

AFTER RECORDING RETURN TO:
Frank J. Kralicek - Hughes and White
Suite 440
2110 Powers Ferry Road
Atlanta, Georgia 30339-5058

120056

Cross Reference
Deed Book 4515, Page 62

Deed Book 10148 Pg 93
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Patty Baker
Clerk of Superior Court Cherokee Cty, GA

**THIRD AMENDMENT TO DECLARATION OF
COVENANTS, RESTRICTIONS AND
EASEMENTS FOR GREAT SKY**

This Third Amendment to Declaration of Covenants, Restrictions and Easements for Great Sky is made effective as of this 31st day of March, 2008, by FAIRGREEN GREAT SKY, LLC, a Georgia limited liability company (hereinafter Declarant).

WITNESSETH:

WHEREAS, Fairgreen Capital, L.P. filed that certain Declaration of Covenants, Restrictions and Easements for Great Sky on April 2, 2001, recorded at Deed Book 4515, Pages 62-99, in the Office of the Clerk of the Superior Court of Cherokee County, Georgia (the "Declaration"); and

WHEREAS, Fairgreen Capital, L.P. filed that certain Amendment to Declaration of Covenants, Restrictions and Easements for Great Sky on December 31, 2005, recorded at Deed Book 8474, Pages 269 - 270, in the Office of the Clerk of the Superior Court of Cherokee County, Georgia; and

WHEREAS, all of the rights, duties, powers and obligations of Fairgreen Capital, L.P. as Declarant under the Declaration have been assigned to Fairgreen Great Sky, LLC pursuant to that certain Assignment and Assumption Agreement regarding Rights of Declarant Under the Declaration of Covenants, Conditions, Restrictions and Easements for Great Sky dated October 17, 2007 by and between Fairgreen Capital, L.P. and Fairgreen Great Sky, LLC recorded at Deed Book 9910, Page 27, aforesaid records; and

WHEREAS, Declarant filed that certain Second Amendment to Declaration of Covenants, Restrictions and Easements for Great Sky on October 18, 2007, recorded at Deed Book 9920, Page 191, aforesaid records; and

WHEREAS, the purpose of this Third Amendment is to incorporate into the Declaration certain provisions that relate to Commercial Property and Commercial Owners, as defined herein, and to specifically provide that Articles IV, V, VI, VIII and IX of the Declaration shall not apply to Commercial Property or to Commercial Owners; and

WHEREAS, Declarant desires to amend further the Declaration in certain specific regards in accordance with its rights contain in Paragraph 10.02 of Article X of the Declaration.

NOW, THEREFORE, Declarant does hereby provide as follows:

The Declaration is hereby amended by making the following changes to the Declaration:

1.

The third WHEREAS clause on page 1 of the Declaration is hereby deleted in its entirety and the following new clauses are substituted in lieu thereof:

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereafter defined) and the Commercial Owners (as hereafter defined); and

WHEREAS, every Owner of any Lot and the Commercial Owners within the Property automatically, by reason of such ownership and this Declaration, shall become a member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association.

2.

Section 1.06 of the Declaration is hereby deleted in its entirety and the following new section is substituted in lieu thereof:

1.06 Declarant. "Declarant" means Fairgreen Great Sky, LLC, or any entity which succeeds to the rights and duties of Declarant as developer of the Property through conveyance by deed to the successor developer of the Property which includes a specific transfer of the rights of Declarant to such a successor.

3.

The following new Sections are added to the end of Article I (Definitions):

1.17 Commercial Owner. "Commercial Owner" means the record owner whether one or more persons or entities, of a fee simple title to any Commercial Property.

1.18 Commercial Property. "Commercial Property" means all real property (together with any and all improvements now and hereinafter located thereon) which is zoned for office, institutional, retail, or general commercial use under the zoning ordinance of the applicable governmental authority and which is designated by Declarant as "Commercial" on the recorded plat showing the Commercial Property. No Lot shall ever be Commercial

Property.

