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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "**Declaration**") is made this 19 day of Feb., 2004, by BCD II, LLC, a Florida limited liability company ("**BCD II**"); BCD 10, LLC, a Florida limited liability company ("**BCD 10**"); and Clemson University Real Estate Foundation, Inc., a South Carolina not-for-profit corporation governed by Section 501(c)(3) of the Internal Revenue Code ("**CUREF**").

WITNESSETH:

WHEREAS, BCD II and BCD 10 are the fee simple owners of those certain parcels of land situate, lying, and being in the City of Greenville, South Carolina, more particularly described in **Exhibit "A"** attached hereto and incorporated by reference herein (the "**Initial BCD Parcels**"); CUREF is the fee simple owner of that certain parcel of land situate, lying, and being in the City of Greenville, South Carolina, more particularly described in **Exhibit "B"** attached hereto and incorporated by reference herein (the "**Initial CUREF Parcel**"). Such lands described in **Exhibits "A" and "B"** are contiguous. These lands, along with the Expansion Parcels (as defined below), when acquired by the appropriate parties as described hereinbelow, are herein referred to as the "**Real Property**"; and

WHEREAS, CUREF, BCD II and BCD 10 plan to develop on the Real Property a research, educational and commercial campus designed to encourage basic and applied research, product development, and technological education (the "**Campus**"). The primary purpose and focus of this research and development project will be automotive technology, though it will be structured with sufficient flexibility to facilitate research and development activities related to other technologies and to provide support services for the research and development functions; and

WHEREAS, BCD II, BCD 10 and CUREF intend to develop the Campus pursuant to a uniform architectural theme and design; and

WHEREAS, BCD II, BCD 10 and CUREF desire to impose certain use restrictions upon the Campus; and

WHEREAS, BCD II and BCD 10 acquired the Initial BCD Parcels from CR-MERC, LLC, a Florida limited liability company, which also serves as the sole Manager of BCD II and BCD 10 (herein referred to as "**CR-MERC**");

NOW, THEREFORE, for and in consideration of these premises and other good and valuable consideration, BCD II, BCD 10 and CUREF declare that Real Property shall be held, sold, transferred, conveyed, leased, used, occupied, mortgaged, and encumbered subject to all of the covenants, conditions and restrictions of this Declaration. This Declaration and the covenants, conditions and restrictions established hereby shall be covenants running with the land. These covenants, conditions and restrictions shall inure to the benefit of, and shall be binding upon each and every person or entity, along with their heirs, successors and assigns, who

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or which shall acquire an interest in the Real Property or any portion thereof. By the acceptance of any interest in all or any portion of the Real Property, the person or entity to whom such interest is conveyed, transferred or leased shall be deemed to accept and agree to be bound by the provisions of this Declaration.

ARTICLE I
DEFINITIONS

1.1 **"Affiliate"** means (a) any Person directly or indirectly controlling, controlled by or under common control with another Person, (b) any Person owning or controlling 50% or more of the outstanding voting securities of such other Person, (c) any officer, director, member, manager or partner of such Person, and (d) if such other Person is an officer, director, member, manager or partner, any company for which such Person acts in such capacity. For purposes of this definition, the term "control" shall also mean the control or ownership of 50% or more of the beneficial interests in the Person referred to.

1.2 **"Architectural Guidelines"** mean the Architectural Guidelines for the Clemson University International Center for Automotive Research adopted and approved by CUREF, BCD II, BCD 10, and CR-MERC and enforceable in accordance with the procedures and provisions set forth in Article III.

1.3 **"Authorized CUREF Designee"** means Clemson University, AMREC, LLC, Clemson University Foundation, Clemson University Real Estate Foundation, Inc., or any eleemosynary institution governed by Section 501(c)(3) of the Internal Revenue Code, which is an Affiliate of CUREF.

1.4 **"Buffer Zone"** means that portion of the Campus identified in Exhibit "C".

1.5 **"Building"** means any structure (or structures) constructed on the Campus, regardless of the number of such structures.

1.6 **"Campus"** means the Real Property and personal property that is subjected to this Declaration, including all Improvements on the Real Property;

1.7 **"Clemson"** means Clemson University, a public South Carolina eleemosynary institution of higher education.

1.8 **"BCD Group"** means BCD II; BCD 10; CR-MERC; BCD LLC, a Florida limited liability company; and BCD Option, LLC, a Florida limited liability company.

1.9 **"BCD Parcel"** means the Initial BCD Parcels, along with any and all Expansion Parcels purchased (whether through exercise of an option or otherwise) by (i) any of the entities included in the BCD Group, (ii) any of their Affiliates, or (iii) any Person to whom any of the entities in the BCD Group, or any of their Affiliates, or any of their successors or assigns have

assigned or otherwise transferred the right to purchase such property (other than CUREF or its Affiliates).

1.10 **"CUREF Parcel"** means the Initial CUREF Parcel, along with any and all Expansion Parcels purchased (whether through exercise of an option or otherwise) by (i) CUREF, (ii) an Authorized CUREF Designee, (iii) any of their Affiliates, or (iv) any Person to whom CUREF, an Authorized CUREF Designee, any of their Affiliates, or their successors or assigns, have assigned or otherwise transferred the right to purchase such property (other than BCD II, BCD 10, or their Affiliates).

1.11 **"Declaration"** means this instrument, and all exhibits attached hereto, as same may be amended from time to time.

1.12 **"Improvements"** mean all structures, or any portion thereof, and artificial changes to the natural environment (exclusive of landscaping), located on and within the Campus, including, but not limited to, any Building.

1.13 **"Person"** means an individual, corporation, limited liability company, limited partnership, trust, partnership, joint venture or any other business organization.

1.14 **"Unit" or "Parcel"** means the Initial BCD Parcels, the Initial CUREF Parcel, or any portion thereof which may hereafter become a separate lot or parcel through the recordation of plats or other instruments prepared for the purpose of dividing or subdividing such Parcels, and to any additional tracts of land (and subsequently subdivided portions thereof) which may be added to the Campus as provided in Section 5.1.

1.15 **"Unit Owner" or "Owner"** means a record owner of legal title to a Unit. In the event that a Unit Owner develops and subjects its Unit to the condominium form of ownership, the condominium association shall be deemed to be the Owner of the Unit, and owners of individual condominium units shall be deemed to be authorized occupants of the Unit.

