**

Section 6.1.3.3 of the Declaration is deleted and the following is substituted therefor:

**6.1.3.3. Assessments for Non-Residential Units.**

(A) There shall be two (2) types of Non-Residential Units, Standard Non-Residential Units and Flexible Non-Residential Units. Flexible Non-Residential Units shall be buildings determined by the Association to be permitted and utilized primarily for storage and warehousing purposes, and which have no more than twenty-five percent (25%) of the total improvements as offices, showroom or display space, common areas, or internal amenities. All other Non-Residential Units including any portion of the Flexible Non-Residential Units over twenty-five percent used as offices, showroom or display space, common areas, or internal amenities shall be deemed Standard Non-Residential Units and assessed accordingly. If there is a change in uses of a Non-Residential building, the Association shall have the right to change the designation of a Non-Residential Unit.

(B) The Owners of both Standard and Flexible Non-Residential Units shall pay (a) one twentieth (1/20) of one (1) Assessment Share, as defined in Section 6.1.4., below, for each 1,000 square feet of unimproved Non-Residential Unit land, and any fraction thereof, and whether or not "developable" or shown upon a recorded plat. For the purpose of Section 6.1.3.3 only, parking lots, parking garages, pathways, roadways or driveways, landscaped areas, and such other elements as may be approved in writing by the Association, shall be deemed "unimproved" land. Any land area which is not occupied by improvements shall also be deemed "unimproved."

(C) In addition to the Assessment allocable to unimproved Non-Residential Unit land set forth in (B), above (i) Standard Non-Residential Units shall pay one (1) Assessment Share for each 1,000 square feet of gross floor area of Non-Residential improvements, and any fraction thereof; and (ii) Flexible Non-Residential Units shall pay one-tenth (1/10<sup>th</sup>) of one (1) Assessment Share for each 1,000 square feet of gross floor area of Non-Residential improvements, and any fraction thereof.

(D) For purposes of (A) and (C), above, "improvements" shall mean any structure intended for commercial or industrial use and occupancy, as permitted by this Declaration and applicable laws, and for which an initial certificate of occupancy or completion has been issued or which is substantially complete as determined by the general contractor or architect, whichever is earlier. The term "improvements" shall not include golf courses, parking lots, parking garages, roadways or driveways, or utility lines and related non-habitable utility facilities.

For example, a 100,000 square foot unimproved Non-Residential Unit

(whether a Standard or Flexible Non-Residential Unit) shall be assigned 5 Assessment Shares.

The same 100,000 square foot Non-Residential Unit (land) with a two story office building containing 50,000 square feet of gross floor area located on 25,000 square feet of land shall be assigned 53.75 Assessment Shares (3.75 Assessment Shares for 75,000 square feet of unimproved land plus 50 Assessment Shares for 50,000 square feet of improved gross floor area).

The same 100,000 square foot Non-Residential Unit (land) with a warehouse or storage building containing 50,000 square feet of gross floor area located on 25,000 square feet of the land shall be assigned 8.75 Assessment Shares (3.75 Assessment Shares for 75,000 square feet of unimproved land plus 5 Assessment Shares for 50,000 square feet of improved gross floor area).

**EXHIBIT 2:**  
**RESTATED DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**  
**PARK WEST MASTER ASSOCIATION**

**TABLE OF CONTENTS**

ARTICLE 1.	DEFINITIONS .....	2
1.1.	DEFINITIONS .....	2
ARTICLE 2.	PLAN OF DEVELOPMENT .....	7
2.1.	NON-SEVERABILITY OF RIGHTS .....	7
2.2.	GENERAL PLAN OF DEVELOPMENT .....	7
2.2.1.	Responsibilities of Declarant .....	7
2.2.2.	Responsibilities of Parcel Developer .....	7
2.2.3.	Designation of Common Area and Areas of Responsibility .....	8
2.2.4.	Subjecting Added Property to the Declaration .....	8
2.3.	INTEREST SUBJECT TO PLAN OF DEVELOPMENT .....	8
2.4.	DEVELOPMENT AND ARCHITECTURAL REVIEW .....	8
2.4.1.	Development Activity Requiring Review .....	8
2.4.2.	Compliance with Development Guidelines .....	9
2.4.3.	Composition of Development Review Board .....	9
2.4.4.	Review of Development Plans for Parcels .....	9
2.4.5.	Review of Residences and Other Activity .....	9
2.4.6.	Enforcement .....	10
2.4.7.	Obtaining Copy of Development Guidelines, Policies and Procedures .....	10
2.4.8.	Fees for Review of Development Activity .....	10
2.4.9.	Deposits for Proper Performance of Development Activity .....	10
2.4.10.	No Liability for Development Activity Review .....	10
ARTICLE 3.	WETLANDS' RESTRICTIVE COVENANTS NOTICE .....	11
3.1	WETLAND PERMITS AND PROTECTIVE COVENANTS .....	11
ARTICLE 4.	PROPERTY RIGHTS .....	11
4.1.	EASEMENTS FOR DECLARANT .....	11
4.2.	EASEMENTS FOR ASSOCIATION .....	11
4.3.	CHANGES IN BOUNDARIES: ADDITIONS TO COMMON AREAS .....	12
4.4.	EASEMENTS FOR UTILITIES AND SERVICES .....	12
4.5.	MUNICIPAL EASEMENT .....	12
4.6.	AGRICULTURAL USES .....	13
4.7.	USE OF STORM WATER AND GROUNDWATER .....	13
4.7.1.	Storm water Runoff .....	13
4.7.2.	Use of Storm water and Groundwater .....	13
ARTICLE 5.	THE ASSOCIATION .....	13
5.1.	GOVERNANCE .....	13

5.2.	BOARD OF DIRECTORS .....	14
5.2.1.	Subsequent to Loss of Controlling Interest by Declarant	14
5.2.2.	Prior to Loss of Controlling Interest by Declarant	14
5.3.	RULES AND REGULATIONS .....	14
5.4.	INDEMNIFICATION OF THE BOARD, OFFICERS AND MANAGING AGENT .....	14
5.5.	BOARD, MANAGING AGENT AND OFFICERS ACT ON BEHALF OF ASSOCIATION.....	14
5.6.	BOARD OF DIRECTOR'S DETERMINATION BINDING.....	15
5.7.	MANAGEMENT.....	15
5.8.	INSURANCE.....	15
5.8.1.	Acquisition of Insurance Coverage	15
5.8.2.	Other Insurance Criteria	16
5.8.3.	Appointment of Trustee for Proceeds	16
5.8.4.	Reconstruction of the Property	16
	ARTICLE 6. ASSESSMENTS AND CHARGES .....	17
6.1.	REGULAR ASSESSMENTS AND BUDGET .....	17
6.1.1.	Fiscal Year and Annual Budget	17
6.1.2.	Determining the Budget	17
6.1.3.	Allocation of Assessments	18
6.1.4.	Calculating the Assessments	20
6.1.5.	Assessments for Units Not Existing at Beginning of Fiscal Year	21
6.1.6.	Assessments for Units Owned by Declarant	21
6.1.7.	Notice and Payment of Assessments	21
6.1.8.	Cap on Regular Assessments; Declarant Subsidy	22
6.2.	SPECIAL ASSESSMENTS.....	22
6.3.	EFFECT OF NON-PAYMENT OF ASSESSMENTS.....	23
6.4.	CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.....	23
6.5.	SUBORDINATION OF THE LIEN .....	23
6.6.	ATTORNEYS' FEES AND COSTS.....	24
6.7.	STATEMENT OF ACCOUNT .....	24
6.8.	MECHANIC'S LIENS .....	24
6.9.	OBLIGATION OF SUBORDINATE ASSOCIATION TO PAY ASSESSMENTS.....	24
6.10.	EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION .....	25
6.11.	INITIAL WORKING CAPITAL FEE. ....	25
6.11.1.	Working Capital Assessment Defined.	25
6.11.2.	Not A Credit Against Other Assessments	26
6.11.3.	Time for Collection of Working Capital Assessment	26
6.11.4.	Exceptions	26
6.11.5.	Applicable Provisions	26
	ARTICLE 7. CONDEMNATION .....	26

7.1.	CONDEMNATION OF COMMON AREAS .....	26
ARTICLE 8.	GENERAL PROVISIONS.....	26
8.1.	AMENDMENTS BY ASSOCIATION .....	26
8.2.	AMENDMENTS BY DECLARANT.....	27
8.3.	ENFORCEMENT.....	27
8.4.	DURATION.....	28
8.5.	PERPETUITIES.....	28
8.6.	INTERPRETATION.....	28
8.7.	GENDER AND GRAMMAR.....	29
8.8.	SEVERABILITY .....	29
8.9.	RIGHTS OF THIRD PARTIES.....	29
8.10.	NOTICE OF SALE, LEASE OR MORTGAGE .....	29
8.11.	NOTICES.....	30
8.12.	SUCCESSORS AND ASSIGNS .....	30
ARTICLE 9.	EXCEPTIONS RELATING TO PARK LAND .....	30
9.1.	PARK LAND DEFINED .....	30
9.2.	LIMITS ON APPLICATION OF DECLARATION TO PARK LAND.....	31
9.3.	OTHER STANDARDS RELATING TO PARK LAND.....	32
EXHIBIT A:	PROPERTY DESCRIPTION .....	34
EXHIBIT A-1:	DESCRIPTION OF PARK LAND.....	35
EXHIBIT B:	BYLAWS .....	36



**RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
PARK WEST MASTER ASSOCIATION**

This **RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK WEST MASTER ASSOCIATION** is made this 30th day of March, 2004, by LandTech Charleston, LLC, a South Carolina limited liability company (hereinafter referred to as "Declarant").

**WITNESSETH:**

WHEREAS, Declarant executed and recorded on December 17, 1997, at Book P294, Page 275, et seq., in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina (hereinafter, the "RMC"); the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK WEST MASTER ASSOCIATION** (the "Original Declaration"); and

WHEREAS, a First Amendment to the Original Declaration was recorded on June 16, 1998, at Book Y304, Page 606 et seq., in the RMC; a Second Amendment to the Original Declaration was recorded on January 5, 1999, at Book Y317, Page 81 et seq., in the RMC; a Third Amendment to the Original Declaration was recorded on July 12, 1999, at Book H330, Page 22 et seq., in the RMC; a Fourth Amendment to the Original Declaration was recorded on January 4, 2000, at Book K340, Page 696 et seq., in the RMC; a Fifth Amendment to the Original Declaration was recorded on October 12, 2001, at Book y-384, Page 233 et seq., in the RMC; a Sixth Amendment to the Original Declaration was recorded on November 13, 2001, at Book r-387, Page 536 et seq., in the RMC; and a Seventh Amendment to the Original Declaration is being recorded in the RMC concurrently herewith; and

WHEREAS, the Original Declaration and all amendments thereto are hereinafter cumulatively referred to as the "Declaration".

---

WHEREAS, Declarant is the owner of the Property, as hereinafter defined, located in Charleston County, South Carolina, and Declarant desires to subject the Property to the provisions of this Declaration in order to provide a flexible and reasonable method for the administration, assessment and maintenance of the Common Areas, as defined below, within that community in Charleston County, South Carolina, commonly known as Park West.

NOW THEREFORE, this Declaration and the covenants, restrictions and easements set forth herein shall be covenants to run with the land and all the Property is subject and subordinate to the provisions of this Declaration. The Declaration shall inure to the benefit of and shall be binding upon each Owner and his, her or its respective heirs, legal representatives, successors, lessees, grantees, assigns and mortgagees. BY THE RECORDING OF A DEED OR THE ACCEPTANCE OF TITLE TO A UNIT OR ANY INTEREST THEREIN, THE PERSON OR ENTITY TO WHOM SUCH UNIT OR INTEREST IS CONVEYED, AND THEIR HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES, GRANTEES, ASSIGNS AND MORTGAGEES SHALL BE DEEMED TO HAVE AGREED TO BE BOUND BY THIS DECLARATION AND THE BY-LAWS OF THE ASSOCIATION.