1.19 "Commercial Structure" means:

(a) any thing or object the placement of which upon Commercial Property may affect the appearance of such Commercial Property, including by way of illustration and not limitation, any building or part thereof, fence, curbing, paving, wall, tree, shrub, sign, signboard, or any temporary or permanent improvement to such Commercial Property;

(b) any excavation, grading, fill ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Commercial Property, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Commercial Property; and

(c) any change in the grade at any point on a Commercial Property of more than six (6) inches, whether or not subsection (b) of this Section 1.19 applies to such change.

4.

Sections 10.02 and 10.03 of the Declaration are hereby deleted in their entirety and the following new sections are substituted in lieu thereof:

10.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded with the Clerk of the Superior Court of Cherokee County, Georgia, without the approval of any Owner, Commercial Owner or mortgagee. However, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot, or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee in a Lot, such amendment shall be valid only upon the written consent thereto of such mortgagees so affected. Furthermore, (i) in the event that such amendment alters or changes any Commercial Owner's right to the use and enjoyment of such Commercial Owner's Commercial Property, or if such amendment adversely affects the title to any Commercial Property, such amendment shall be valid only upon the written consent thereto by all of the then existing Commercial Owners affected thereby, or (ii) in the event that such amendment would adversely affect the security title and interest of any mortgagee in Commercial Property, such amendment shall be valid only upon the written consent thereto of such mortgagees so affected. Any amendment made pursuant to this Section 10.02 shall be certified by Declarant as having been duly approved by Declarant, and such Owners, Commercial Owners and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Subject to the conditions as stated above in this Section, each Owner and Commercial Owner, by acceptance of a deed or other

conveyance to a Lot or Commercial Property, agrees to be bound by such amendments as are permitted by this Section 10.02 and further agrees that, if requested to do so by Declarant, such Owner or Commercial Owner will consent to the amendment of this Declaration or any other instruments relating to the Development if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Commercial Property subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots or Commercial Property subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

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

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Owners and Commercial Owners holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which adversely affects the security, title and interest of any mortgagee must be approved by such mortgagee; (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association or has the right to appoint all members of the ACC, such amendment must be approved by Declarant; and (iii) that any amendment which does not require the approval of the Declarant but which amends any of the following sections or Articles of this Declaration must be approved by all the Commercial Owners: Sections 1.17, 1.18, 1.19, 10.02, 10.03, 12.06 and 12.07 and Articles XIII, XIV, XV, XVI, XVII, XVIII, XIX, and XX. Furthermore, (i) in the event that such amendment alters or changes any Commercial Owner's right to the use and enjoyment of such Commercial Owner's Commercial Property, or if such amendment adversely affects the title to any Commercial Property, such amendment shall be valid only upon the written consent thereto by all of the then existing Commercial Owners affected thereby. Notwithstanding any other provision of this Declaration, this Section 10.03(b) can never be amended.

(c) The agreement of the required percentage of the Owners and Commercial Owners and, where required, Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment

executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

5.

Sections 12.06 and 12.07 of the Declaration are hereby deleted in their entirety and the following new sections are substituted in lieu thereof:

12.06 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures, or consent of any kind made pursuant to this Declaration, whether made by Declarant, the Association, the ACC, the Owner, the Commercial Owner or any other person, shall be in writing. All such writings shall be sufficient only if hand delivered or if deposited in the United States Mail, and sent to the following addresses:

(a) Declarant: Fairgreen Great Sky, LLC
Suite 900
6065 Roswell Road
Atlanta, GA 30328

(b) Owners: Each Owner's address as registered with the Association in accordance with the By-Laws.

(c) Commercial Owners: Each Commercial Owner's address as registered with the Association in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section 12.06 shall be deemed received when hand delivered or on the third (3rd) day following the day such written notice is deposited in the United States mail.

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

6.

Articles IV, V, VI, VII and IX of the Declaration shall not be applicable to Commercial Property or to Commercial Owners.

The following new Articles are hereby added to the Declaration:

ARTICLE XIII

COMMERCIAL SIGNS

13.01 No Commercial Builder or Commercial Owner shall erect or place any signs on Commercial Property without first obtaining the approval of the Commercial Architectural Control Committee with regard to materials, contents, size, construction, color, face type, location and set-backs of the signs. Pennants, banners, streamers, spinners, hot air or any other type balloons may not be used on the exterior of any Commercial Structures.