1.16 **"Zoning Regulations"** means any and all applicable codes, ordinances, statutes, rules and regulations imposed or issued by the United States, the State of South Carolina, Greenville County, City of Greenville, and/or any agency of any of the foregoing which has jurisdiction over the development of the Real Property.

ARTICLE II PLAN OF DEVELOPMENT

Subject to the provisions of this Declaration, the Campus shall be developed in accordance with the Architectural Guidelines and all applicable Zoning Regulations into a research, educational and commercial campus which will include, but not be limited to, the development of research and educational facilities, office, retail and industrial Buildings and amenities, and residential development. The Campus shall be referred to (and known) as the **"Clemson University International Center for Automotive Research."**

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ARTICLE III
ARCHITECTURAL DESIGN CONTROL

3.1 **Uniform Plan of Development.** In order to ensure that the development of the Campus will proceed pursuant to uniform and consistent architectural and landscape standards designed to maintain, preserve and protect within the Campus a unique, functional, attractive and harmonious physical environment, BCD II, BCD 10 and CUREF reserve the right and authority to review, approve and control the architectural design of any and all Buildings, structures and other Improvements of any kind, nature or description, including landscaping, upon the Real Property. This authority will be exercised through two committees, consisting of three (3) individuals each. The membership of these committees will be selected in accordance with Section 3.3 below. The BCD DRC (as defined below) will have the authority and responsibility to discharge the responsibilities set forth in Article III with respect to the BCD Parcels; and the CUREF DRC (as defined below) will have such authority with respect to the CUREF Parcel. Each of these committees is referred to herein as a "Design Review Committee" or "DRC."

For purposes of exercising authority, selecting and designating DRC members, proposing and acting upon proposed amendments, and all other similar purposes stated in this Article III, the authority and rights of BCD II and BCD 10 will be exercisable solely by CR-MERC, in its capacity as the sole Manager of both BCD II and BCD 10. The sole Manager of CR-MERC is Rosen Campus I, LLC, a Florida limited liability company. The sole Manager of Rosen Campus I, LLC is Clifford D. Rosen. Provisions governing the exercise of this authority following the resignation, removal, death, or disability of Clifford D. Rosen in his capacity as the sole Manager of Rosen Campus I, LLC (which in turn is the sole Manager of CR-MERC) are set forth in Subsection 3.2(g)(v) of this Article III.

(a) No Improvements or landscaping of any kind or nature (including signage) shall be constructed on the Real Property, nor shall any plat, Building or site plan or plans and specifications for any such Improvements be submitted for governmental permitting and approval, unless and until the plat, Building or site plan, plans and specifications, building elevations, building massing and configuration, and all exterior materials and finishes and landscaping have been reviewed and approved in writing by the appropriate DRC. Any and all Improvements, Building plans, Building elevations, and landscaping shall reflect a project design that is in compliance with the Architectural Guidelines.

(b) No material change, either structural or cosmetic, shall be made in the layout, design or exterior of any previously approved Improvement or landscaping plan (including, without limitation, changes in signage and color) without the prior written approval of the appropriate DRC.

(c) Notwithstanding anything in this Declaration to the contrary, the purchase by (i) CUREF, (ii) an Authorized CUREF Designee, (iii) any of their Affiliates, or (iv) any Person to whom CUREF, an Authorized CUREF Designee, or any of their Affiliates, or their successors or assigns have assigned or otherwise transferred the right to purchase, of any tract of

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land that comprises a portion of the property identified as Real Property (including the Expansion Parcels identified in Section 5.1) will cause said tract of land to be governed by the CUREF DRC effective on the date of said purchase. Furthermore, the purchase by (i) any entity in the BCD Group, (ii) any of said entity's Affiliates, or (iii) any Person to whom said entity, or any of said entity's Affiliates, or its successors or assigns have assigned or otherwise transferred the right to purchase, of any tract of land that comprises a portion of the property identified as Real Property (including the Expansion Parcels identified in Section 5.1) will cause said tract of land to be governed by the BCD DRC effective on the date of said purchase.

3.2 **Architectural Design Review.** The DRCs' review and approval functions shall be accomplished in **three (3) stages** -- conceptual, preliminary and final, as more fully described below, and shall in all respects be conducted so as to ensure compliance with the Architectural Guidelines:

(a) The conceptual review and approval process will permit developers to obtain an initial screening of and reaction to their plans and designs without unnecessarily incurring the expense associated with the preparation of detailed plans and specifications. The conceptual review and approval shall be advisory in nature and shall in no way be binding upon the DRCs in their review and ultimate approval or disapproval of the preliminary and final plans and specifications submitted thereafter.

(b) At each stage of preliminary and final review and approval, the owner of the proposed Improvement (the "**Applicant**") shall submit to the appropriate DRC **two (2)** sets of the plans, specifications and/or all other relevant materials (including those identified in Section 3.1(a) above) appropriate for such stage review (hereinafter together referred to as the "**Design Plans**") and the DRC shall either approve (or conditionally approve) or disapprove the Design Plans submitted to it within **ten (10) business days** after the same have been duly submitted. A majority vote of the appropriate DRC shall be required for approval of Design Plans. The failure of the DRC to disapprove the same (or approve subject to certain conditions) within such **ten (10) business day** period shall be deemed to be an approval of the Design Plans. If conditional approval is given, the conditions enumerated must be fully complied with as a prerequisite to final approval.

(c) Any final approval of Design Plans by the DRC shall be effective for a period of **one (1) year** from the date of such approval. If construction or installation of the Improvement or landscaping for which Design Plans have been approved has not commenced within said **one (1) year** period, such approval shall expire, and no construction shall thereafter commence without a re-submission and re-approval of Design Plans relating to such Improvement. The prior approval shall not be binding upon the DRC on resubmission in any respect.

(d) The members of the DRCs shall not be liable or accountable in damages or otherwise to any Owner of a portion of the Real Property or other person or party by reason of any decision, approval or disapproval of any Design Plans submitted for review and approval pursuant to the provisions of this Article, or for any mistake in judgment, negligence,

misfeasance or nonfeasance related to or in connection with any such decision, approval or disapproval. Each person who submits Design Plans to the DRC for consent or approval pursuant to the provisions of this Article, by the submission thereof, and each subsequent Owner by acquiring title to any such Improvement or any interest therein, shall be deemed to have agreed that no claim may be asserted against the DRC members for the purpose of recovering any such damages or other relief.