## **ARTICLE 1. DEFINITIONS**

### 1.1. DEFINITIONS

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

1.1.1. "Added Property(s)" means real property, whether or not owned by a Declarant, which is made subject hereto as provided in Article 2 hereof.

1.1.2. "Affiliate" means any entity which is owned by the Declarant, which owns the Declarant, or in which the Declarant or Persons holding an interest in Declarant own at least fifty per cent (50%) of the interests.

1.1.3. "Apartment Unit" means each dwelling unit in a residential apartment structure which is separately rented, including the unit, if applicable, for the apartment manager. The Association shall have the right to determine whether an Apartment Unit exists and how many Apartment Units exist at a particular time, subject to the provisions of this Declaration.

1.1.4. "Area of Common Responsibility" means any area for which the Association has or assumes the responsibility for maintenance, repair and management, including, without limitation, the Common Areas and portions of the Property specified by the Association which have not been conveyed to a Developer as a Parcel and which contain facilities which benefit more than one Parcel, including, without limitation, (a) street shoulders and curbs, walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting, whether within the Common Area or

unpaved portions of designated common roadways and Park West Boulevard right-of-way from its intersection with U. S. Highway 17 to the terminus of Dunes West Boulevard right-of-way (as such rights of way are noted on the plat of the Property or any portion thereof, which plat is approved by the Declarant or the Association), whether said rights-of-way are privately owned, dedicated to the public, or conveyed to the State of South Carolina or any municipality thereof, (b) lakes, lagoons and drainageways specifically shown and designated on any plat of the Property, or any portion thereof, which plat is approved by Declarant or the Association, as being a Common Area of the Association or the responsibility of the Association, and (c) any common utility lines or facilities which have not been dedicated to and accepted for maintenance by a or public utility.

1.1.5. "Assessment" means the charges from time to time assessed against a Unit by the Association in the manner herein provided, and shall include both regular and special assessments.

1.1.6. "Association" means the Park West Master Association, Inc., a South Carolina not-for-profit corporation.

1.1.7. "Board of Directors" or "Board" means the Board of Directors of the Association.

1.1.8. "By-Laws" means the By-Laws duly adopted by the Association which govern the administration and operation of the Association, as may be amended from time to time. A copy of the By-Laws is attached hereto as Exhibit B.

1.1.9. "Common Areas" means all areas shown and designated as a Common Area, or similar wording clearly indicating such intent, on any recorded plat of the Property, or any portion thereof, which plat has been approved in writing by Declarant or the Association, and incorporated herein by a Supplemental Declaration. THE DESIGNATION OF ANY OF THE PROPERTY OR IMPROVEMENTS THEREON AS COMMON AREAS SHALL NOT MEAN OR IMPLY THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OF USE OR ENJOYMENT THEREIN.

1.1.10. "Common Expenses" means all liabilities or expenditures made or incurred by or on behalf of the Association, together with all funds necessary for the creation or maintenance of financial, equipment or capital improvement reserves, consistent with the provisions of this Declaration.

1.1.11. "Condominium Unit" means each dwelling unit in a residential condominium as defined in the master deed of the condominium regime. The Association shall have the right to determine whether a Condominium Unit exists and how many Condominium Units exist at a particular time, subject to the provisions of this

Declaration.

1.1.12. "Controlling Interest" means the ownership by Declarant and any Affiliate of Declarant, as of the date of such determination, of Property to which there remains allocated at least 25% of the Zoned Density for the Property.

1.1.13. "Declarant" means LandTech Charleston, LLC, a South Carolina limited liability company, its successors and assigns, and any entity designated as a successor declarant by LandTech Charleston, LLC by a recorded supplemental declaration, provided, however, that this definition shall not include the purchaser, owner, or mortgagee of any Unit.

1.1.14. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Park West Master Association and all amendments or Supplemental Declarations filed for record from time to time in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

1.1.15. "Developer" means a purchaser of a Parcel or of Added Property which is subject to this Declaration for the purpose of subdivision or development into Units, their successors and assigns; provided, however, that this definition shall not include the purchaser, owner, or mortgagee of any Unit.

1.1.16. "Development" means the mixed use residential and commercial community constructed or to be constructed upon the Property or Added Property or portions thereof.

1.1.17. "Development Review Board" means the individuals designated by the Association to review and approve development plans submitted to the Board pursuant to this Declaration.

1.1.18. "Managing Agent" means any entity retained by the Association to manage the Common Property and Area of Common Responsibility, or portions thereof, and supervise its maintenance and the operation of the administrative affairs of the Association.

1.1.19. "Non-Residential Unit" means a portion of the Property, whether improved or unimproved, held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common) which is used or is designated on the Final Site Plan thereof approved by the Town of Mount Pleasant for non-residential uses, such as, without limitation, hotels, offices, retail and other commercial establishments, industrial and institutional uses, medical and conference centers, and golf courses and other commercial amenities, if any. The term excludes Common Areas, common property of any Subordinate Association, and Property

dedicated to the public unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. A "Non-Residential Unit" shall exist at such time as a Final Site Plan for the non-residential use is approved by the Town of Mount Pleasant and recorded in the Office of the Register of Mesne Conveyances for Charleston County; provided, however, if the Owner fails to record the Final Site Plan, the Association may determine that the property is nevertheless subject to the Assessments. The Association shall have the right to determine whether a Non-Residential Unit exists and how many Non-Residential Units exist at a particular time, subject to the provisions of this Declaration.

1.1.20. "Occupant" means any individual lawfully occupying any Unit, including, without limitation, any Owner, or family member, guest, invitee, licensee, tenant of an Owner occupying any Unit.

1.1.21. "Owner" means any Person which owns fee simple title to any Unit located on the Property. "Owner" shall not mean a mortgagee unless such mortgagee has acquired title to the Unit or any Person having a contract to purchase a Unit but to which title has not been conveyed of record.

1.1.22. "Parcel" means any portion of the Property and any Added Property subjected to this Declaration, as further divided into smaller components, such as lots, condominium units, apartment tracts, or commercial sites. No portion of the Property shall be deemed a "Parcel" until such time as a subdivision plat, final site plan, or condominium master deed for the units or structures thereon has been approved by the governmental authority having jurisdiction thereof, and such plat, final site plan or condominium master deed has been recorded in the Office of the Register of Mesne Conveyances for Charleston County in accordance with applicable ordinances and laws. Such plat, final site plan or condominium master deed shall provide for access to and from Park West Boulevard, or other road directly or through one or more other Parcels.

1.1.23. "Person" means any individual or legal entity, as the context may reasonably require.

1.1.24. "Property" means all the land and improvements thereon described in Exhibit "A" attached hereto and any Added Property.

1.1.25. "Residential Unit" means any portion of the Property, whether improved or unimproved, which (a) is intended for development, use, and occupancy as an attached or detached residence for one family, (b) may be independently owned and conveyed, and (c) is held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common). "Residential Unit" includes, by way of illustration and not limitation, townhouses, cluster homes, patio or

zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such. "Residential Unit" excludes Apartment Units, Condominium Units, Common Areas, common property of any Subordinate Association, and Property dedicated to the public unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. A Parcel shall initially be deemed to contain the number of dwelling units (including Apartment Units and Condominium Units) designated on or with the subdivision plat, final site plan, or condominium master deed for the Parcel which is approved by the Town of Mount Pleasant; South Carolina and recorded in the Office of the Register of Mesne Conveyances for Charleston County in accordance with applicable ordinances and laws. Thereafter, each dwelling unit for which a certificate of occupancy has been issued shall constitute a separate Unit. The Association shall have the right to determine whether a Residential Unit exists and how many Residential Units exist at a particular time, subject to the provisions of this Declaration.

1.1.26. "Subordinate Association" means an association of Owners within one or more Parcels, as defined or created by a Subordinate Declaration, to provide for the orderly control, administration, maintenance or management of those Parcels.

1.1.27. "Subordinate Declaration" means any instrument or documents, and any amendments thereto, which is filed of record with respect to a Parcel or Parcels, and which creates an association of owners for such Parcel or Parcels and establishes covenants, conditions, easements, rules or restrictions with respect to the lots, dwellings, units or commercial sites or structures within such Parcel or Parcels.

1.1.28. "Unit" means an Apartment Unit, Condominium Unit, Nonresidential Unit or Residential Unit.

1.1.29. "Wetland Tract" means any piece or tract of the Property designated on a recorded plat as a "Wetland Tract" which is the subject matter of a Department of the Army Permit issued by the U.S. Army Corps of Engineers, or is the object of a mitigation plan under any such permit; and which, by Supplemental Declaration referencing such plat and permit, and such additional matters as the permit requires, is made subject to the covenants set forth in Article 3 below.

1.1.30. "Zoned Density" means the number of dwelling units which are permitted to be developed within the Property as of the date of recordation of this Declaration, which number is 5,281 dwelling units. If the Declarant subjects Added Property to the Declaration, the Declarant may, in its sole discretion, increase the Zoned Density for the combined parcels by the number of dwelling units which may be developed within the Added Property. In such event, the Declarant shall file a Supplemental Declaration evidencing the revised Zoned Density. The Zoned Density for

any Parcel shall be defined in a Subordinate Declaration or recorded Land Use and Density Agreement signed by the Declarant.

## **ARTICLE 2. PLAN OF DEVELOPMENT**

### **2.1. NON-SEVERABILITY OF RIGHTS**

The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Unit as more specifically set forth below, and may not be severed or alienated from such ownership.

### **2.2. GENERAL PLAN OF DEVELOPMENT**

#### **2.2.1. Responsibilities of Declarant**

Declarant shall be solely responsible for development and construction of (a) Park West Boulevard and such other primary circulation roads from U.S. Highway 17 to the Parcels as Declarant determines are required for effective circulation within the Property, (b) the initial installation of such walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting along the unpaved portions thereof as Declarant shall determine are appropriate, and (c) such entry landscaping, signage and lighting in the Common Area at the intersection of U.S. Highway 17 and Park West Boulevard as Declarant shall determine are appropriate. As the Property is developed, Declarant shall extend Park West Boulevard and other primary circulation roads as Declarant determines is required to provide ingress and egress from each developed Parcel for all Owners and Occupants of such Parcel, to and from U.S. Highway 17. Prior to completing such extensions, Declarant may convey a right of ingress and egress to the applicable Subordinate Association by temporary easement.

#### **2.2.2. Responsibilities of Parcel Developer**

The Developer of a Parcel, whether Developer is the Declarant or a third party entity, shall be solely responsible for development and construction of any of the following services and facilities within the Parcel which the Developer shall determine are appropriate, or as may be required by applicable regulatory agencies or the Development Guidelines: (a) roads; common properties and facilities; public and rights-of-way; utility lines and facilities; walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting; (b) landscaping, signage and lighting at the intersection of Park West Boulevard or other primary road serving the Parcel and the entry road into each such Parcel; and (c) drainageways, easements, and retention or detention ponds and lagoons serving the drainage needs within the respective Parcel and, if required by approvals of any applicable regulatory agency, any other property. All such drainageways, easements, and retention or detention ponds and lagoons which are subject to a Department of the Army permit is issued by the U.S. Army Corps of

Engineers shall be subject to the restrictive covenants set forth in Article 3 below.

**2.2.3. Designation of Common Area and Areas of Responsibility**

Declarant or the Association shall designate in a Supplemental Declaration the additional Common Areas and the Areas of Common Responsibility for which the Association shall be responsible. Property so designated shall conform to the development plan as prepared and amended from time to time by Declarant. If approved in writing by Declarant or the Association, a Developer may convey Common Areas within a Parcel developed by such Developer to the Association at any time, provided that the conveyance shall be free and clear of all liens and the Developer shall promptly provide to the Association a copy of the conveyance documents. Unless expressly approved by the Association, Declarant or a Developer shall convey all Common Areas within a Parcel developed by it to the Association no later than ninety (90) days after the date of closing the sale of the last Unit in such Parcel; provided, however, the Declarant or Developer shall convey all Common Area within its Parcel at an earlier date if required by a governmental agency having jurisdiction over the Parcel (such as the Veterans Administration or Federal Housing Administration). After approved conveyance of a Common Area or designation of an Area of Common Responsibility, the Association shall be fully responsible for its operation, maintenance and repair.