ARTICLE XIV

THE ASSOCIATION AS IT RELATES TO COMMERCIAL PROPERTY

14.01 Additional Purposes, Powers and Duties. In addition to the purposes, powers and duties set forth in Section 3.01 of the Declaration, the Association shall also perform certain functions for the common good and general welfare of the Commercial Owners.

14.02 Additional Membership in the Association. Every Commercial Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration.

14.03 Voting Rights of Commercial Owners. Each Commercial Owner shall be entitled to one (1) vote for each two thousand five hundred square feet of gross floor area of any buildings constructed on the Commercial Property owned by such Commercial Owner for which Certificates of Occupancy have been issued, rounded up to the nearest whole number, or, if there are no such buildings, then two (2) votes for each acre (rounded up to the nearest whole acre) of Commercial Property owned by such Commercial Owner. The status of the Commercial Property as of January 1 of each calendar year shall determine which calculation shall be used to determine the number of votes that the Commercial Owner is entitled to have for that calendar year. Where such Commercial Owner is a group or entity other than one individual person, the vote on behalf of such Commercial Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group entity and delivered to the secretary of the Association.

14.04 Termination of Membership. A Commercial Owner's membership in the Association shall cease when that person ceases to be a Commercial Owner.

ARTICLE XV

ASSESSMENTS ON COMMERCIAL PROPERTY

15.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Commercial Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for Commercial Property, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Commercial Property owned by him;

(b) that there is hereby created a continuing charge and lien upon all Commercial Property owned by him against which all such assessments are made to secure payment of such assessments and interest thereon as provided in Section 15.07 hereof and costs of collection including reasonable attorneys' fees;

(c) that such continuing charge and lien on such Commercial Property binds such Commercial Property in the hands of the then Commercial Owner, and the Commercial Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Commercial Property whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase Commercial Property (together with any and all Commercial Structures which may from time to time be placed or located thereon), (2) to finance the construction, repair or alteration of Commercial Structures, and (3) to refinance loans secured by the Commercial Property;

(d) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Commercial Property from liability for any assessment thereafter assessed;

(e) that all annual and special assessments (together with interest thereon as provided in Section 15.07 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Commercial Property owned by him during the period that he is an Commercial Owner shall be (in addition to being a continuing charge and lien against such Commercial Property as provided in Section 15.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Commercial Owner owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to a Commercial Owner's successor in title unless expressly assumed by such successor; and

(f) to pay to the Association a one time membership fee in an amount equal to \$500.00 times the number of acres owned by the Commercial Owner, rounded up to the nearest whole acre, which shall be due and payable by the Commercial Owner on the date that the Commercial Owner closes

on the purchase of Commercial Property.

15.02 Purpose of Assessment. The assessments levied by the Association on Commercial Property shall be used exclusively for the purpose of providing for the common good and general welfare of Commercial Owners of the Commercial Property, and for enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards (as hereinafter defined) of the Commercial ACC (as hereinafter defined), the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association. No assessments or special assessments paid by a Commercial Owner shall be used by the Association (a) to construct, replace, maintain or repair any amenities located on Common Property, such as the clubhouse, pool or tennis courts, or (b) to install, replace, maintain or repair any Pump Equipment located on Commercial Property. Each Commercial Owner shall be solely responsible for all costs associated with the installation, replacement, maintenance or repairing of Pump Equipment located on that Commercial Owner's Commercial Property.

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

15.04 Maximum Annual Assessments.

(a) In 2008 each Commercial Property shall be subject to a maximum annual assessment calculated by multiplying seventy-five percent times the amount of the annual assessment levied on the Owner of each Lot (excluding the pump equipment assessment) times the number of acres of the Commercial Property (rounded up to the nearest whole number of acres). No Commercial Owner shall ever have to pay, during any year, the pump equipment assessment due from each Lot for the cost of the service contract for the Pump Equipment serving a Lot. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Commercial Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date.