(e) Design Plans submitted to and approved by the DRC shall be reviewed only as to their compliance with the Architectural Guidelines and this Declaration. The DRC shall not be responsible for assuring compliance with governmental laws and regulations, including, without limitation, any applicable Zoning Regulations. By approving Design Plans, neither the DRC nor any individual member of the DRC shall assume or incur any liability or responsibility for any violation of governmental regulations or any defect in the design or construction of any Improvement constructed, erected, placed or installed in accordance with any approved Design Plans.

(f) The Architectural Guidelines may be amended when both of the DRCs shall deem such amendments necessary in order to adapt to changes and new developments in materials and technology affecting the development of Improvements within the Campus, or in order to resolve challenges and problems encountered by Owners as a result of material changes in architectural trends, market dynamics, and economic conditions. Proposed amendments must be provided to all of the members of both DRCs for their consideration at least thirty (30) days prior to any meeting at which such an amendment will be considered. Amendments will be approved by the affirmative vote of a majority of the members of each DRC. If one of the DRCs shall approve a proposed Amendment and one of them shall oppose it, then their disagreement shall be resolved utilizing the procedures set forth in Section 3.2(g) below. Amendments to the Architectural Guidelines will be promptly published and distributed to all parties who are Owners at the time such amendments are approved. Amendments shall not be applicable to any Person who has presented conceptual, preliminary or final Design Plans prior to the date when the amendment is adopted. No proposed amendment shall be approved if it causes the Architectural Guidelines to become inconsistent with this Declaration.

(g) If one of the DRCs shall approve a proposed Amendment and one of them shall oppose it, as referenced in subsection (f) immediately above, then their disagreement shall be resolved by an independent third party selected CR-MERC and CUREF by mutual agreement (the "**Mediator**"). If CR-MERC and CUREF are unable to agree on the Mediator, then the appointment of the Mediator shall be made through the following process:

(i) Not later than five (5) days after the meeting in which the DRCs were unable to come to an agreement on the proposed amendment(s) to the Architectural Guidelines, CR-MERC and CUREF shall simultaneously submit to each other a list of ten (10) potential mediators, each of whom must be a licensed architect, licensed engineer, or certified land planner. They shall be listed in alphabetical order.

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(ii) If any name appears on both lists, then that person shall be selected. If more than one name shall appear on both lists, then the parties shall attempt to agree on one of such names. If they cannot agree, the selection shall be made by a random draw process from the names appearing on both lists.

(iii) If there is no common name, then this process shall be repeated, in ten (10) day cycles, until a common name appears on both lists.

(iv) In the event either party shall fail to comply with the obligation to submit lists, then the other party may appoint the Mediator.

(v) Notwithstanding anything in this Declaration to the contrary, CR-MERC's authority and right to participate in the selection of the Mediator, as set forth hereinabove, shall not be transferable and shall not run with the land, but shall be personal to and retained by CR-MERC; provided, such right may be assigned to CUREF or to an Affiliate of CR-MERC. While CR-MERC exercises this authority, Clifford D. Rosen must serve as the sole Manager of Rosen Campus I, LLC, and that entity must serve as the sole Manager of CR-MERC. While an Affiliate of CR-MERC exercises this authority, Clifford D. Rosen must serve as the sole Manager, chief executive officer, or sole general partner, as appropriate, of such Affiliate of CR-MERC. Following (1) the death or disability of Clifford D. Rosen, (2) the resignation or removal of Clifford D. Rosen as the effective sole Manager of CR-MERC, either directly or indirectly as the sole Manager of the entity serving in that capacity (while CR-MERC owns this right), or (3) the resignation or removal of Clifford D. Rosen as the sole Manager, chief executive officer, or sole general partner, as appropriate, of an Affiliate of CR-MERC (following an assignment of this right to an Affiliate), the right to appoint the Mediator shall be exercised by or on behalf of the Owners of the total acreage of the BCD Parcel which is subject to this Declaration at the time of the selection of the Mediator. In order to exercise this right, these Owners, acting through a meeting or through signatures on a written document, shall select one of their number to be a representative (the "**BCD Property Representative**"). The decision of such Owners will be made by the affirmative vote of at least fifty one percent (51%) of the Owners of such acreage. In the voting process, each Owner will have one vote for each acre of land owned, with each fractional acre rounded up (if more than fifty percent (50%) of an acre) or down (if fifty percent (50%) or less). The BCD Property Representative shall exercise the right to participate in the selection of the Mediator, as stated in this Section 3.2(g) and the selection of the members to the DRCs as stated in Section 3.3, until the resignation, death, disability, bankruptcy, dissolution, or liquidation of the person or entity selected for that role. Thereafter, the Owners of the total acreage in the BCD Parcel which is subject to this Declaration at that time shall select a replacement BCD Property Representative utilizing the process described above.

(vi) If at the time CR-MERC has the right to participate in selection of a Mediator and Clifford D. Rosen has died, become disabled, or is no longer the effective sole Manager of CR-MERC, directly or indirectly as the sole Manager of the

entity which serves in that capacity (while CR-MERC owns this right), or the sole Manager, chief executive officer, or the sole general partner, as appropriate, of an Affiliate of CR-MERC (while it owns this right), and there shall be no duly elected BCD Property Representative, then the Owners of the BCD Parcel will lose their right to participate in the selection of a Mediator unless they elect a BCD Property Representative within forty-five (45) days after notice from CUREF that a Mediator must be selected. CUREF shall provide the notice in the prior sentence by mail to the Owners of the BCD Parcel at such Owners' addresses as shown in the property tax records of Greenville County, South Carolina. In the event such Owners lose their right to participate in the selection of a Mediator, CUREF shall have the sole right to select a Mediator.

(h) In the event a Mediator is used to resolve a disagreement as provided in subsection (g) immediately above, each party will bear its own costs in the mediation process. The fees and expenses of the Mediator will be shared equally by the parties. The Mediator shall resolve any unresolved issues, and the Mediator's resolution shall be final and binding.