**2.2.4. Subjecting Added Property to the Declaration**

Any owner of Added Property may apply to the Association to have said Added Property made subject to this Declaration. Upon approval of the Board of Directors of the Association, the owner of the Added Property and the Association shall execute a Supplemental Declaration subjecting said Added Property to this Declaration and to such other terms and conditions as shall be required by the Association as a condition of such approval.

**2.3. INTEREST SUBJECT TO PLAN OF DEVELOPMENT**

Every Owner shall take title, and every mortgagee or holder of a security interest in any part of the Property shall hold such mortgage or security interest subject to the terms and conditions of this Declaration.

**2.4. DEVELOPMENT AND ARCHITECTURAL REVIEW**

**2.4.1. Development Activity Requiring Review**

Unless otherwise expressly permitted in writing by the Declarant, the Board of Directors or the Development Review Board, no clearing, grading or excavation; removal or severe pruning of a tree having a trunk diameter greater than eight (8) inches at five (5) feet above surrounding grade; or construction of any residence, building, fence or wall, pool, fountain, terrace, patio, deck, road, walkway, antennae, lighting, or other structure on a Lot shall commence, and no modification thereto shall occur (such commencement



or modification being cumulatively referred to as "Development Activity"), until such Development Activity has been approved by the Development Review Board. In its sole discretion, however, the Board of Directors or Development Review Board may delegate in writing some or all of its authority for review of such Development Activity to any Person or Persons, including the Board of Directors of any Subordinate Association or any architectural review entity which may be established by such Subordinate Association.

#### **2.4.2. Compliance with Development Guidelines**

The Developer of a Parcel and each Unit Owner shall comply with the Development Guidelines for Park West, dated May 1997, prepared by Design Works L.C., as they may be amended by Declarant from time to time (the "Development Guidelines"), which Development Guidelines are incorporated herein by reference.

#### **2.4.3. Composition of Development Review Board**

As long as the Declarant has a Controlling Interest in the Property, the number of Persons composing the Development Review Board shall be determined by the Declarant or its designee. Thereafter, the number of Persons composing the Development Review Board shall be determined by the Board of Directors of the Association. A member of the Development Review Board need not be an Owner. The Development Review Board may also select such non-voting advisors or consultants as it may determine are useful in evaluating a submission for Development Activity.

#### **2.4.4. Review of Development Plans for Parcels**

Unless waived in writing by Declarant, the following shall require written approval by the Development Review Board in accordance with review procedures issued by the Development Review Board from time to time: (i) Development Plan (as defined in the Development Guidelines); (ii) a site plan showing the proposed location of all structures in the Parcel (excluding single family homes), roads, curbs, utilities, paths, signage, exterior lighting, landscaping, etc.; and (iii) all construction, landscaping, lighting, signage or similar development in the Park West Boulevard Buffer, the Neighborhood Entry Buffers or the Adjacent Parcel Buffers, as defined in the Development Guidelines. The Developer of a Parcel may also impose additional restrictions on such Parcel if such restrictions do not conflict with the Development Guidelines, in the opinion of the Development Review Board.

#### **2.4.5. Review of Residences and Other Activity**

The Development Review Board may, from time to time, establish procedures and policies for review of proposed residences and other Development Activity. In addition, the Board of Directors may, from time to time, establish or approve, in writing, architectural and/or landscape design standards for various Parcels within the Property, which standards shall be set forth in one or more Subordinate Declarations. In recognition of the fact that various portions of the Property may be intended for residences and structures of different types, cost, quality, complexity, motifs, architectural concepts and

density, there shall be no requirement that the procedures and policies for review of all structures and Development Activity within the Property be identical, or that the architectural and/or landscape design standards for various Parcels be identical. The Development Review Board may, in its sole discretion, modify or waive established procedures and policies, or architectural and/or landscape design standards, in order to deal with hardships determined to exist, or new or unique issues, or for other purposes determined by the Development Review Board to be in the best interests of the Property.

#### **2.4.6. Enforcement**

The Declarant, the Association or the Development Review Board shall have authority to monitor Development Activity and to halt or require modification of Development Activity not executed in accordance with approved plans, established procedures, policies or standards, this Declaration, or the Rules and Regulations. Enforcement shall occur in accordance with Section 8.3 of this Declaration.

#### **2.4.7. Obtaining Copy of Development Guidelines, Policies and Procedures**

A copy of the current Development Guidelines and/or any current review procedures or policies which apply to a particular Parcel or portion of the Property shall be provided to any Owner by the Association upon written request to the Development Review Board, in care of the Association, as set forth in Section 8.11 of the Declaration. The Association may charge a reasonable fee to cover the delivery, administrative and reproduction costs for so providing.

#### **2.4.8. Fees for Review of Development Activity**

The Board of Directors may establish a schedule of fees for review or inspection of Development Activity in order to cover the reasonable costs to the Development Review Board or the Association regarding such matters, such as administrative and operating expenses, storage of materials, consultation, site inspections; etc.

#### **2.4.9. Deposits for Proper Performance of Development Activity**

The Board of Directors may establish a schedule of deposits to be paid by an Owner prior to commencement of Development Activity. The purpose of such deposits may include, without limitation, to provide adequate funds to insure compliance with approved plans and conditions for Development Activity, including required landscaping; to enforce applicable rules and regulations; to place and collect trash containers at the site or to remove trash from the site; to enforce parking rules and regulations; etc. Upon completion of the Development Activity, any unused deposits shall be refunded to the depositing Owner.

#### **2.4.10. No Liability for Development Activity Review**

Neither the Development Review Board, the Declarant, the Board of Directors, the Association, nor any Person who is a member of such entity, shall be responsible or liable

in any way for any defects in any plans or specifications approved by the Development Review Board or any entity to which the Development Review Board has delegated responsibility, nor for any structural defects in any work done according to such plans and specifications. Further, such Persons shall not be liable for damages to any Person submitting plans or specifications for approval under this Section, or to any Person affected by such plans, specifications, approval or disapproval as a result of mistake of judgment, negligence or non-feasance arising out of, or in connection with, the approval or disapproval or failure to approve or disapprove any such plans or specifications.

### **ARTICLE 3. WETLANDS' RESTRICTIVE COVENANTS NOTICE**

#### **3.1 WETLAND PERMITS AND PROTECTIVE COVENANTS**

Portions of the Property are designated as "Wetlands" and "Wetland Buffers" pursuant to Department of the Army Charleston District Corps of Engineers Permit No. 94-IT-178. All deeds to property conveyed by Declarant or an Developer to an Owner which contains "Wetlands" or "Wetland Buffers" shall contain or be accompanied by a notice that such portions of the Property are subject to such Corps of Engineers Permit and a Declaration of Wetlands Protective Covenants which are or will be recorded in the Office of the Register of Mesne Conveyances for Charleston County (the "Wetlands Covenants"). The Wetlands Covenants will be in addition to the notice set forth above that portions of the Property owned by Declarant are subject to and will be conveyed subject to the above referenced permit.

### **ARTICLE 4. PROPERTY RIGHTS**

#### **4.1. EASEMENTS FOR DECLARANT**

During the period that Declarant owns any of the Property, or until such earlier time as Declarant records a Supplemental Declaration relinquishing all or part of its rights as set forth in this section, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the Common Area and Area of Common Responsibility for the purpose of constructing, installing, maintaining, repairing and replacing such other improvements to the Property as Declarant desires. The exercise of such right and easement by Persons other than Declarant shall be undertaken only with the prior written approval of the Declarant so long as the Declarant holds a Controlling Interest.

#### **4.2. EASEMENTS FOR ASSOCIATION**

The Association and its directors, officers, agents and employees, including, but

not limited to, any Managing Agent of the Association and any officers, agents and employees of such Managing Agent, shall have a general right and easement to enter upon any Parcel or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected thereby.

#### 4.3. CHANGES IN BOUNDARIES: ADDITIONS TO COMMON AREAS

So long as the Declarant holds a Controlling Interest, Declarant reserves the right and power, without the approval of the Association, to change the boundary lines between any Common Area and other Property owned by Declarant or any Affiliate or to add portions of the Property to the Common Areas.

#### 4.4. EASEMENTS FOR UTILITIES AND SERVICES

The Association or the Declarant shall have a transferable, perpetual power and authority to grant and accept easements to and from any entity or public authority, agency, public service district, public or utility or other Person, upon, over, under and across the Common Area, any Area of Common Responsibility, and any Property within fifteen (15) feet of Property dedicated or to be dedicated for public right of way. The easement(s) granted may be for constructing, installing, maintaining, repairing, inspecting and replacing master television antennae or television cable systems, data transmission systems, security and similar systems, landscaping, and all utility facilities and services, including, but not limited to, storm and sanitary sewer systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Declarant without notice to or consent by the Association. The Association may not grant such easements over Property owned by the Declarant or its Affiliates without the express written permission of the owner. To the extent feasible, as determined by the Declarant or the Association, as applicable, all utility lines serving the Property and located therein shall be located underground. Unless permitted by the terms of the easement, or unless permitted by the Development Review Board, the grantee of the easement or the commission, municipality, utility or other entity controlling the easement area, no structure shall be erected, no paving shall be laid (other than driveways, entrances, causeways, or paths crossing the easement area), and no trees shall be planted in such easement.

#### 4.5. MUNICIPAL EASEMENT

Police, fire, water, health and other authorized municipal officials, employees and vehicles shall have the right of unrestricted ingress and egress to the Common Areas, and any portion thereof, for the performance of their official duties.

#### 4.6. AGRICULTURAL USES

Declarant and its Affiliates reserve the right to use any portion of the Property not conveyed to others for "Agricultural" purposes, as defined in S.C. Code Section 12-31-230 (a), as it may be amended from time to time, and Declarant reserves the right to permit such use by others.

#### 4.7. USE OF STORM WATER AND GROUNDWATER

##### 4.7.1. Storm water Runoff

Unless otherwise expressly approved in writing by the Board of Directors or the Development Review Board, each Owner shall cause all development activity on its property to be such that storm water runoff from the property is discharged into a storm water drainage system that (a) has been approved by any required regulatory authority, and (b) is shown on a recorded easement, plat, supplemental declaration or similar document that has been approved by the Association or the Declarant. Such storm water drainage systems shall include, without limitation, ditches, swales, pipes, lagoons, catchment basins, or similar facilities designed to capture and distribute storm water in accordance with any applicable laws or regulations, or any applicable rules and regulations established by the Association.

##### 4.7.2. Use of Storm water and Groundwater

The Association shall have the right to use, draw down, re-allocate, or divert storm water and groundwater retained or channeled within the Property, whether located in any Parcel or Common Area, for use by the Association or its designee for irrigation, firefighting, storm water control, mosquito or insect control, aesthetic benefits, or other purposes.

### **ARTICLE 5. THE ASSOCIATION**

#### 5.1. GOVERNANCE

The Association shall not have any members, but shall be governed by a Board of Directors selected as set forth herein. The Board of Directors shall function in accordance with this Declaration and the Bylaws, and all Owners and Subordinate Associations shall be bound by this Declaration and the Bylaws. The Bylaws may be amended, from time to time, only as provided herein. The Board of Directors shall constitute the final administrative authority of the Association, and all decisions of the Board of Directors shall be binding upon the Association and the Owners. Unless otherwise expressly stated by this Declaration or the Bylaws, all rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

5.2. BOARD OF DIRECTORS

5.2.1. Subsequent to Loss of Controlling Interest by Declarant

Following loss of Controlling Interest by the Declarant, the Board of Directors shall consist of such number of individuals as may be selected in accordance with the Bylaws.

5.2.2. Prior to Loss of Controlling Interest by Declarant

For so long as Declarant owns a Controlling Interest, the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as determined by Declarant from time-to-time. Said individuals need not be Owners of Units.