(b) Beginning January 1, 2009, the maximum annual assessment for Commercial Property shall be an amount calculated by (i) multiplying seventy-five percent times the amount of the annual assessment levied on the Owner of each Lot (excluding the pump equipment assessment) times the number of square feet of the Commercial Structure located on the Commercial Property, divided by 2,500 (which quotient shall be rounded up to the nearest whole number), or (ii) if there is no Commercial Structure on the Commercial Property as of January 1 of that assessment year, multiplying seventy-five percent times the amount of the annual assessment levied on the Owner of each Lot (excluding the pump equipment assessment) times the number of acres of the Commercial Property (rounded up to the nearest whole number of acres).

15.05 Assessment Procedure. The Board shall cause the Association to send a notice of annual assessment on Commercial Property to each Commercial Owner at least thirty (30) days in advance of the Due Date. The annual assessment on Commercial Property shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Commercial Owner shall be responsible for paying said assessment, not the tenants of any Commercial Property.

15.06 Commencement Date for Assessments. The Commencement Date for payment of the annual assessment on Commercial Property shall be the date that the Commercial Owner closes on the purchase of the Commercial Property.

15.07 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall incur a late fee of \$25.00 if not paid within thirty (30) days of the Due Date and shall bear interest after the Due Date at the lower of (i) the highest legal rate of interest which can be charged on the lending of money or, (ii) the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that a Commercial Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest any costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Commercial Owner, as well as a lien on such Commercial Owner's Commercial Property enforceable in accordance with the provisions of this Declaration.

15.08 Certificate of Payment. Upon written demand by a Commercial Owner, the Association shall within a reasonable period of time issue and furnish to such Commercial Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Commercial Property owned by said Commercial Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid and setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Commercial Property in question.

15.09 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

ARTICLE XVI

COMMERCIAL ARCHITECTURAL CONTROL

16.01 Commercial Architectural Control Committee: Creation and Composition.

(a) A Commercial Architectural Control Committee (the "CACC") shall be established consisting of not less than three persons. Notwithstanding anything to the contrary contained herein, all members of the CACC shall be appointed by Declarant until the first to occur of (i) December 31, 2017; or (ii) until voluntary surrender in writing by Declarant of its right to appoint the membership of the CACC. Thereafter, two-thirds of the members of the CACC must be Commercial Owners, appointed by the Board and one-third of the members must be Owners. All costs of operating the CACC shall be borne by the Association. The CAAC shall have no authority over the improvements constructed on any Lot, and the ACC shall have no authority over the improvements constructed on any Commercial Property.

(b) Each initial member of the CACC shall be appointed for a term expiring on December 31, 2008. Thereafter, each member of the CACC shall be appointed for a calendar year term. If any vacancy shall occur in the membership of the CACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the CACC shall continue to act and such vacancy shall subject to the provisions of paragraph 16.01(a) be filled by Declarant (or the Board, if at the time the Board has the right to appoint members of the CACC), at the earliest time. Any CACC member may resign at any time by giving written notice of such resignation to the Chairman of the CACC, and such resignation shall take effect on receipt thereof by Chairman. Any member of the CACC may be removed at any time with or without cause by the Declarant (or the Board if at the time the Board has the right to appoint members of the CACC).

16.02 Purpose, Powers and Duties of the CACC. The purpose of the CACC is to assure that any installation, construction or alteration of any Commercial Structure on Commercial Property shall be submitted to the CACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of structures with respect to topography, finished ground elevation and surrounding Commercial Structures. To the extent necessary to carry out such purpose, the CACC shall have all of the powers and duties to do each and everything reasonably necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Commercial Structure on any Commercial Property.

16.03 Officers, Subcommittees and Compensation. The members of the CACC shall appoint from among their number such other officers and subcommittees of members of the CACC as they shall from time to time determine necessary. The members of the CACC shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the CACC.

16.04 Operations of the CACC.

(a) Meetings. The CACC shall hold regular meetings at least once every six (6) months or more often as may be established by the CACC. Special meetings may be called by the Chairman at

any time and shall be called by the Chairman upon the written request of a majority of the members of the CACC then in office. Regular and special meetings of the CACC shall be held at such time and at such place as the CACC shall specify. Notice of each regular or special meeting of the CACC shall be either hand delivered or mailed to each Commercial Owner at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the CACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the CACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states at the beginning of the meeting any such objection or objections to the transaction of business. At each meeting of the CACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the CACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the CACC. In the absence of a quorum, any member of the CACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. The CACC shall maintain both a record of votes and minutes for each of its meetings. The CACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the CACC may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the CACC and be filed with the minutes of the proceedings of the CACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the CACC.