3.3 Selection of Members to Development Review Committees.

(a) The Design Review Committee for the CUREF Parcel (the "CUREF DRC") shall be selected as follows:

(i) CUREF shall be entitled to appoint two (2) members to the CUREF DRC. CUREF shall be entitled to transfer its rights of appointment hereunder to an Authorized CUREF Designee in its sole discretion.

(ii) CR-MERC shall be entitled to appoint one (1) member to the CUREF DRC. CR-MERC shall be entitled to transfer its rights of appointment hereunder to an Affiliate of CR-MERC in its sole discretion.

(b) The Design Review Committee for the BCD Parcel (the "BCD DRC"), shall be selected as follows:

(i) CUREF shall be entitled to appoint one (1) member to the BCD DRC. CUREF shall be entitled to transfer its rights of appointment hereunder to an Authorized CUREF Designee in its sole discretion.

(ii) CR-MERC shall be entitled to appoint one (1) member to the BCD DRC. CR-MERC shall be entitled to transfer its rights of appointment hereunder to an Affiliate of CR-MERC in its sole discretion.

(iii) CR-MERC and CUREF shall, by mutual agreement, appoint a third member to the BCD DRC (the "Independent Appointee"). The term of appointment of the Independent Appointee shall be two (2) years; provided the initial term shall run from the date of this Declaration until December 31, 2004. Not later than three (3) months prior to the end of each term, CR-MERC and CUREF shall inform each other whether they will approve the

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reappointment of the Independent Appointee. If either of them does not approve, or if the Independent Appointee declines to serve another term or for any reason shall be unable to serve another term, then CR-MERC and CUREF will select a new Independent Appointee not later than the beginning of the next term. If CR-MERC and CUREF are unable to agree on the Independent Appointee, then the appointment shall be made through the following process:

A. Not later than two (2) months before the beginning of the next term, CR-MERC and CUREF shall simultaneously submit to each other a list of ten (10) potential appointees, each of whom must be an architect, engineer, or certified land planner. They shall be listed in alphabetical order.

B. If any name appears on both lists, then that person shall be selected. If more than one name shall appear on both lists, then the parties shall attempt to agree on one of such names. If they cannot agree, the selection shall be made by a random draw process from the names appearing on both lists.

C. If there is no common name, then this process shall be repeated, in ten (10) day cycles, until a common name appears on both lists.

(c) Notwithstanding anything in this Declaration to the contrary, CR-MERC's authority and right to appoint members to the respective DRCs, as set forth herein, shall not be transferable and shall not run with the land, but shall be personal to and retained by CR-MERC; provided, however, such right may be assigned to CUREF or an Affiliate of CR-MERC. While CR-MERC exercises this authority, Clifford D. Rosen must serve as the sole Manager of Rosen Campus I, LLC, and that entity must serve as the sole Manager of CR-MERC. While an Affiliate of CR-MERC exercises this authority, Clifford D. Rosen must serve as the sole Manager, the chief executive officer, or the sole general partner, as appropriate, of such Affiliate of CR-MERC. Following (1) the death or disability of Clifford D. Rosen, (2) the resignation or removal of Clifford D. Rosen as the effective sole Manager of CR-MERC, either directly or as the Manager of the entity which serves in that capacity (while CR-MERC owns this right), or (3) the resignation or removal of Clifford D. Rosen as sole Manager, chief executive officer, or sole general partner, as appropriate, of an Affiliate of CR-MERC (following an assignment of this right to an Affiliate); the right of the Owners (as used in Section 3.2(g)(v)) to appoint members to the DRCs, including the right to appoint an Independent Appointee to the BCD DRC shall follow the same process set forth in Section 3.2(g)(v) for the selection of the Mediator. Furthermore, the Owners may lose their rights to make these appointments in the same manner that the Owners may lose their right to participate in the selection of the Mediator as stated in Section 3.2(g)(vi), and the consequences of the Owners losing these rights to make these appointments will be the same as the consequences of the Owners losing the right to participate in the selection of the Mediator, as stated in Section 3.2(g)(vi).

3.4 **Compliance with Governmental Regulations.** The Owner or Owners of all interests in and to any portion of Real Property shall at all times comply with all Zoning Regulations, approvals, development orders, and permits of or issued by all governmental authorities having jurisdiction over Real Property including, but not limited to, those pertaining

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to zoning, land use, wetlands, drainage, environmental matters, waste storage, and waste disposal.

3.5 **Requirements for Unimproved Property.** All Owners shall comply with laws, ordinances, and regulations promulgated by the City of Greenville, South Carolina, relating to the maintenance of unimproved property. Failure to do so shall constitute a violation of this Declaration and the Restrictions set forth herein.

3.6 **Requirements for Compliance.** Following the final approval of Design Plans for any portion of the Campus, failure to comply with the approved Design Plan shall constitute a violation of this Declaration and the Restrictions set forth herein.

ARTICLE IV **USE RESTRICTIONS**

4.1 **Use Restrictions.** All of the Real Property will be subject to the following use restrictions:

(a) **General Use Restrictions.** No part of the Real Property shall be used as or for: (i) a bar, tavern, cocktail lounge, unless and except as part of a restaurant or food-service establishment; (ii) an adult entertainment facility, such as an adult book or adult video store or establishment selling or exhibiting any materials that are obscene, pornographic or "X-rated" (provided, however, that nothing herein shall prohibit a family oriented video rental store with method of operating and a video selection similar to that of Blockbuster); (iii) an automotive maintenance or repair facility open to the general public; (iv) any refining, smelting or similar operations; (v) any dumping, disposing, incinerating or reduction of garbage; (vi) a car wash; (vii) any use which emits an obnoxious odor, noise or sound above levels prescribed by governmental laws, codes, regulations, orders and ordinances; (viii) the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; (ix) a billiard or pool hall, game parlor or video arcade, other than as part of an up-scale entertainment facility such as Dave & Busters and GameWorks, or similar facility; (x) a bowling alley; (xi) a skating rink; (xii) a dance hall; (xiii) a massage parlor; (xiv) a tattoo or piercing parlor; (xv) a pawn shop; (xvi) a second-hand or consignment store, except an antique or collectibles store or art gallery shall be permitted; (xvii) any fire sale, bankruptcy sale (unless pursuant to court order) or auction house operation; (xviii) a flea market; (xix) a laundry, dry cleaning plant or laundromat; (xx) a mortuary or funeral home; (xxi) a veterinary hospital or animal raising facility; (xxii) any "big box" retail stores, such as Wal-Mart; (xxiii) mobile or other modular homes; (xxiv) retailers of firearms or fireworks; (xxv) pet stores; (xxvi) veterinarian facility; (xxvii) pet boarding facility; or (xxviii) other similar uses that are incompatible with the plan of development intended by this Declaration.