5.3. RULES AND REGULATIONS

The Board of Directors shall have the authority from time to time to adopt rules and regulations governing the use, administration and operation of the Common Areas and Area of Common Responsibility, subject to the terms of this Declaration and the Bylaws. The Board of Directors shall have the authority to lease or grant licenses or concessions with respect to portions of the Common Areas; provided that such grants or leases shall be consistent with the provisions of this Declaration and the Bylaws.

5.4. INDEMNIFICATION OF THE BOARD, OFFICERS AND MANAGING AGENT

The members of the Board of Directors, the officers of the Association as may be elected by the Board, and such other officers or employees of the Association or the Managing Agent of the Association as the Board shall specify by written resolution of the Board from time-to-time, shall not be liable to the Owners or Association for any mistake in judgment or acts or omissions unless such act or omission was made in bad faith or was the result of gross negligence. The Association shall indemnify and hold harmless such non-liable Persons against all liabilities to others arising out of any agreement made by such Persons on behalf of the Association unless such agreement was made in bad faith or with gross negligence.

5.5. BOARD, MANAGING AGENT AND OFFICERS ACT ON BEHALF OF ASSOCIATION

Unless otherwise expressly indicated in writing, and in the absence of fraud, bad faith or gross negligence, all contracts and agreements entered into by the Board of Directors, the Managing Agent or the officers of the Association on behalf of the Association shall be deemed executed as agent for the Association.

#### 5.6. BOARD OF DIRECTOR'S DETERMINATION BINDING

If a disagreement arises between Owners or, during the period that Declarant owns a Controlling Interest, among or between the Association, Subordinate Association, Owners and Declarant related to the Common Area or the interpretation and application of this Declaration or the Bylaws of the Association, the decision of the Board of Directors regarding the proper disposition of such matter shall be final and binding upon the entities involved and the Association.

#### 5.7. MANAGEMENT

The Board of Directors may, in its discretion, retain a Managing Agent or one or more employees of the Association to manage the Common Area and Area of Common Responsibility and supervise its maintenance and operation and the operation of the administrative affairs of the Association. The terms of any management or employment agreements shall be determined by the Board of Directors, provided that any management or employment contracts shall (i) permit the termination thereof for cause by the Association upon not more than 60 days prior written notice; and (ii) be for a period of not more than five (5) years. Such contracts may permit renewals thereof for periods not to exceed five (5) years at a time provided that such renewal is approved by the parties. Nothing herein shall prohibit the Association from entering into a management contract with the Declarant or any Affiliate of the Declarant if the terms of such contract are reasonable and consistent with the above provisions.

#### 5.8. INSURANCE

##### 5.8.1. Acquisition of Insurance Coverage

If such insurance is available at reasonable cost, the Board of Directors shall endeavor to obtain insurance coverage, in such amounts as it shall reasonably determine, for the Common Area, the Area of Common Responsibility, other property of the Association and the activities of the Association, to cover the insurable interests of the Association and any mortgagees of the Association, and the insurable interests of the Declarant and Managing Agent, if any, and their respective directors, officers, employees and agents, if any, therein. To the extent feasible at reasonable cost, such insurance coverage shall be obtained:

- A. against loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies. The insurance shall be for the full insurable value thereof (based upon current replacement cost);
- B. against such risks as vandalism, theft and malicious mischief;
- C. for comprehensive general public liability and, if applicable, automobile liability

insurance, covering loss or damages resulting from accident or occurrences on or about the Common Area or elsewhere;

- D. for worker compensation or other mandatory insurance;
- E. for fidelity insurance covering any employees or officers of the Association or Managing Agent having access to any substantial funds of the Association;
- F. for officers and directors, providing coverage against claims brought against the Board of Directors or officers of the Association acting in such capacity; and for
- G. such other insurance as the Board of Directors shall determine to be reasonable and desirable from time to time.

#### 5.8.2. Other Insurance Criteria

All insurance premiums shall be a Common Expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds for such insurance shall be payable to, the Association. The insurance coverage shall, if feasible, provide that:

- A. the interest of the Association shall not be invalidated by any act or neglect of any Owner or any officer or member of the Board of Directors of the Association;
- B. the coverage shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Association; and
- C. subrogation shall be waived with respect to the Association and its Board of Directors, employees and agents, and Owners, members of their household and mortgagees.

#### 5.8.3. Appointment of Trustee for Proceeds

The Board of Directors may, at its discretion, retain any bank, trust company or South Carolina law firm to act as trustee, agent or depository on its behalf for the purpose of receiving or distributing any insurance proceeds. The fees and reimbursable expenses of any such entity shall be a Common Expense.

#### 5.8.4. Reconstruction of the Property

The insurance proceeds for casualty losses (after payment of any applicable fees and reimbursable expenses of any trustee, attorney or consultant advising the trustee or the Association regarding insurance matters) shall be applied by the Board of Directors on behalf of the Association for the reconstruction or restoration of the damaged property; provided, however, if such proceeds are inadequate to reconstruct or restore the damaged property, the Board of Trustees may pursue such other options as it may



determine are reasonable under the circumstances.

## **ARTICLE 6. ASSESSMENTS AND CHARGES**

### **6.1. REGULAR ASSESSMENTS AND BUDGET**

Assessments shall be computed and assessed against all Units as follows:

#### **6.1.1. Fiscal Year and Annual Budget**

The fiscal year of the Association shall be the calendar year. Unless otherwise determined by the Board of Directors, the Board of Directors shall prepare or cause to be prepared by December 1 an operating budget (the "Budget") for the next fiscal year setting forth the estimated Common Expenses and anticipated revenues of the Association for such fiscal year, and any projected deficit or surplus from the preceding fiscal year. The Budget, once approved by the Board of Directors, shall serve as the basis for assessments to all Owners (the "Total Assessments") for such fiscal year and the primary guideline under which the Association shall be projected to be operated during such fiscal year. If the Board fails for any reason to adopt a Budget for the fiscal year, then until such time as it is adopted, the Budget and Total Assessments in effect for the current year shall automatically be increased effective the first day of the fiscal year in the same proportion as any percentage increase during the current Year over the preceding Year, in the Consumer Price Index, all Urban Consumers, United States City Average, All Items (the "CPI") or its successor index, as determined by the Board of Directors. In order to provide time to determine any applicable increase, the "Year" for determining the CPI shall be measured from October 1 through September 30. Such adjusted Budget shall be the Budget for the succeeding year, until a new Budget is adopted. Within ninety (90) days following the close of the Association's fiscal year, the Board of Directors shall cause an unaudited or audited financial statement, as the Board shall determine, of the Association (the "Annual Report") to be prepared by a public accountant licensed to practice in the State of South Carolina. Upon request, a copy of the Annual Report shall be provided to any Owner of any Unit which is subject to Assessments.

#### **6.1.2. Determining the Budget**

The Budget and the Total Assessments shall be based upon annual estimates by the Board of Directors of the Association's revenues and its cash requirements to pay all estimated expenses and costs arising out of or connected with the use, maintenance and operation of the Common Area and Area of Common Responsibility and the operation of the Association. Such estimated expenses and costs may include, among other things, the following: expenses of management, including compensation of any Management Agent; taxes and special assessments; insurance premiums; repairs and maintenance; wages and personnel expenses for Association employees; utility charges; legal and

accounting fees; any deficit remaining from a previous period; creation of one or more reasonable contingency reserves and/or sinking funds; any principal and interest payments due for debts of the Association; and any other expenses, costs and existing or projected liabilities which may be incurred by the Association for the benefit of the Owners pursuant to this Declaration. Such expenses and costs shall constitute the Common Expenses.

### 6.1.3. Allocation of Assessments

#### 6.1.3.1. Assessments for Residential Units Except Apartments and Condominium Units.

The Owner of each Residential Unit shall pay one (1) Assessment Share, as defined in Section 6.1.4., below. For Assessment purposes, a Residential Unit shall be deemed to exist at such time as a subdivision plat showing the location of the Unit is recorded.

#### 6.1.3.2. Assessments for Apartment and Condominium Units.

The Owner of each Apartment Unit or Condominium Unit shall pay one fourth (1/4) of one (1) Assessment Share, as defined in Section 6.1.4., below. In the case of a Condominium Unit, the condominium regime for such Condominium Unit shall collect and pay to the Association the Assessment for all Condominium Units in the condominium regime unless the Association agrees, in writing, to collect such Assessments directly from the Owner of each Condominium Unit. For Assessment purposes, an Apartment Unit shall be deemed to exist at such time as a Final Site Plan for the non-residential use is approved by the Town of Mount Pleasant and recorded in the Office of the Register of Mesne Conveyances for Charleston County; provided, however, if the Owner fails to record the Final Site Plan, the Association may determine that the Apartment Unit is nevertheless subject to the Assessments. For Assessment purposes, a Condominium Unit shall be deemed to exist at such time as a master deed is recorded by the condominium regime in the Office of the Register of Mesne Conveyances for Charleston County; provided, however, if the condominium regime fails to record the master deed, the Association may determine that the Condominium Unit is nevertheless subject to the Assessments.

For example, a building (or buildings) containing 40 Apartment Units or 40 Condominium Units shall be assigned ten (10) Assessment Shares.

#### 6.1.3.3. Assessments for Non-Residential Units.

(A) There shall be two (2) types of Non-Residential Units, Standard Non-Residential Units and Flexible Non-Residential Units. Flexible Non-Residential Units shall be buildings determined by the Association to be permitted and utilized primarily for storage and warehousing purposes, and which have no more than twenty-five percent (25%) of the total improvements as offices, showroom or display space, common areas, or internal amenities. All other Non-

Residential Units including any portion of the Flexible Non-Residential Units over twenty-five percent used as offices, showroom or display space, common areas, or internal amenities shall be deemed Standard Non-Residential Units and assessed accordingly. If there is a change in uses of a Non-Residential building, the Association shall have the right to change the designation of a Non-Residential Unit.

(B) The Owners of both Standard and Flexible Non-Residential Units shall pay (a) one twentieth (1/20) of one (1) Assessment Share, as defined in Section 6.1.4., below, for each 1,000 square feet of unimproved Non-Residential Unit land, and any fraction thereof, and whether or not "developable" or shown upon a recorded plat. For the purpose of Section 6.1.3.3 only, parking lots, parking garages, pathways, roadways or driveways, landscaped areas, and such other elements as may be approved in writing by the Association, shall be deemed "unimproved" land. Any land area which is not occupied by improvements shall also be deemed "unimproved."

(C) In addition to the Assessment allocable to unimproved Non-Residential Unit land set forth in (B), above (i) Standard Non-Residential Units shall pay one (1) Assessment Share for each 1,000 square feet of gross floor area of Non-Residential improvements, and any fraction thereof; and (ii) Flexible Non-Residential Units shall pay one-tenth (1/10<sup>th</sup>) of one (1) Assessment Share for each 1,000 square feet of gross floor area of Non-Residential improvements, and any fraction thereof.

(D) For purposes of (A) and (C), above, "improvements" shall mean any structure intended for commercial or industrial use and occupancy, as permitted by this Declaration and applicable laws, and for which an initial certificate of occupancy or completion has been issued or which is substantially complete as determined by the general contractor or architect, whichever is earlier. The term "improvements" shall not include golf courses, parking lots, parking garages, roadways or driveways, or utility lines and related non-habitable utility facilities.

For example, a 100,000 square foot unimproved Non-Residential Unit (whether a Standard or Flexible Non-Residential Unit) shall be assigned 5 Assessment Shares.

The same 100,000 square foot Non-Residential Unit (land) with a two story office building containing 50,000 square feet of gross floor area located on 25,000 square feet of land shall be assigned 53.75 Assessment Shares (3.75 Assessment Shares for 75,000 square feet of unimproved land plus 50 Assessment Shares for 50,000 square feet of improved gross floor area).

The same 100,000 square foot Non-Residential Unit (land) with a warehouse or storage building containing 50,000 square feet of gross floor area located on 25,000 square feet of the land shall be assigned 8.75 Assessment Shares (3.75 Assessment Shares for 75,000 square feet of unimproved land plus 5 Assessment Shares for 50,000 square feet of improved gross floor area).