(b) Activities.

(i) The CACC shall adopt and promulgate the Commercial Design Standards described in Section 16.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with any Commercial Design Standards of plans and specifications to be submitted for approval to the CACC pursuant to the provisions of this Declaration. The CACC shall, as required, issue authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration. The function of the CACC shall be to deal with aesthetic issues only and not to act as a building inspector.

(ii) The action of the majority of the members of the CAAC with respect to the matters specified shall be final and binding upon the CACC and upon any applicant for an approval, permit or authorization. Other than as provided in Section 16.09, written notice of the decision shall be given to any applicant for an approval or authorization within five (5) working days after written request for action by the applicant. The approval of plans or specifications by the CACC shall in no way subject the CACC or its members to any liability or responsibility for defects or loss sustained by virtue of the content thereof.

16.05 Commercial Design Standards.

(a) The CACC has adopted the attached Exhibit A as the "Commercial Design Standards." The CACC may from time to time adopt, promulgate, amend, revoke and enforce additional Commercial Design Standards for the purposes of:

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

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

(iii) establishing general guidelines with respect to the approval and disapproval of design features, architectural styles, exterior color and materials, details of construction, location and size of Commercial Structures and any other matters that require approval by the CACC pursuant to this Declaration; and

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

However, upon the first to occur of (i) December 31, 2017, or (ii) until voluntary surrender in writing by Declarant of its right to appoint the membership of the CACC, the Commercial Design Standards may not be amended or changed in any way.

(b) The CACC shall make a published copy of the current Commercial Design Standards readily available to the Members and prospective Members of the Association and to all applicants seeking the CACC's approval.

16.06 Submission of Plans and Specifications. No Commercial Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Commercial Property nor shall any existing Commercial Structure upon any Commercial Property be altered in any way which materially changes the exterior appearances of the Commercial Structure or Commercial Property, unless plans and specifications therefore shall have been submitted to and approved in writing by the CACC. Such plans and specifications shall be in such form and contain such information as may be reasonably required by the CACC in the Commercial Design Standards and shall include, without being limited to:

(a) a site plan showing the location of all proposed and existing Commercial Structures on the Commercial Property including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a floor plan;

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

(d) specifications of materials' color scheme and other details affecting the exterior appearance of all proposed Commercial Structures and alterations to existing Commercial Structures;

(e) plans for landscaping; and

(f) payment of a \$250.00 review fee to the CACC.

16.07 Approval of Plans and Specifications. Upon approval by the CACC of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the CACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Commercial Property or Commercial Structure of any plans and specifications shall not be deemed a waiver of the CACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Commercial Property or Commercial Structure. Approval for any such plans and specifications relating to any Commercial Property or Commercial Structure, however, shall be final as to that Commercial Property or Commercial Structure, and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with such plans and specifications, as approved, and any conditions attached to any such approval.

16.08 Disapproval of Plans and Specifications. The CACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

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

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

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

16.09 Obligation to Act. The CACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the CACC, if granted, together with any conditions imposed by the CACC, shall be placed in writing on the plans

and specifications and shall be returned to the applicant. Failure by the CACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

16.10 Inspection Rights. Any employee or agent of the Association or the CACC may, after reasonable notice, at any reasonable time or from time to time enter upon any Commercial Property and Commercial Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Commercial Structure or the use of any Commercial Property or Commercial Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the CACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section and provided that nothing herein shall permit the entry into any Commercial Structure without the permission of the Commercial Owner or the Commercial Owner's tenant, if any.

16.11 Violations. If any Commercial Structure shall be erected, placed, maintained or altered upon any Commercial Property, otherwise than in accordance with the plans and specifications approved by the CACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the CACC such violation shall have occurred, the CACC shall notify the Association. If the Board shall agree with the determination of the CACC with respect to the violation, then the Board shall provide written notice to the Commercial Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Commercial Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 18.03 hereof.