(b) **Buffer Zone Restrictions.** In addition to the General Use Restrictions set forth above, no part of the Buffer Zone (described on Exhibit "C") shall be used as or for: (i) retail (other than uses incidental to uses permitted in this Declaration and uses housed within

Improvements primarily designed for permitted uses within this Buffer Zone); (ii) industrial; (iii) residential; or (iv) hotel or similar facility, except for one hotel and conference center complex, which may be built out over time, and which meets the following requirements: Hotel and conference center complex must be above average in quality and specifically designed for the professional business traveler. Hotel and conference center complex must have spacious, well-appointed rooms. Public areas must be tastefully furnished and very comfortable. At a minimum, the hotel must meet the quality and standards that are exhibited, at the date of this Declaration, by the Embassy Suites Hotel located on Verdae Boulevard in Greenville, South Carolina. Said hotel and conference center complex shall not be constructed within 475 feet of the center line of Middle Laurel Creek.

(c) **Additional Restrictions.** Nothing contained in this Article shall prevent any Owner or group of Owners from subjecting their respective properties to additional use restrictions which shall be cumulative to the restrictions set forth herein and shall not be deemed to replace, alter, or relax any such restrictions.

(d) **Name Restriction.** Except for the marks, service marks, trademarks, tradenames, names and logos of Clemson University, no marks, service marks, trademarks, tradenames, names and logos or similar items of any institution of higher learning shall appear on the exterior of any improvement, as an exterior fixture of any kind, or upon a flagpole on the Campus without the express written consent of CUREF.

4.2 **Hazardous Substances.** No Owner or tenant of any portion of the Real Property shall use, or permit the use of Hazardous Materials on, about, under, or in the Real Property or any portion thereof, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. For purposes hereof, the term (i) "**Hazardous Materials**" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Laws, and (ii) "**Environmental Laws**" shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment.

ARTICLE V MISCELLANEOUS

5.1 **Expansion of Campus.** On the date of execution of this Declaration, CUREF and one or more entities in the BCD Group have contracts or options to purchase certain additional tracts of land located adjacent to the Initial CUREF Parcel and/or the Initial BCD Parcel. These additional tracts of land are depicted as Tract B and Tract C on the survey(s) which are described on **Exhibit "D"** attached hereto (collectively, the "**Additional Sites**"). The Additional Sites, as and when purchased (whether by exercise of an option or otherwise) by

- (i) CUREF;
- (ii) an Authorized CUREF Designee;
- (iii) any entity in the BCD Group;
- (iv) any of the Affiliates of any entities names in (i), (ii), or (iii);
- (v) the successors or assigns of any of the entities named in (i), (ii), (iii), or (iv); or
- (vi) any Person to whom any of entities named in (i), (ii), (iii), (iv), or (v) has assigned or otherwise transferred the right to purchase such parcels

shall herein be collectively referenced as the “**Expansion Parcels**” and included in the definition of Campus and shall be subject to all provisions of this Declaration.

The addition of such lands into the Campus shall be reflected in supplements to this Declaration describing with specificity the land to be added, executed by the Person who acquires such land, and recorded immediately after the recordation of the deed through which such acquisition is accomplished.

Notwithstanding the above, the Declaration set forth herein shall not be deemed a burden upon any portion of the Expansion Parcels until and unless they have been acquired by the parties listed in the prior paragraph.

5.2 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of South Carolina.

5.3 **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

5.4 **Waiver.** The failure of any Unit Owner to enforce any covenant, restriction or other provision of this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

5.5 **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and/or tenant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed to all of the provisions of this Declaration.

5.6 **Gender: Plurality.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

5.7 **Captions.** The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

5.8 **Amendments.** This Declaration may be amended only by a written instrument, in recordable form, duly executed by or on behalf of the Owners of at least seventy-five percent (75%) of the total acreage of the Real Property which is subject to this Declaration at the time of any proposed amendment (including any additional lands becoming subject to this Declaration pursuant to Section 5.1 hereof). The authority of Owners to amend this Declaration is subject to the following limitations and qualifications:

(a) The amendments must be stated specifically in the written instrument; and the language being replaced shall be recited along with the proposed substitute language to be inserted.

(b) The instrument must include a statement of the acreage owned by each of the Owners approving and signing the amendment instrument, either within the amendment instrument itself or attached as an exhibit thereto.

(c) The following types of amendments may not be made unless they are approved and signed by or on behalf of Owners of one hundred percent (100%) of the total acreage of the Real Property which is subject to this Declaration at the time of any proposed amendment (including any additional lands becoming subject to this Declaration pursuant to Section 5.1 hereof):

(i) Changes in the make-up and powers of the DRCs and changes in the power to appoint members to the DRCs, as set forth in Article III hereof;

(ii) Changes in the Use Restrictions set forth in Section 4.1(a) which would subject any of the Real Property to **more** restrictive limitations than those set forth in Section 4.1(a) above;

(iii) Changes of any type in the use restrictions affecting the Buffer Zone, as set forth in Section 4.1(a) or (b) hereof as originally recorded;

(iv) Changes to Section 4.1(d);

(v) Changes to the procedure for amending the Architectural Guidelines set forth in Section 3.2;

(vi) Changes to Section 5.1 hereof; and

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(vii) Changes to this Section 5.8.

(d) The instrument must be recorded in the Office of the Register of Deeds of Greenville County, South Carolina (or such replacement office as may be designated for such purposes under applicable statutes). No amendment shall be deemed to deprive any Owner of any portion of the Real Estate as of the date of the amendment of any rights, approvals, or privileges which may exist or which may have been granted prior to the effective date of the amendment.