#### 6.1.4. Calculating the Assessments

To determine the number of Assessment Shares and the allocable Assessment for each type of Unit for the fiscal year, the Board of Directors shall:

- A. Determine the total number of Residential Units existing at the beginning of the applicable fiscal year. This total is the "Assessed Residential Units." Multiply the number of Assessed Residential Units by one (1).
- B. Determine the total number of Apartment Units and Condominium Units existing at the beginning of the applicable fiscal year. This total is the "Assessed Apartment and Condominium Units." Divide the number of Assessed Apartment Units and Condominium Units by four (4).
- C. Determine, in accordance with Section 6.1.1.3, the Assessment Shares allocable to Non-Residential Units.
- D. Determine the sum of A, B and C. This constitutes the "Total Assessment Shares".
- E. Divide the Total Assessments required for the fiscal year by the Total Assessment Shares to determine the amount of one (1) Assessment Share. Each Residential Unit will pay one (1) Assessment Share. Each Apartment Unit and Condominium Unit will pay one fourth (1/4) of one (1) Assessment Share. Non-Residential Units will pay the appropriate Assessment as calculated in Section 6.1.3.3.

[Example: Assume that (i) the Budget of the Association for the forthcoming fiscal year is \$150,000; (ii) there are 500 Assessed Residential Units, (iii) there are 600 Assessed Apartment and Condominium Units and (iii) the Assessment Shares allocable to Non-Residential Units has been determined to be 400. The Total Assessment Shares are (w) 500 for Residential Units, plus (x) 150 for Apartment and Condominium Units (600 divided by 4), plus (y) 400 for Non-Residential Units,

or (z) a total of 1,050 Assessment Shares. Thus, each Assessment Share for the year is \$150,000 divided by the number of Total Assessed Units (1,050), or \$142.86.

NOTE: The Assessment calculations shown provide a mathematical example only. They are not intended to be estimates of the number of Units of different types or the actual Assessment which may be applicable from time to time.

**6.1.5. Assessments for Units Not Existing at Beginning of Fiscal Year**

If a Unit is created after the beginning of the fiscal year, then the applicable Assessment for such Unit shall be pro-rated and shall be payable for the balance of the current fiscal year beginning on the first calendar day of the month following the creation of such Unit. To determine when a Unit is deemed to be created, see the definition of the Unit type under Section 1.1.

**6.1.6. Assessments for Units Owned by Declarant**

Declarant and Affiliates of Declarant shall pay Assessments on Units owned by them in the same manner as other Unit Owners; provided, however, that the Declarant may elect, in lieu of paying Assessments, to contribute to the Association from time to time such funds as may be required to offset any operating deficit of the Association which exists after subtracting Common Expenses incurred during the year from Assessments and other revenues received during the year. Unless the Declarant notifies the Association otherwise by March 1 of the applicable fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the preceding fiscal year.

**6.1.7. Notice and Payment of Assessments**

**6.1.7.1. Notice.**

Unless the Board of Directors elects a shorter payment period, the Assessments shall be due on a calendar year basis in advance. Unless otherwise determined by the Board of Directors, the Association shall, by December 15, furnish to each Owner of a Residential Unit, each Owner of a participating Apartment Unit and Participating Non-Residential Unit, and each participating condominium regime a copy of the Budget for the forthcoming fiscal year and a statement of the amount of the Assessment payable by such Owner. Where mutually agreed by the Association and the board of directors of any Subordinate Association of Units, the Association may send such information as is applicable to Owners in the Subordinate Association directly to such subordinate association, and the subordinate association shall act as the Assessments communication, billing and collection agent for the Owners in such subordinate association; provided that such agreement shall not relieve any Owner of a Residential Unit from its obligations under this Declaration.

#### 6.1.7.2. Payment.

Unless otherwise expressly approved by the Board of Directors, Assessments shall be payable by the later of (i) the tenth (10th) day of January in the calendar year to which the Assessment is applicable or (ii) fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with Section 6.1.7.1.

#### 6.1.8. Cap on Regular Assessments; Declarant Subsidy

Until such time as the number of Assessment Shares exceeds 1,000, the maximum annual regular Assessment Share shall not exceed \$150; provided, however, that the maximum amount that may be assessed shall automatically be increased effective the first day of each fiscal year by an amount that equals the percentage increase during the current Year over the preceding Year in the Consumer Price Index, all Urban Consumers, United States City Average, All Items (the "CPI") or its successor index, as determined by the Board of Directors. In order to provide time to determine any applicable increase, the "Year" for determining the CPI shall be measured from October 1 through September 30. If the Assessment is not actually increased by the maximum amount in any year, this shall not preclude including the maximum amount in calculating the cumulative maximum amount of Assessment Share in a subsequent year. Until such time as the number of Assessment Shares exceeds 1,000, if the Assessment Share exceeds the stated maximum, the Declarant shall contribute to the Association such funds as may be required to offset any operating deficit of the Association which exists after subtracting Common Expenses incurred during the year from Assessments and other revenues received during the year. This obligation of the Declarant shall not include any obligation for unbudgeted property taxes or assessments, any uninsured loss or claim, or, in the event of an insured loss or claim, any deductible under the insuring policy which is payable by the Association.

#### 6.2. SPECIAL ASSESSMENTS

In addition to the regular Assessments authorized above, the Board of Directors may levy one or more Special Assessments which cumulatively do not exceed Fifty Dollars (\$50.00) per Assessment Share during any fiscal year. In addition, the Board of Directors may levy one or more Special Assessments to cover the cost of any unbudgeted property taxes or assessments or, in the event of an insured loss or event, any deductible amount under the insuring policy. (Special Assessments for Apartment, Condominium and Non-Residential Units shall be in the same proportion as the portion of the Assessment Share which is allocable to such Units, as set forth in Section 6.1.4.) Any other Special Assessment levied by the Board of Directors shall have the approval of Units representing a majority of the Total Assessment Shares, as determined in Section 6.1.4. Meetings of Owners for the special purpose of considering a Special Assessment shall be held only after written notice by the Association to the Owners of the Units, in accordance with the notice procedure set forth in this Declaration. The meeting shall occur no earlier than seven (7) days after the date of mailing or delivery. The notice shall

state generally the purpose and amount of the proposed Special Assessment. Owners may be represented at such meetings by written proxy, which proxy may be held by any Person. Special Assessments shall be allocated among Units in the same manner as other Assessments. Special Assessments shall be payable by the date determined by the Board of Directors, but no earlier than fourteen (14) days after notice of such Assessment shall have been given to the Owner in accordance with the procedure set forth in Section 7.11 of this Declaration.

#### 6.3. EFFECT OF NON-PAYMENT OF ASSESSMENTS

Any Assessment which is not paid to the Association when due by an Owner shall be delinquent. All delinquent Assessments shall incur an administrative charge of \$10.00 per month or any portion of any month from the date each such installment is due until such payment is received by the Association, in addition to any interest charges which may be payable. No Owner may waive or otherwise escape liability of the Assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

#### 6.4. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

Assessments, including Special Assessments, interest and charges thereon, and costs of collection thereof (including reasonable attorneys' fees and expenses) shall be (i) the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due and, unless expressly agreed by the Board of Directors of the Association, also of any subsequent Owner, (ii) a charge on the Unit to which such assessments are applicable and (iii) a continuing lien upon each Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association may prepare a written notice of lien setting forth the amount of the unpaid Assessment or Special Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or any Managing Agent of the Association and may be recorded in the office of the Register of Mesne Conveyances for Charleston County. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced as set forth in Section 6.9.

#### 6.5. SUBORDINATION OF THE LIEN

The lien of the Assessments provided for herein shall be subordinate to the lien of any unpaid taxes and any recorded mortgage on the applicable Unit. Sale or transfer of any Unit shall not affect the lien of the Assessments. However, the sale or transfer of any Unit which 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 the lien of the Assessments as to payment thereof, which became due prior to

such sale or transfer. No sale or transfer shall relieve the Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

6.6. ATTORNEYS' FEES AND COSTS

In any suit or action brought by the Declarant or the Association to enforce any of the provisions of the Declaration or the Bylaws, the Declarant or the Association shall be entitled to recover from any other party to the suit or action which is subject to this Declaration its costs and disbursements and reasonable attorneys' fees and expenses in such suit or action and any appeal thereof.

6.7. STATEMENT OF ACCOUNT

Upon payment of a reasonable fee determined by the Board of Directors, but not to exceed \$50.00, and upon written request of any Owner, mortgagee, lessee, prospective mortgagee, or prospective purchaser or lessee of a Unit, the Association shall issue a written statement (which shall be conclusive upon the Association) setting forth the following:

- A. The amount of unpaid annual Assessment or Special Assessment, if any, applicable to such Unit.
- B. The amount of the current annual Assessment and any current Special Assessment and the date or dates upon which any payment thereof shall become due.
- C. The amount of any credit for advance payments of annual Assessments or Special Assessments.

6.8. MECHANIC'S LIENS

The Board of Directors may cause to be discharged any mechanic's lien or other encumbrance which in the opinion of the Board of Directors may constitute a lien against the Common Area. Where less than all of the Owners are responsible for the existence of said lien, the Owners responsible, as determined by the Board of Directors, shall be jointly and severally liable for the amount necessary to discharge the same, and for all related costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

6.9. OBLIGATION OF SUBORDINATE ASSOCIATION TO PAY ASSESSMENTS

In order to simplify the overall assessment process for Owners, the Association



may determine that all Assessments payable by an Owner who is a member or participant in a Subordinate Association because of the Owner's ownership of a specific Unit, shall also be the obligation of the Subordinate Association. If the Association so determines, the Assessments applicable to the Owner shall be billed to the Subordinate Association instead of the Owner. Thereupon, the Subordinate Association shall promptly bill the Owner for the applicable Assessment and take all reasonable actions to ensure timely payment of such Assessments by the Owners in the Subordinate Association. Payment by an Owner of his prorata share of the Assessment to the Subordinate Association shall relieve the Owner of responsibility for the failure of the Subordinate Association to pay the full amount of the Assessments due by the Subordinate Association to the Association. All costs incurred by the Association for collection of Assessments billed to the Subordinate Association shall be the obligation and liability of the Subordinate Association. The rights of the Association are cumulative and may be pursued collectively or separately without resort, or necessity of resort, to any other remedy.

**6.10. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION**

Any delinquent Assessment which is not paid when due by an Owner to the Association, or, if applicable, to the Subordinate Association, shall be delinquent. Thereupon, the Association may bring an action at law against the delinquent Owner personally for its collection, or foreclose the lien against the delinquent Owner's Unit in the same manner in which a mortgage on real property may be foreclosed in the State of South Carolina. The Association shall have the right to bid in at any foreclosure sale, and, upon conveyance to the Association, thereafter hold, lease, mortgage, or convey the subject Unit.

**6.11. INITIAL WORKING CAPITAL FEE.**

**6.11.1. Working Capital Assessment Defined.**

Each new owner of a Unit (as defined in Section 1.1.28), other than Declarant or an Affiliate of Declarant (as defined in Section 1.1.2) shall pay to the Association a "Working Capital Assessment" equal to one half (1/2) of the regular annual Assessment for such type of Unit for the fiscal year of the Association in which the conveyance of the Unit occurs. (See Section 6.1.3 regarding "Allocation of Assessments".) Specifically, the Working Assessments shall be (a) for a Residential Unit, as defined in Section 1.1.25, one half (1/2) of one (1) Assessment Share (as defined in Section 6.1.4); (b) for an Apartment Unit (as defined in Section 1.1.3) or Condominium Unit (as defined in Section 1.1.11), one eighth (1/8<sup>th</sup>) of one (1) Assessment Share; and (c) for a Non-Residential Unit (as defined in Section 1.1.19), one half (1/2) of the Assessment that would be payable pursuant to Section 6.1.3.3.

**6.11.2. Not A Credit Against Other Assessments**

The Working Capital Assessment shall be in addition to, and not in lieu of, the regular annual Assessment or any applicable Special Assessment for the Unit, and shall not be considered an advance payment of any portion thereof.