16.12 Certification of Compliance.

(a) Upon completion of the installation, construction, or alteration of any Commercial Structure in accordance with plans and specifications approved by the CACC, the CACC shall, upon written request of the Commercial Owner thereof or upon the CACC's own initiative, issue a Certificate of Compliance, identifying such Commercial Structure and the Commercial Property upon which such Commercial Structure is placed, and stating that the plans and specifications have been approved and that such Commercial Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the CACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Commercial Structures on the Commercial Property comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the CACC of the actual construction of Commercial

Structures or of the workmanship, or to represent or warrant to any person the quality, function, or operation of the Commercial Structures or of any construction, workmanship, engineering, materials or equipment.

(c) The issuance of the Certificate shall in no way be construed to certify to any party that the Commercial Structures have been built in accordance with any applicable rule or regulation.

16.13 Fees. The CACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 16.10. The fee shall be established from time to time by the CACC and shall be put in writing available to any Commercial Owner.

ARTICLE XVII

ADDITIONAL COVENANTS AND RESTRICTIONS ON COMMERCIAL PROPERTY

17.01 Application. The covenants and restrictions contained in this Article XVII shall pertain and apply to all Commercial Property and Commercial Structures erected or placed thereon.

17.02 Restriction on Use. Commercial Property shall never be used (a) for manufacturing purposes; (b) to sell or rent adult magazines, adult books, adult videotapes, or adult DVDs ("Adult Material"), or (c) to operate massage parlors. "Adult Material" is defined as any printed and/or pictorial work that appeals to a prurient interest in sex, is patently offensive according to contemporary community standards, and has no serious literary, artistic, political, or scientific value, and any printed and/or pictorial work rated X, XX, XXX (or of a rating assigned to works containing material more sexually explicit than XXX), and, notwithstanding anything to the contrary contained herein, no material shall be considered Adult Material if: (1) it is available, or of the type to be available to the community, through a broadcast network (i.e., NBC, ABC or CBS); or (2) it is such a material that is, or has been in a cinema or theater for public viewing in the community where the Premises is located; provided, however, that any material rated X, XX, XXX, or rated for more sexually explicit content than XXX, shall be considered Adult Material and restricted regardless of its availability to the general public.

17.03 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Commercial Property without the prior written approval of the CACC of plans and specifications for the prevention and control of such erosion or siltation. The CACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscapes and required landscaping as provided for in Section 17.04. Guidelines for the prevention and control of erosion and siltation may be included in the Commercial Design Standards of the CACC.

17.04 Landscaping. No construction or alteration of any Structure shall take place without

the prior written approval by the CACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure shall be included in the Commercial Design Standards of the CACC.

17.05 Trees. No tree having a diameter of six (6) inches or more [measured from a point two (2) feet above ground level] shall be removed from any Commercial Property unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 16.06 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Commercial Design Standards of the CACC.

17.06 Maintenance. Each Commercial Owner shall keep and maintain each Commercial Property and Commercial Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Commercial Structures; (ii) the seeding, watering and mowing of all lawns; (iii) the mulching of all planting areas with approved mulch listed in the Commercial Design Standards; and (iv) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If in the opinion of the CACC, any Commercial Owner shall fail to perform the duties imposed by this Section, the CACC shall notify the Association. If the Board shall agree with the determination of the CACC with respect to the failure of said Commercial Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Commercial Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Commercial Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 18.03 hereof. Guidelines relating to the maintenance of Commercial Structures and landscaping shall be included in the Commercial Design Standards of the CACC.

17.07 Recreational Vehicles and Trailers and Commercial Vehicles. No house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Commercial Property on a permanent basis, but shall be allowed on a temporary basis such as in the case of a customer patronizing business establishments located on the Commercial Property or as otherwise authorized in writing by the CAAC.

17.08 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Commercial Property.

17.09 Solid Wastes.

(a) No Commercial Owner shall cause or permit or suffer any junk, scrap, rubbish, trash, refuse or litter to be deposited on, stored or to remain on Commercial Property so as to detract from the neat and well-ordered appearance thereof or constitute a fire hazard thereon.