(e) The procedure for voting on amendments, set forth above in this Section 5.8, shall not be deemed to prevent CUREF, BCD II, BCD 10, or any other Owner or group of Owners from creating a supplemental voting procedure which would require all Unit Owners within specified areas of the Real Property to assign or pool their votes in such a way as to give a single Owner the right to cast all of the votes corresponding to the acreage within such specified areas.

(f) Upon the recording of any amendment to this Declaration which complies with the conditions and qualifications set forth above, such amendment will be effective and binding upon all Unit Owners and all holders of mortgages or other liens upon all Units.

5.9 **Interpretation.** If any clause, sentence, or other portion of this Declaration shall become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect. All rights created hereby are subject to all easements, rights, liens, restrictions, and reservations of record. The foregoing restrictive covenants are hereinafter collectively referred to as the "**Restrictions.**" In the event of any violation or threatened violation by any Owner, tenant, occupant, or other Person who is subject to this Declaration of any of the foregoing terms, covenants, or Restrictions, then, in addition, to all other remedies provided in this Declaration or available at law or in equity, any Owner shall have the right to seek an injunction to prevent such violation.

5.10 **Lien Subordination.** Notwithstanding anything contained herein to the contrary, no lien of any type, including without limitation, any mortgage lien, shall have priority over this Declaration, and all holders of liens in any way affecting any portion of the Campus shall take such liens as subject to the terms and conditions of this Declaration.

5.11 **Miscellaneous.** This Declaration shall run with the land, both as respects benefits and burdens created herein and shall be binding upon and inure to the benefits of the successors and assignees of the respective parties hereto.

5.12 **Scope of Relationship.** This Declaration is intended solely as an agreement to address the use and development of the Real Property and no partnership, joint venture, franchise or other relation is created or intended between the Owners.

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IN WITNESS WHEREOF, BCD II, BCD 10, and CUREF have executed this Declaration the day and year first stated above.

(SIGNATURE PAGES TO FOLLOW)

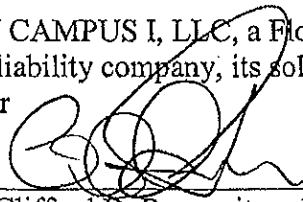
BOOK 2075 PAGE 1796

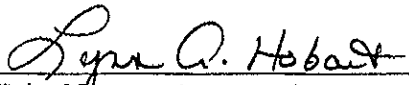
WITNESSES:

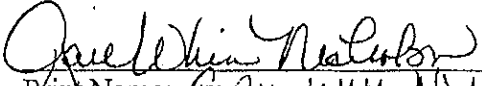
BCD II, LLC, a Florida limited liability Company

By: CR-MERC, LLC, a Florida limited liability company, Manager

By: ROSEN CAMPUS I, LLC, a Florida limited liability company, its sole Manager

By: 
Name: Clifford D. Rosen, its sole Manager


Print Name: LYNN A. HOBART



Print Name: GAIL WHITE NICHOLSON

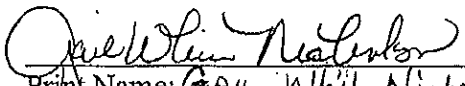
BCD 10, LLC, a Florida limited liability Company

By: CR-MERC, LLC, a Florida limited liability company, Manager

By: ROSEN CAMPUS I, LLC, a Florida limited liability company, its sole Manager

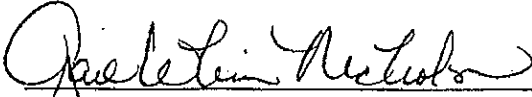
By: 
Name: Clifford D. Rosen, its sole Manager


Print Name: LYNN A. HOBART


Print Name: GAIL WHITE NICHOLSON

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

The foregoing instrument was acknowledged before me this 19th day of February, 2004, by Clifford D. Rosen, as sole Manager of Rosen Campus I, LLC, a Florida limited liability company, as sole Manager of CR-MERC, LLC, a Florida limited liability company, as Manager of BCD 10, LLC and BCD II, LLC on behalf of BCD 10, LLC and BCD II, LLC, who is personally known to me.


Notary Signature
Print Name: GAIL WHITE NICHOLSON
My Commission Expires: 6/23/08

CLEMSON UNIVERSITY REAL ESTATE FOUNDATION, INC., a South Carolina not-for-profit corporation,

CCC. Mr
Print Name: Charles C. Nickel

By: Douglas D. Richardson
Name: Douglas D. Richardson
Title: Assistant Vice President

Shonna Steel
Print Name: Shonna F. Kel

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

The foregoing instrument was acknowledged before me this 19th day of February, 2004, by Douglas D. Richardson as Assistant Vice Pres. of Clemson University Real Estate Foundation, Inc., who is personally known to me or has produced _____ as South Carolina Drivers License _____ as identification.

Sandra L. Henderson
Notary Signature
Print Name: Sandra L. Henderson
Commission Expires: 9-3-12

EXHIBIT A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

INITIAL BCD PARCELS

BCD II PARCELS:

All those certain pieces, parcels or lots of land, lying and being in the City of Greenville, South Carolina, shown on the "SUMMARY PLAT FOR HOLLINGSWORTH FUNDS, INC., MICHIGAN AGRI-CHEMICAL, INC., and CR-MERC, LLC," prepared by Freeland & Associates, Inc., dated December 9, 2003, recorded in the Office of the Register of Deeds for Greenville County, South Carolina on December 12, 2003, in Plat Book 47-S at Page 44, and designated thereon as Lot 6, consisting of approximately 19.333 acres, Lot 7, consisting of approximately 18.849 acres and Lot 8, consisting of approximately 26.818 acres, (altogether approximately 65 acres) having such courses, metes, measurements, and boundaries as appear thereon.

BCD 10 PARCEL:

All that certain piece, parcel or lot of land, lying and being in the City of Greenville, South Carolina, shown on the "SUMMARY PLAT FOR HOLLINGSWORTH FUNDS, INC., MICHIGAN AGRI-CHEMICAL, INC., and CR-MERC, LLC," prepared by Freeland & Associates, Inc., dated December 9, 2003, recorded in the Office of the Register of Deeds for Greenville County, South Carolina on December 12, 2003, in Plat Book 47-S at Page 44, and designated thereon as Lot 6-A, consisting of 10.00 acres, having such courses, metes, measurements, and boundaries as appear thereon.