**6.11.3. Time for Collection of Working Capital Assessment**

Each such Owner's share of working capital, as aforesaid, shall be payable to the Association by the new Owner concurrently with the closing of the conveyance of the Unit to the new Owner.

**6.11.4. Exceptions**

The Working Capital Assessment shall not be applicable to (a) a conveyance of a Unit for which no deed recording fee is payable under South Carolina law, or (b) such other exceptions as the Board of Directors of the Association shall approve in writing, in its sole discretion.

**6.11.5. Applicable Provisions**

Sections 6.3 through 6.10 shall apply to Working Capital Assessments as well as Assessments and Special Assessments.

**ARTICLE 7. CONDEMNATION**

**7.1. CONDEMNATION OF COMMON AREAS**

Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association. If the portion of the Common Area so taken or conveyed was improved in any way, then the Association shall repair, rebuild, replace or renovate the improvements so taken, to the extent practicable, on the remaining lands included in the Common Area which are available thereof, in accordance with plans approved by the Board of Directors. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and, in the opinion of the Board of Directors, such deficiency cannot or should not be funded from a reserve fund or regular Assessments, the Board of Directors may levy a special assessment against all Units in accordance with the procedure set forth in Section 6.2.

**ARTICLE 8. GENERAL PROVISIONS**

**8.1. AMENDMENTS BY ASSOCIATION**

Amendments to this Declaration, other than those authorized by Section 8.2 hereof, shall be proposed and adopted by a vote of not less than seventy-five percent (75%) of the then existing Board of Directors. Notice of the proposed amendment shall be given to the Board in writing by a Director proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment. No amendment which imposes or reasonably could be construed to impose a greater economic or legal burden on Declarant than exists under the then current provisions of this Declaration shall be valid unless it is approved, in writing, by Declarant, and no amendment of the Declaration which is contrary to this statement shall be valid.

### 8.2. AMENDMENTS BY DECLARANT

Notwithstanding any other provision herein or in the Bylaws, Declarant may amend this Declaration without the consent of the Association, any Subordinate Association, any Owner, easement grantee, or any mortgagee if, in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Declaration into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with this Declaration; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any Units subject to this Declaration; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to this Declaration; (iv) enable any governmental agency or mortgage insurance company to insure mortgages on the Units subject to this Declaration; (v) enable any insurer to provide insurance required by this Declaration; or (vi) clarify any provision of this Declaration or eliminate any conflict between provisions of this Declaration.

### 8.3. ENFORCEMENT

Each Owner and Subordinate Association shall comply strictly with this Declaration, the Bylaws and the published rules and regulations of the Association adopted pursuant to this Declaration, as they may be lawfully amended from time to time. Failure to comply shall be grounds for imposing fines, for instituting an action to recover sums due, for damages and/or for injunctive relief or specific performance, such actions to be maintainable by the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. If Declarant or the Association employs legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating party. Failure on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall not be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to any violation or breach occurring prior to subsequent thereto. No right of action shall accrue in favor of

nor shall any action be brought or maintained by any Person against Declarant or the Association for or on account of any failure to bring an action on account of any purported or threatened violation or breach by any Person of the provisions of this Declaration, the Bylaws or any rules and regulations of the Association.

#### 8.4. DURATION

The provisions of this Declaration shall run with the land and be binding upon the title to the Property, shall be binding upon and inure to the benefit of all Owners, the Declarant, the Association, the Subordinate Associations and all mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and successors in title, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided any rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for unlimited successive ten (10) year periods, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty (20) period or the last year of any ten (10) year renewal period, Units representing at least seventy-five percent (75%) of the Total Assessment Shares, as defined in Section 6.1.4., vote to terminate this Declaration. If this Declaration is terminated, an instrument evidencing such termination shall be filed of record in the records of the Register of Mesne Conveyances for Charleston County, South Carolina, such instrument to contain a certificate wherein the President of the Association affirms that such termination was duly adopted by the requisite number of votes. No termination of this Declaration shall be enforceable or valid if the Declarant owns a Controlling Interest unless Declarant consents in writing to the termination.

#### 8.5. PERPETUITIES

If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Robert F. Kennedy.

#### 8.6. INTERPRETATION

This Declaration shall be construed in accordance with the laws of the State of South Carolina. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if

necessary, they shall be so extended or enlarged by implication as to make them fully effective. The captions herein as to the contents of various portions of the Declaration are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular provisions to which they refer. The effective date of this Declaration shall be the date of its filing for record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina.

8.7. GENDER AND GRAMMAR

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, limited liability companies or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

8.8. SEVERABILITY

The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Unit, and may not be severed or alienated from such ownership. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provisions which can reasonably be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

8.9. RIGHTS OF THIRD PARTIES

This Declaration shall be recorded for the benefit of Declarant, Owners, the Association, the Subordinate Associations, and their mortgagees, and by such recording, no other Person, including any adjoining property owner, shall have any right, title or interest whatsoever in the Property except as expressly provided herein, or in the operation of the Association or the Common Area or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and mortgagees herein provided.

8.10. NOTICE OF SALE, LEASE OR MORTGAGE

If an Owner sells, leases, mortgages, or otherwise disposes of any Unit, the transferring Owner shall promptly furnish to the Association, in writing, the name and address of such purchaser, lessee, mortgagee, or transferee.

8.11. NOTICES

Notices required hereunder shall be deemed given when in writing and delivered by hand or three (3) calendar days after being deposited in the United States Mail, First Class, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as has been designated in writing to the Association, or if no address had been so designated, at the addresses of such Owner's respective Units.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Park West Master Association, Inc., 2000 Center Point Lane, Suite 2100  
Columbia, SC 29210

or to such other address as the Association may from time to time notify the Owners and the Declarant.

All notices to Declarant shall be delivered or sent in care of Declarant at:

c/o LandTech Charleston, LLC, 2000 Center Point Lane, Suite 2100  
Columbia, SC 29210

or to such other address as Declarant may from time to time notify the Association. Notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association.

8.12. SUCCESSORS AND ASSIGNS

Except where expressly stated to the contrary and without the necessity of separately so stating at every reference herein, all provisions herein shall be binding upon and inure to the benefit of the Declarant, the Association, the Subordinate Associations, and Owners and their respective heirs, legal representatives, successors, assigns and successors in title.

**ARTICLE 9. EXCEPTIONS RELATING TO PARK LAND**

9.1. PARK LAND DEFINED

"Park Land" is certain land conveyed to the Town of Mount Pleasant, South Carolina, as more specifically identified in Exhibit A-1 attached hereto.

9.2. LIMITS ON APPLICATION OF DECLARATION TO PARK LAND

Pursuant to the Second Amendment to this Declaration, effective as of the 4th day of January, 1999, the Declaration shall not apply to the Park Land, and neither the Association nor the Declarant shall have any rights or responsibilities relating to the Park Land unless set forth in other written agreements between the parties; provided, however, that the following provisions shall continue to apply to the Park Land in order to preserve the aesthetic standards of Park West and provide for necessary services for the Property:

- (A) Section 2.2.2 (stating the responsibilities of a Parcel Developer). Notwithstanding Section 2.2.2 and the Development Guidelines, as defined in Section 2.4.2 of the Declaration, (i) the Town shall have no responsibility for constructing any bicycle or pedestrian path within the "20' Bike Trail and Utilities Easement", (ii) the Town shall have no responsibility for landscaping or irrigating landscaping within the 20' Bike Trail and Utilities Easement or the "55' Buffer", as long as the Town retains existing foliage within the 55' Buffer as a natural buffer (except such modifications to such natural buffer as may be mutually approved by the Town and the Development Review Board of the Association), and (iii) it shall not be required that a berm be constructed in front of the buffer. However, the Town shall be responsible for developing, landscaping, irrigating, lighting and providing signage for the main entrance to the Park Land in accordance with that portion of the Development Guidelines which relates to "Neighborhood Entries", including constructing one paved pedestrian/bicycle path or a sidewalk along one side of the main entrance to the Park Land, from the Park Land side of the 20' Bike Trail and Utilities Easement to the end of the 150' minimum depth for the Neighborhood Entry.
- (B) Section 2.4 (relating to development and architectural review), but excluding Sections 2.4.8 and 2.4.9 (as amended by the First Amendment); provided, however, (i) Section 2.4 shall apply **only** to development within the Park West Boulevard Buffer, the Neighborhood Entry Buffers, and the Adjacent Parcel Buffers, as defined in the Development Guidelines, and (ii) such application shall be limited as set forth in Section 1.A. of this Second Amendment.
- (C) Section 3.1, relating to Wetland Permits and Protective Covenants.
- (D) Section 4.1, relating to certain easements for Declarant across Common Area and Area of Common Responsibility.
- (E) Section 4.2, relating to certain easements for the Association.
- (F) Article VIII, containing General Provisions regarding such matters as amendments, enforcement, duration of the Declaration, procedure for giving

notice, and rights of successors and assigns of the parties.

9.3. OTHER STANDARDS RELATING TO PARK LAND

In addition to such buffers, setbacks and standards as are required by the Development Guidelines referenced in Section 2.4.2 of the Declaration, (as modified above as it relates to the Park Land), the following additional standards shall apply to the Park Land:

(A) Along the north boundary line, a minimum natural buffer shall be retained within twenty (20) feet of the property line, provided that additional landscaping and planting may occur in such buffer.

(B) Along the north boundary line, all structures and lighting shall be set back from the property line not less than fifty (50) feet.

(C) In designing the lighting for any playing fields or similar large areas, the Town shall make reasonable efforts to minimize the impact of such lights on residential areas outside the Park Land.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 11th day of December, 1997.

**LANDTECH CHARLESTON, LLC**  
a South Carolina Limited Liability Company

WITNESS:

\_\_\_\_\_

Isl Patrick L. Tomlin

\_\_\_\_\_

BY: Patrick L. Tomlin  
ITS MANAGER



**ACKNOWLEDGEMENT**

I, Ruthann E. Gunter the undersigned Notary Public for the State of South Carolina, do hereby certify that Patrick L. Tomlin personally appeared before me this day and acknowledged the due execution of the foregoing Declaration.

Witness my hand and official seal this 11th day of December, 1997.

(SEAL)

/s/ Ruthann E. Gunter  
Notary Public for South Carolina

My commission expires: 4-18-2000

## **EXHIBIT A: PROPERTY DESCRIPTION**

ALL those pieces, parcels and tracts of land situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, containing one thousand six hundred ninety-nine and six hundred forty-three thousandths (1,699.643) aggregate acres, more or less, and being fully shown and delineated on a plat of survey made by Southeastern Surveying, Inc. titled "A BOUNDARY SURVEY OF A 1,692.333 ACRE TRACT OF LAND AND A 7.310 ACRE TRACT OF LAND BEING A PORTION OF DUNES WEST", dated December 10, 1996, and recorded on December 19, 1996 in Plat Book EB at pages 501-505 in the RMC Office of Charleston, South Carolina.

SAID tracts of land having such size, shape, dimensions and boundaries as will by reference to said plat more fully appear.

BEING a portion of the property conveyed to the grantor herein by deed of Georgia-Pacific Corporation dated March 31, 1989, and recorded in Book W-183 at page 725, in the RMC Office of Charleston, South Carolina and by deed of Wando Developers dated June 13, 1989, and recorded in the aforesaid office in Book D-185 at page 392.

Being TMS #598-00-00-002 and a portion of TMS # 540-00-00-009, and to become 540-00-00-056.

### **ALSO**

TOGETHER with all Easements reserved to Georgia-Pacific Corporation in a Deed from Georgia-Pacific Corporation to Charleston County Airport District dated February 2, 1981, and recorded February 13, 1981, in Book S-124 at page 10 in the RMC Office for Charleston County, South Carolina.