(b) Except during approved construction, no person shall burn rubbish, garbage or any other

form of solid waste on any Commercial Property.

(c) Except for building materials employed during the course of construction of any Commercial Structure approved by the CACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Commercial Property unless screened or otherwise handled in a manner set forth in the Commercial Design Standards.

(d) Rubbish, garbage, or any other form of solid waste must be disposed of by being collected on a regular basis and recurring basis from permanent containers that are screened or enclosed in a manner set forth in the Commercial Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Commercial Design Standards.

17.10 Nuisances. No noxious or offensive activity shall be carried on upon any Commercial Property so as to render any portion unsanitary, unsightly, offensive, or detrimental to persons using or occupying any Commercial Property. Noxious or offensive activities shall not be carried on in any Commercial Property and each Commercial Owner, his tenants, visitors, guests, servants, and agents, shall refrain from any act or use of a Commercial Property which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the tenants or Commercial Owners of other Commercial Property, or which could result in a cancellation of any insurance of any Commercial Property, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices shall be located, used, or placed on any Commercial Property, except (i) security devices used exclusively for security purposes, and (ii) exterior speakers for drive throughs.

17.11 Notice of Tenants, Lessees and Guests. All tenants, invitees and guests of Commercial Owners are subject to the Covenants contained in this Declaration and must abide by the rules and regulations set forth herein. Any failure of a tenant to fully comply with the terms and conditions of such documents shall constitute a default by the Commercial Owner. Leasing by a Commercial Owner shall not relieve a Commercial Owner from his obligations hereunder. In the event of a violation of this Declaration

ARTICLE XVIII

ENFORCEMENT

18.01 Compliance. Each Commercial Owner shall comply strictly with the By-Laws of the Association and with the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be amended from time to time, and with the covenants, restrictions, and easements set forth in this Declaration.

18.02 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by:

- (a) Declarant so long as it is an Owner or Commercial Owner,
- (b) each Commercial Owner, his legal representatives, heirs, successors and assigns, and
- (c) the holder of any deed to secure debt upon any Commercial Property.

18.03 Right of Abatement.

(a) Except where different notices of provisions are provided in Sections 16.11 and 17.06, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Commercial Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violations or breach. If the Commercial Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement subject only to the superior right of holders of deeds to secure debt described in paragraph 4.01(d)(ii).

(b) The Right of Abatement, as used in this Section and in Sections 16.11 and 17.06 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Commercial Property or Commercial Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Commercial Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection and reasonable attorneys' fees, together with the interest thereon at the lower of the highest rate permitted by law or 18 percent to be a binding personal obligation of such Commercial Owner enforceable in law, as well as a lien on such Commercial Owner's Commercial Property enforceable pursuant to the provisions of Section 18.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Commercial Property after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only:

- (i) such liens for taxes or other public charges as by applicable law are made superior,
- (ii) the liens created by Section 15.01 hereof, and

(iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase Commercial Property (together with any and all Commercial Structures which may from time to time be placed or located thereon), (2) to finance construction, repair or alteration of Commercial Structures, and (3) to refinance loans secured by the Commercial Property.

18.04 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of Declarant, the Association or any Commercial Owner to enforce the

Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

18.05 Collection of Assessments and Enforcement of Lien. If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring an action at law against the Commercial Owner personally obligated to pay the same for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including actual attorneys' fees incurred by the Association.

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

18.07 Fines.

(a) Upon the violation of this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, the Association shall have the power to impose reasonable monetary fines, including fines for each day a violation continues, which shall constitute an equitable charge and a continuing lien upon the Commercial Property, the Commercial Owner or tenants of which are guilty of such violation, and which may be collected as provided in Section 18.05 of this Declaration.

(b) The Association shall not impose a fine for violation of this Declaration, the By-laws or any rules and regulations duly adopted hereunder until the following procedure is followed: Written demand to cease and desist from an alleged violation shall be served upon the Commercial Owner responsible for such violation specifying: (i) the alleged violation; (ii) the action required to abate the violation; (iii) the fine that will be imposed if the violation is not abated; and (iv) a time period of not less than ten (10) days during which the violation may be abated without a fine, if the violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws or the rules and regulations of the Association may result in the imposition of the fine specified in the statement.