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EXHIBIT B**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS****INITIAL CUREF PARCEL**

All those certain pieces, parcels or lots of land, lying and being in the City of Greenville, South Carolina, shown on the "SUMMARY PLAT FOR HOLLINGSWORTH FUNDS, INC., MICHIGAN AGRI-CHEMICAL, INC., and CR-MERC, LLC," prepared by Freeland & Associates, Inc., dated December 9, 2003, recorded in the Office of the Register of Deeds for Greenville County, South Carolina on December 12, 2003, in Plat Book 47-S at Page 44, and designated thereon as **Lot 1, consisting of approximately 5.001 acres; Lot 2-A, consisting of approximately 18.216 acres; Lot 2-B, consisting of approximately 3.033 acres; Lot 3, consisting of approximately 5.00 acres; Lot 4-A, consisting of approximately 15.001 acres; Lot 4-B, consisting of approximately 15.851 acres; and Lot 5, consisting of approximately 13.770 acres, having such courses, metes, measurements, and boundaries as appear thereon.**

EXHIBIT C

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

BUFFER ZONE

All that certain piece, parcel or lot of land, lying and being in the City of Greenville, South Carolina, shown on the "EXHIBIT DRAWING SHOWING BUFFER # 1, (Drawing No: 52459-BUFFER)" dated September 10, 2003, with a last revision date of October 6, 2003, prepared by Freeland & Associates, Inc. and described thereon as follows:

BUFFER AREA #1

Beginning at a point located on the western right of way of the 4 Lane Boulevard (100' right of way), said point located in the centerline of Middle Laurel Creek and being the common corner of Lot 2A and Lot 6, thence along said centerline, N 19-05-10 W for 3.77 feet to a point; thence N 09-09-44 E for 16.94 feet to a point; thence N 07-02-44 E for 16.39 feet to a point; thence N 43-44-40 W for 31.43 feet to a point; thence N 17-32-39 W for 53.86 feet to a point; thence N 03-05-40 E for 53.41 feet to a point; thence N 12-59-29 W for 41.22 feet to a point; thence N 15-53-48 W for 70.62 feet to a point; thence N 03-14-22 E for 91.83 feet to a point; thence N 05-01-31 W for 31.39 feet to a point; thence N 03-32-01 W for 67.74 feet to a point; thence N 10-09-34 W for 84.52 feet to a point; thence N 23-50-43 W for 80.75 feet to a point; thence N 30-27-42 E for 41.71 feet to a point; thence N 11-36-10 W for 86.57 feet to a point; thence N 10-13-56 W for 112.62 feet to a point; thence N 27-34-53 W for 55.68 feet to a point; thence N 05-40-43 W for 56.95 feet to a point; thence N 29-39-41 W for 29.60 feet to a point; thence N 40-29-08 W for 53.95 feet to a point; thence N 15-26-50 W for 43.82 feet to a point located on the southern right of way of Interstate 85 (variable width right of way); thence along said right of way along a curve to the left having a radius of 5879.47 feet and a chord bearing and distance N 66-26-19 E for 701.35 feet to a point; thence leaving said right of way, S 26-46-19 E for 25.00 feet to a point located in the centerline of Road "C"; thence along said centerline along a curve to the right having a radius of 400.35 feet and a chord bearing and distance S 62-22-30 E for 651.02 feet to a point; thence S 07-54-18 E for 72.66 feet to a point; thence along a curve to the left having a radius of 285.24 feet and a chord bearing and distance S 42-09-20 E for 321.08 feet to a point; thence S 78-52-32 E for 85.07 feet to a point located in the centerline of Road "A"; thence with a line across Road "A" and through Lot 8, S 71-33-56 E for 689.46 feet to a point located on the western right of way of ACL Railroad (variable width right of way); thence along said right of way along a curve to the left having a radius of 858.51 feet and a chord bearing and distance S 06-01-18 W for 547.93 feet to a point; thence along the common line of Lot 5 and Lot 8, N 66-14-17 W for 360.89 feet to a point; thence N 77-58-03 W for 524.37 feet to a point located on the southeastern right of way of Road "A"; thence across Road "A", N 73-33-58 W for 159.39 feet to a point located on the northwestern right of way of way of Road "A"; thence along said right of way, S 75-06-02 W for 178.27 feet to a point; thence along a curve to the right having a radius of 134.00 feet and a chord bearing and distance N 81-05-14 W for 108.20 feet to a point; thence along a curve to the left having a radius of 139.00 feet and a chord bearing and distance N 80-09-20 W for 108.09 feet to a point; thence along a curve to the left having a radius of 139.00 feet

and a chord bearing and distance S 51-44-37 W for 118.46 feet to a point; thence along a curve to the right having a radius of 124.00 feet and a chord bearing and distance S 50-48-43 W for 102.01 feet to a point; thence S 75-05-59 W for 65.04 feet to a point; thence S 77-54-21 W for 245.25 feet to a point; thence S 75-06-01 W for 63.66 feet to the Point of Beginning. Said tract contains 40.571 acres, more or less.

EXHIBIT D

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SURVEYS DEPICTING ADDITIONAL SITES

The Additional Sites are shown on that certain ALTA/ACSM LAND SURVEY FOR BCD, LLC, dated March 11, 2002, Drawing Number 52459-LEB, prepared by Freeland & Associates, Inc. (designated thereon as Tract "B") and on that certain ALTA/ACSM LAND SURVEY FOR BCD, LLC, dated March 14, 2002, Drawing Number 52459-LEC, prepared by Freeland & Associates, Inc. (designated thereon as Tract "C").

The Additional Sites are also shown on that certain Preliminary Subdivision Plat for Tracts A, B, and C dated September 10, 2003 with a last revision date of October 3, 2003. On the Preliminary Subdivision Plat, these Additional Lands are designated as follows: (i) Tract B (110.067 acres); and (ii) all of Tract C, which is subdivided on said Preliminary Subdivision Plat as follows: Lot 1A (27.311 acres), Lot 1B (39.477 acres), Lot 2 (20.334 acres), Lot 3 (36.873 acres), and Lot 4 (3.472 acres).