**EXHIBIT A-1: DESCRIPTION OF PARK LAND**

ALL those pieces, parcels and tracts of land situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, containing 58.98 acres, more or less, and being fully shown and delineated on a plat of survey made by SouthStar Surveying titled "PLAT OF 58.98 ACRE TRACT BEING A PORTION OF PARK WEST ABOUT TO BE CONVEYED TO THE TOWN OF MOUNT PLEASANT", dated June 16, 1997, and recorded on April 16, 1998, in Plat Book EC at page 428 in the RMC Office of Charleston, South Carolina.

SAID tracts of land having such size, shape, dimensions and boundaries as will by reference to said plat more fully appear.

BEING a portion of the property described in the Declaration of Covenants, Conditions and Restrictions for Park West Master Association recorded in Book P-294 at page 285, in the RMC Office of Charleston, South Carolina

Being TMS #598-00-00-045

**EXHIBIT B: BYLAWS**  
**OF**  
**PARK WEST MASTER ASSOCIATION, INC.**

**TABLE OF CONTENTS**

**ARTICLE I**  
**NAME AND PRINCIPAL OFFICE**

1.1.Name.....	1
1.2.Offices.....	1

**ARTICLE II**  
**DEFINITIONS**

2.1.Definitions.....	1
----------------------	---

**ARTICLE III**  
**MEMBERS**

3.1.No Members.....	5
3.2.Notice by Participating Owners.....	5

**ARTICLE IV**  
**BOARD OF DIRECTORS**

4.1.General Powers.....	6
4.2.Number, Tenure, and Qualifications.....	6
4.3.Annual and Regular Meetings.....	7
4.4.Special Meetings.....	7
4.5.Quorum, Telephonic Meetings and Manner of Acting.....	7
4.6.Compensation.....	8
4.7.Resignation and Removal.....	8
4.8.Vacancies.....	9
4.9.Informal Action by Directors.....	9

**ARTICLE V**  
**OFFICERS**

5.1.Number.....	9
5.2.Election, Tenure, and Qualifications.....	9
5.3.Subordinate Officers and Agents.....	9
5.4.Resignation and Removal.....	10

5.5. Vacancies and Newly Created Offices .....	10
5.6. The President .....	10
5.7. The Vice President .....	10
5.8. The Secretary .....	10
5.9. The Treasurer .....	10
5.10. Compensation .....	10

**ARTICLE VI  
COMMITTEES**

6.1. Designation of Committees .....	11
6.2. Proceedings of Committees .....	11
6.3. Quorum and Manner of Acting .....	11
6.4. Resignation and Removal .....	11
6.5. Vacancies .....	11

**ARTICLE VII  
INDEMNIFICATION**

7.1. Indemnification .....	12
7.2. Determination .....	12
7.3. Advances .....	12
7.4. Scope of Indemnification .....	13
7.5. Insurance .....	13
7.6. Payments and Premiums .....	13

**ARTICLE VIII  
FISCAL YEAR AND SEAL**

8.1. Fiscal Year .....	13
8.2. Seal .....	13

**ARTICLE IX  
RULES AND REGULATIONS**

9.1. Rules and Regulations .....	14
----------------------------------	----

**ARTICLE X  
NOTICES**

10.1. Notices .....	14
---------------------	----

**ARTICLE XI  
AMENDMENT OF BYLAWS**

11.1. Amendment by Association .....	14
11.2. Amendment by Declarant .....	15

**BYLAWS OF  
PARK WEST MASTER ASSOCIATION, INC.**  
A South Carolina Nonprofit Mutual Benefit Corporation

Pursuant to the provisions of the South Carolina Nonprofit Corporation Act, the Board of Directors of Park West Master Association, Inc., a South Carolina nonprofit mutual benefit corporation, hereby adopts the following Bylaws for such corporation.

**ARTICLE I  
NAME AND PRINCIPAL OFFICE**

1.1. Name. The name of the nonprofit corporation is "Park West Master Association, Inc.", hereinafter referred to as the "Association".

1.2. Offices. The principal offices of the Association shall be in Charleston County, South Carolina.

**ARTICLE II  
DEFINITIONS**

2.1. Definitions. Except as otherwise provided herein or required by the context hereof, all terms defined in the Declaration (as defined below) (hereinafter referred to as the "Declaration"), shall have such defined meanings when used in these Bylaws. For ease of reference, certain of such definitions as exist in the Declaration as initially recorded, are repeated below.

2.1.1. "Added Property(s)" means real property, whether or not owned by a Declarant, which is made subject hereto as provided in Article II hereof.

2.1.2. "Affiliate" means any entity which is owned by the Declarant, which owns the Declarant, or in which the Declarant or Persons holding an interest in Declarant own at least fifty per cent (50%) of the interests.

2.1.3. "Apartment Unit" means each dwelling unit in a residential apartment structure which is separately rented, including the unit, if applicable, for the apartment manager. The Association shall have the right to determine whether an Apartment Unit exists and how many Apartment Units exist at a particular time, subject to the provisions of the Declaration.

2.1.4. "Area of Common Responsibility" means any area for which the Association has or assumes the responsibility for maintenance, repair and management, including the Common Areas and portions of the Property specified by

the Association which have not been conveyed to a Developer as a Parcel and which contain facilities which benefit more than one Parcel, including, without limitation, (a) street shoulders and curbs, walkways and bicycle paths, signage, landscaping, street lighting, signage lighting and landscape lighting, whether within the Common Area or unpaved portions of designated common roadways and Park West Boulevard right-of-way from its intersection with U. S. Highway 17 to the terminus of Dunes West Boulevard right-of-way (as such rights of way are noted on the plat of the Property or any portion thereof, which plat is approved by the Declarant or the Association), whether said rights-of-way are privately owned, dedicated to the public, or conveyed to the State of South Carolina or any municipality thereof, (b) lakes, lagoons and drainageways specifically shown and designated on any plat of the Property, or any portion thereof, which plat is approved by Declarant or the Association, as being a Common Area of the Association or the responsibility of the Association, and (c) any common utility lines or facilities which have not been dedicated to and accepted for maintenance by a or public utility.

2.1.5. "Assessment" means the charges from time to time assessed against a Unit by the Association in the manner provided in the Declaration, and shall include both regular and special assessments.

2.1.6. "Association" means the Park West Master Association, Inc., a South Carolina not-for-profit corporation.

2.1.7. "Board of Directors" or "Board" means the Board of Directors of the Association.

2.1.8. "By-Laws" means the By-Laws duly adopted by the Association which govern the administration and operation of the Association, as may be amended from time to time.

2.1.9. "Common Areas" means all areas shown and designated as a Common Area, or similar wording clearly indicating such intend, on any recorded plat of the Property, or any portion thereof, which plat has been approved in writing by Declarant or the Association, and incorporated herein by a Supplemental Declaration. **THE DESIGNATION OF ANY OF THE PROPERTY OR IMPROVEMENTS THEREON AS COMMON AREAS SHALL NOT MEAN OR IMPLY THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OF USE OR ENJOYMENT THEREIN.**

2.1.10. "Common Expenses" means all liabilities or expenditures made or incurred by or on behalf of the Association, together with all funds necessary for the creation or maintenance of financial, equipment or capital improvement reserves,

consistent with the provisions of the Declaration.

2.1.11. "Condominium Unit" means each dwelling unit in a residential condominium as defined in the master deed of the condominium regime. The Association shall have the right to determine whether a Condominium Unit exists and how many Condominium Units exist at a particular time, subject to the provisions of this Declaration.

2.1.12. "Controlling Interest" means the ownership by Declarant and any Affiliate of Declarant, as of the date such determination, of Property to which there remains allocated at least 25% of the Zoned Density for the Property.

2.1.13. "Declarant" means LandTech Charleston, LLC, a South Carolina limited liability company, its successors and assigns, and any entity designated as a successor declarant by LandTech Charleston, LLC by a recorded supplemental declaration, provided, however, that this definition shall not include the purchaser, owner, or mortgagee of any Unit.

2.1.14. "Declaration" means the Restated Declaration of Covenants, Conditions and Restrictions for Park West Master Association recorded concurrently in the office of the Register of Mesne Conveyances for Charleston County, in Book\_\_\_\_, Page\_\_\_\_, and all amendments or Supplemental Declarations filed for record from time to time in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

2.1.15. "Managing Agent" means any entity retained by the Association to manage the Common Property and Area of Common Responsibility, or portions thereof, and supervise its maintenance and the operation of the administrative affairs of the Association.

2.1.16. "Non-Residential Unit" means a portion of the Property, whether improved or unimproved, held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common) which is used or is designated on the Final Site Plan thereof approved by the Town of Mount Pleasant for non-residential uses, such as, without limitation, hotels, offices, retail and other commercial establishments, industrial and institutional uses, medical and conference centers, and golf courses and other commercial amenities, if any. The term excludes Common Areas, common property of any Subordinate Association, and Property dedicated to the public unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. A "Non-Residential Unit" shall exist at such time



as a Final Site Plan for the non-residential use is approved by the Town of Mount Pleasant and recorded in the Office of the Register of Mesne Conveyance for Charleston County; provided, however, if the Owner fails to record the Final Site Plan, the Association may determine that the property is nevertheless subject to the Assessments. The Association shall have the right to determine whether a Non-Residential Unit exists and how many Non-Residential Units exist at a particular time, subject to the provisions of the Declaration.

2.1.17. "Occupant" means any individual lawfully occupying any Unit, including, without limitation, any Owner, or family member, guest, invitee, licensee, tenant of an Owner occupying any Unit.

2.1.18. "Owner" means any Person which owns fee simple title to any Unit located on the Property. "Owner" shall not mean a mortgagee unless such mortgagee has acquired title to the Unit or any Person having a contract to purchase a Unit but to which title has not been conveyed of record.

2.1.19. "Person" means any individual or legal entity, as the context may reasonably require.

2.1.20. "Property" means all the land and improvements thereon described in Exhibit "A" and any Added Property.

2.1.21. "Residential Unit" means any portion of the Property, whether improved or unimproved, which (a) is intended for development, use, and occupancy as an attached or detached residence for one family, (b) may be independently owned and conveyed, and (c) is held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common. "Residential Unit" includes, by way of illustration and not limitation, townhouses, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such. "Residential Unit" excludes Apartment Units, Condominium Units, Common Areas, common property of any Subordinate Association, and Property dedicated to the public unless otherwise specified in the deed from the Declarant or the Association conveying such property or in another recorded document expressly approved by the Declarant. A Parcel shall initially be deemed to contain the number of dwelling units (including Apartment Units and Condominium Units) designated on or with the subdivision plat, final site plan, or condominium master deed for the Parcel which is approved by the Town of Mount Pleasant, South Carolina and recorded in the Office of the Register of Mesne Conveyance for Charleston County in accordance with applicable ordinances and laws. Thereafter, each dwelling unit for which a certificate of occupancy has been issued

shall constitute a separate Unit. The Association shall have the right to determine whether a Residential Unit exists and how many Residential Units exist at a particular time, subject to the provisions of the Declaration.

2.1.22. "Subordinate Association" means an association of Owners within one or more Parcels, as defined or created by a Subordinate Declaration, to provide for the orderly control, administration, maintenance or management of those Parcels.

2.1.23. "Subordinate Declaration" means any instrument or documents, and any amendments thereto, which is filed of record with respect to a Parcel or Parcels, and which creates an association of owners for such Parcel or Parcels and establishes covenants, conditions, easements, rules or restrictions with respect to the lots, dwellings, units or commercial sites or structures within such Parcel or Parcels.

2.1.24. "Unit" means an Apartment Unit, Condominium Unit, Nonresidential Unit or Residential Unit.

2.1.25. "Wetland Tract" means any piece or tract of the Property designated on a recorded plat as a "Wetland Tract" which is the subject matter of a Department of the Army Permit issued by the U.S. Army Corps of Engineers, or is the object of a mitigation plan under any such permit; and which, by Supplemental Declaration referencing such plat and permit, and such additional matters as the permit requires, is made subject to the covenants set forth in Article III of the Declaration.