ARTICLE XIX

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION FOR COMMERCIAL OWNERS

19.01 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all persons subject to this Declaration, any Builder and any person not

otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Commercial Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 19.02 ("Claims") shall be resolved using the procedures set forth in Section 19.03 in lieu of filing suit in any court.

19.02 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Declaration or the Bylaws, or the rights, obligations and duties of any Bound Party under the Declaration or the Bylaws or relating to the design or construction of improvements on Commercial Property shall be subject to the provisions of Section 19.03.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 19.03:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article XV (Assessments on Commercial Property);

(b) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article XVI (Commercial Architectural Control) or Article XVII (Additional General Covenants and Restrictions on Commercial Property);

(c) any suit by a Commercial Owner to challenge the actions of the Declarant, the Association, the CACC, or any other committee with respect to the approval or disapproval, of plans and specifications in accordance with Article XVI (Commercial Architectural Control);

(d) any suit by a Commercial Owner to challenge the enforcement or application of specific use restrictions promulgated in accordance with the procedures set forth in Article XVII (Additional General Covenants and Restrictions on Commercial Property);

(e) any suit between Owners or Commercial Owners, which does not include Declarant or the Association as a Party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Bylaws;

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

(g) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 19.03.

19.03. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party

("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If a written request is submitted to the Board by a Party and is accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent dispute resolution center, the Neighborhood Justice Center of Atlanta, or such other independent agency providing dispute resolution services in Cherokee County or the Metropolitan Atlanta, Georgia area upon which the Parties may mutually agree.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

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

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the

Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

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

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the Georgia Arbitration Act. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

19.04. Allocation of Costs of Resolving Claims.

(a) Subject to Section 19.04(b), each party shall bear its own costs, including any attorneys fees incurred, and each party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

19.05. Enforcement of Resolution. After resolution of any Claim, if any party fails to abide by the terms of any agreement or Award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 9.03. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs by tenants, guests, or invitees the Association shall notify the Commercial Owner as well as the tenant of such violation.

ARTICLE XX

USE OF COMMON PROPERTY BY COMMERCIAL OWNERS

20.01 Right of Enjoyment. Commercial Owners and their employees, who actually work in their commercial businesses located on the Commercial Property, shall have the right to use or enjoy

the Common Property, but not any amenities located on the Common Property, including the clubhouse, swimming pool, and tennis courts.

Declarant hereby certifies that this Third Amendment to Declaration of Covenants Restrictions and Easements for Great Sky has been duly approved by Declarant and does not require the approval of other Owners, Commercial Owners or mortgagees, and shall be effective upon the later to occur of the recordation hereof in the deed records of Cherokee County, Georgia or the date of execution shown above.

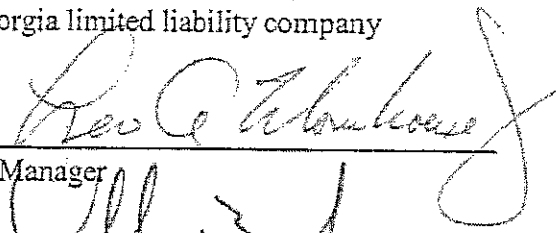
[Signatures Continued on Next Page]

This Third Amendment to Declaration of Covenants, Restrictions and Easements for Great Sky has been executed by the duly authorized Managers of Declarant on the day and year first above written.

DECLARANT:


FAIRGREEN GREAT SKY, LLC
a Georgia limited liability company

By:



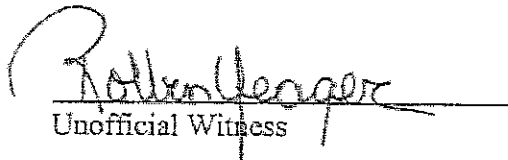
Manager

By:



Manager

Signed, sealed and delivered in
the presence of:



Unofficial Witness



Notary Public

My commission expires:

(NOTARIAL SEAL)