2.1.26. "Zoned Density" means the number of dwelling units which are permitted to be developed within the Property as of the date of recordation of this Declaration, which number is 5,281 dwelling units. If the Declarant subjects Added Property to the Declaration, the Declarant may, in its sole discretion, increase the Zoned Density for the combined parcels by the number of dwelling units which may be developed within the Added Property. In such event, the Declarant shall file a Supplemental Declaration evidencing the revised Zoned Density. The Zoned Density for any Parcel shall be defined in a Subordinate Declaration or recorded Land Use and Density Agreement signed by the Declarant.

### ARTICLE III MEMBERS

3.1.No Members. Pursuant to the Declaration and Articles of Incorporation, the Association shall not have members.

3.2.Notice by Participating Owners. Upon purchasing a Unit in that community

commonly known as Park West, located in Charleston County, South Carolina, the Owner of any Unit purporting to have the right to use the Common Area shall promptly furnish to the Association a legible copy of the recorded instrument by which ownership of such Unit has been vested in the Owner, which copy shall be maintained in the records of the Association.

#### ARTICLE IV BOARD OF DIRECTORS

4.1. General Powers. The property, affairs, and business of the Association shall be managed by its Board of Directors. The Board may exercise all of the powers of the Association, whether derived from law, the Declaration, the Articles of Incorporation, or these Bylaws, except such powers as are expressly vested in another Person by such sources. The Board shall constitute the final administrative authority of the Association, and all decisions of the Board shall be binding upon the Association. The Board may by written contract delegate, in whole or in part, to a Management Agent such of its duties, responsibilities, function, and powers, or those of any officer, as are properly delegable.

#### 4.2. Number, Tenure, and Qualifications.

4.2.1 For so long as Declarant owns a Controlling Interest, the Board of Directors shall consist of not less than three (3) nor more than five (5) individuals, as designated by Declarant from time-to-time. Such Directors need not be Owners of Units.

4.2.2. At such time as the Declarant no longer has a Controlling Interest, or such earlier time as the Declarant records a Supplemental Declaration waiving its authority to designate the Board, the successor Board shall be selected as follows:

A. The successor Board shall consist of three (3) Persons, each of whom shall serve for a three (3) year staggered term. Initially, one (1) Director shall be elected for a one (1) year term, one (1) Director shall be elected for a two (2) year term, and one (1) Director shall be elected for a three (3) year term. The Person receiving the highest number of votes shall be elected to the three (3) year term, the Person receiving the next highest number of votes shall be elected to the two (2) year term, and the Person receiving the next highest number of votes shall be elected to the one (1) year term.

B. Thereafter, in the absence of the resignation or replacement of a Director (in which case the replacement Director shall serve for the balance of

the applicable term), one (1) Director shall be elected each year for a three (3) year term. The position of the Director initially holding a one (1) year term shall be replaced for the second year and the position of the Director initially holding a two (2) year term shall be replaced for the third year. It is not necessary that a Director be an Owner and there is no limit on the number of terms that a Director may serve.

C. The current Board of the Association shall constitute a Nominating Committee to nominate competent and responsible Persons to serve as Directors of the Association. At the discretion of the Board of Directors, elections of Directors shall be held either (i) by written ballot distributed to the Owners of Units without a meeting or (ii) by written ballot election at a meeting of the Owners. In all cases, the Board of Directors shall determine the form of the written ballot, but the ballot shall contain one or more blank spaces for additional Persons to be nominated. If election is by written ballot distributed to the Owners of Units without a meeting, the ballot or accompanying materials shall state a date by which the ballot must be returned to the Association in order to be counted. If election of Directors is at a meeting of the Owners, the Association shall cause notice to be given to all Owners that a meeting shall be held at a designated time and place in Charleston County not earlier than seven (7) days after the date such notice is given for election of Directors. The notice shall contain the names of those persons recommended by the Nominating Committee, but shall note that Owners may make other nominations at the meeting.

D. At each election of Directors (and at any other vote of Owners of Units), the Owner of each Unit shall be entitled to cast a vote for each Unit that is owned by such Owner. The weighted number of votes for each Unit Owner shall be the same as the number of Assessment Shares allocable to such Units, as set forth in the Declaration. Each Owner shall be authorized to cast as many votes as the number of Directors to be elected (i.e. if three Directors are being elected, then the Owner may cast his votes for three nominees).

E. If election of Directors is at a meeting of the Owners, then, after giving the Owners (or written proxy holders) attending such meeting the opportunity to nominate other Persons, with a second by another Owner or proxy holder, the Directors shall be elected by written secret ballot.

4.3. Annual and Regular Meetings. The first meeting of the Board of Directors shall be held within one (1) year from the date of incorporation of the Association. Subsequent annual meetings shall be set by the Board so as to occur no later than

ninety (90) days after the close of the Association's fiscal year, provided that the date for such annual meeting may be deferred by the Board of Directors. Regular meetings of the Board of Directors shall be held on such dates as the Board of Directors may determine.

4.4. Special Meetings. Special meetings of the Board may be called by or at the request of two Directors, or if there are only two Directors, then any Director. The Director(s) calling a special meeting of the Board may fix any place within Charleston County, South Carolina (or such other place as is approved by all Directors) as the place for holding such a meeting. Except as otherwise required or permitted by the South Carolina Nonprofit Corporation Act, notice of any special meetings shall be given at least two (2) days prior thereto. Notice shall be in accordance with the procedure set forth in Section 11.1, provided that notice may also be given by facsimile transmission if the Director given such notice has provided a facsimile number to the Association and the sender retains a record of its electronic receipt. Any Director may waive notice of a meeting.

4.5. Quorum, Telephonic Meetings and Manner of Acting. A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. Upon approval of a majority of the Board, a meeting may be conducted by any electronic means which permits all participating Directors to communicate simultaneously (such as a telephone conference call). The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers as such. A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board and individual Directors shall have no powers as such.

4.6. Compensation. No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacities as Directors.

4.7. Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, by proper action of the Person(s) having the right to designate or elect Directors at the time of removal (see Sections 4.2.1 and 4.2.2,

above).

4.8. Vacancies. If a vacancy shall occur in the Board by reason of the death or resignation of a Director, then such vacancy shall be filled by vote of the remaining Directors. If a vacancy shall occur in the Board by reason of removal, then such vacancy shall be filled solely by vote of the Person(s) then having the right to designate or elect Directors (i.e. by the Declarant or the Owners of the Total Assessed Units, as set forth in Sections 4.2.1 and 4.2.2, above). Any Director designated or appointed to fill a vacancy shall serve for the unexpired term of his predecessor.

4.9. Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

## ARTICLE V OFFICERS

5.1. Number. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board.

5.2. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one individual may hold any two or more of such offices, except that the President may not also be the Secretary or the Treasurer. No individual holding two or more offices shall act in or execute any instrument in the capacity of more than one office. It is not necessary that an officer be a Director or an Owner.

5.3. Subordinate Officers and Agents. The Board may from time to time appoint such other officers or agents as it deems advisable, each of whom shall have such title, hold office for such periods, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. It is not necessary that a subordinate officer or agent be a Director or an Owner.

5.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President of the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause.

5.5. Vacancies and Newly Created Offices. If any vacancies shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular special meeting.

5.6. The President. The President shall preside at meetings of the Board and at meetings of Owners called by the Association. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him; provided that the Board may authorize other officers or Persons to act on specific matters by proper resolution of the Board.

5.7. The Vice President. The Vice President shall preside in the absence of the President and shall do and perform all other acts and things that the Board may require of him.

5.8. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board may require of him.

5.9. The Treasurer. The Treasurer shall have custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President or the Board to do so, report the state of the finances of the Association. He shall perform such other duties as the Board may require of him.

5.10. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided further, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be additionally compensated for services rendered to the Association other than in their capacities as officers.

## ARTICLE VI COMMITTEES

6.1. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall consist of such number as the Board shall determine. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided by these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members. It is not necessary that a committee member be a Director, an officer or an Owner.

6.2. Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board. Unless expressly delegated to the committee by the Board, the power and authority of each committee shall only be to make recommendations to the Board, which shall have the final decision whether to take any action or not.

6.3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation either to the President, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5. Vacancies. If any vacancy shall occur in any committee designated by the



Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## ARTICLE VII INDEMNIFICATION

7.1. Indemnification. The Association shall indemnify any Person who was or is a party to, or is threatened to be made a party to, any threatened, pending, or completed action, suit, or proceeding (including a proceeding brought by the Association) whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement in connection with such action, suit, or proceeding, if the indemnified Person (a) acted in good faith, without fraudulent intent or gross negligence (or, if the action is brought by the Association, without negligence or breach of any contractual or fiduciary obligation to the Association), and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2. Determination. To the extent that a Director, officer, employee, or agent of the Association had been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 7.1, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 7.1 hereof shall be made by the Association only upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Section 7.1 hereof. Such determination shall be made by the Board by a majority vote of a quorum consisting of Directors excluding the Person whose indemnification is being considered.

7.3. Advances. Expenses incurred in defending a civil or criminal action, suit, or

proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board (excluding the Person whose indemnification is being considered) and upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

7.4. Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Declaration, Articles of Incorporation, Bylaws, agreements, vote of disinterested members of Directors, or applicable law. The indemnification authorized by this Article shall apply to all present and future Directors, officers, employees, and agents of the Association and shall continue as to such Persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and legal representatives of all such Persons.

7.5. Insurance. The Association may purchase and maintain insurance on behalf of any Person who was or is a Director, officer, employee, or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the Bylaws or the laws of the State of South Carolina, as the same may hereafter be amended or modified.

7.6. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute Common Expenses of the Association and shall be paid with funds of the Association.

#### ARTICLE VIII FISCAL YEAR AND SEAL

8.1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.2. Seal. The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal."

ARTICLE IX  
RULES AND REGULATIONS

9.1. Rules and Regulations. The Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Property, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. Without limitation, such rules and regulations may include establishment of reasonable fees for guests or for special use of facilities in the Common Area, definition of the times and conditions of use of facilities in the Common Area and reasonable charges or fines for failure to observe the terms of this Declaration or the rules and regulations. Upon request of any Owner, such Owner shall be provided a copy of the rules and regulations or the Declaration, provided that the Board may charge a reasonable fee to cover any reproduction, mailing or administrative costs involved.

ARTICLE X  
NOTICES

10.1. Notices. Notices required hereunder shall be deemed given when in writing and delivered by hand or three (3) calendar days after being deposited in the United States Mail, First Class, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address had been so designated, at the addresses of such Owner's respective Units as shown on the records of the Association.

All notices to the Association shall be delivered or sent in care of the Association at:

c/o Park West Amenity Association, Inc., 2000 Center Point Lane, Suite 2100,  
Columbia, SC 29210

or to such other address as the Association may from time to time notify the Owners.

ARTICLE XI  
AMENDMENT OF BYLAWS

11.1. Amendment by Association. The Bylaws may be amended by approval of the proposed amendment by vote of two thirds of the then existing Board of Directors. Notice of the proposed amendment shall be given to the Board in writing by a Director

proposing the amendment and the notice shall contain a general description of the proposed amendment and the purpose of the proposed amendment. No amendment to the Bylaws which imposes or reasonably could be construed to impose a greater economic or legal burden on Declarant than exists under the then current provisions of this Declaration shall be valid unless it is approved, in writing, by Declarant, and no amendment of the Bylaws which is contrary to this statement shall be valid.

11.2. Amendment by Declarant. Declarant may amend the Bylaws without the consent of the Association, the Board, any Owner or any mortgagee if, in Declarant's opinion, such amendment is necessary to (i) bring any provision of the Bylaws or the Declaration into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which is in conflict with the Declaration or the Bylaws; (ii) enable any title insurance company to issue title insurance coverage with respect to any Units subject to the Declaration; (iii) enable any mortgagee to make mortgage loans on any Unit or other improvements subject to the Declaration; (iv) enable any governmental agency or mortgage insurance company to insure mortgages on the Units subject to the Declaration; (v) enable any insurer to provide insurance required by the Declaration; or (vi) clarify any provision of the Bylaws or the Declaration or eliminate any conflict between provisions of the Bylaws and/or the Declaration.