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 12:52 PM
02 19 04 RECORDED IN DEED
BOOK 2075 PAGE 1779 THRU 1802
DOC # 2004014130

Judy A. Dix

Mason

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

RECORDER'S RECEIPT

Received from Nelson Mullins Riley & Scarborough, L.L.P. the following document for recording:

Declaration of Supplemental Covenants, Conditions, Restrictions and Easements - Clemson University Real Estate Foundation, Inc., Developer

Deed Book 2101 Page 1020 Date 8/3/04 Time 3:31 pm

Office of the Register of Deeds for Greenville County

By: 

PREPARED BY AND RETURN TO:

Space Above Line for Recorder's Use Only

**DECLARATION OF SUPPLEMENTAL COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS**

BINDING ARBITRATION

This is the first page of the Declaration of Supplemental Covenants, Conditions, Restrictions, and Easements. Pursuant to South Carolina Code of Laws § 15-48-10 et seq., 1976, as amended, this Declaration is subject to the following:

THIS DECLARATION IS SUBJECT TO ARBITRATION UNDER SECTION 12.16 HEREIN. THIS DECLARATION IS BINDING ON ALL PARTIES TO THIS AGREEMENT, AND THEIR SUCCESSORS, HEIRS, ASSIGNS AND TRANSFEREES.

In the event other pages, including but not limited to, cover pages, indexes, or tables of contents, are placed in front of this page, those pages shall not be deemed the first page. This page and only this page shall be deemed or considered the first page of the Declaration for all legal purposes.

THIS DECLARATION OF SUPPLEMENTAL COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Declaration") is made effective as of this 9th day of July, 2004 by **CLEMSON UNIVERSITY REAL ESTATE FOUNDATION, INC.**, a South Carolina not-for-profit corporation ("CUREF" or "Developer").

WITNESSETH:

WHEREAS, CUREF is the fee simple owner of that certain parcel of land situate, lying, and being in the City of Greenville, South Carolina, and that is more particularly described in **Exhibit "A"** attached hereto and incorporated by reference herein (the "**Initial CUREF Parcel**"). This lands, along with the Additional Property as defined herein is referred to as the "**Real Property**"; and

WHEREAS, CUREF plans to develop on the Real Property a research, educational and commercial campus designed to encourage basic and applied research, product development, and technological education (the "**Campus**"). The primary purpose and focus of this research and development project will be automotive technology, though it will be structured with sufficient flexibility to facilitate research and development activities related to other technologies and to provide support services for the research and development functions; and

WHEREAS, CUREF acknowledges that the Real Property is a portion of that certain real property which is subject to that certain Declaration of Covenants, Conditions and Restrictions between CR-MERC, LLC and CUREF dated February 19, 2004, and recorded on February 19, 2004 in Book 2075 at Page 1779 in the Register of Deeds of Greenville County, South Carolina (the "**Baseline CCR's**"). The Baseline CCR's are related to CR-MERC's and CUREF's intent 1) to develop the Campus (as defined in the Baseline CCR's) pursuant to a uniform architectural theme and design, and 2) to impose certain use restrictions upon such Campus; and

WHEREAS, CUREF desires to impose certain additional and supplemental restrictions and other rights, options, restrictions and covenants upon the Real Property, including, but not limited to, the power to assess the Real Property.

NOW, THEREFORE, for and in consideration of these premises and other good and valuable consideration, CUREF declares that Real Property shall be held, sold, transferred, conveyed, leased, used, occupied, mortgaged, and encumbered subject to all of the covenants, conditions and restrictions of this Declaration. This Declaration and the covenants, conditions and restrictions established hereby shall be covenants running with the land. These covenants, conditions and restrictions shall inure to the benefit of, and shall be binding upon each and every person or entity, along with their heirs, successors and assigns, who or which shall acquire an interest in the Real Property or any portion thereof. By the acceptance of any interest in all or any portion of the Real Property, the person or entity to whom such interest is conveyed, transferred or leased shall be deemed to accept and agree to be bound by the provisions of this Declaration.

ARTICLE I
DEFINITIONS

1.1 **"Additional Property"** means any and all real property which CUREF may subsequently own and submit to the provisions of this Declaration, in accordance with **Section 2.4** below.

1.2 **"Affiliate"** means (a) any Person directly or indirectly controlling, controlled by or under common control with another Person, (b) any Person owning or controlling 50% or more of the outstanding voting securities of such other Person, (c) any officer, director, member, manager or partner of such Person, and (d) if such other Person is an officer, director, member, manager or partner, any company for which such Person acts in such capacity. For purposes of this definition, the term "control" shall also mean the control or ownership of 50% or more of the beneficial interests in the Person referred to.

1.3 **Articles" or "Articles of Incorporation"** mean the Articles of Incorporation of the Association, as amended from time to time (defined below).

1.4 **"Assessment"** means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owners.

1.5 **"Association"** means the CU-ICAR Property Owner's Association, Inc., a not for profit South Carolina corporation, the sole entity responsible for the operation and maintenance of the Common Elements of the Campus.

1.6 **"Association Property"** means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.

1.7 **"Board" or "Board of Directors" and "Directors"** mean the board of directors and the members of the board of directors of the Association.

1.8 **"Building"** means any structure (or structures) constructed on the Campus, regardless of the number of such structures.

1.9 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.10 **"Campus"** means the Real Property and personal property that is subjected to this Declaration, all Improvements on the Real Property, and all easements and rights appurtenant thereto intended for use in connection with the Campus.

1.11 **"Common Elements"** means and includes the portions of the real property and Improvements, specifically including public art, located within the Campus which are owned by the Association. No portion of the Campus shall be conveyed to the Association as a Common Element by any Person other than CUREF without the prior written approval of the Association.

1.12 **"Common Expenses"** means (A) all expenses incurred by the Association (i) for the operation, maintenance, repair, replacement or protection of the Association Property, or (ii) for the common use, enjoyment, protection, and betterment of the Campus for Unit Owners; (B) the costs of carrying out the powers and duties of the Association; and (C) any other expense, whether or not included in the foregoing, designated as a **"Common Expense"** by this Declaration, the Articles or the Bylaws. For all purposes of this Declaration, **"Common Expenses"** shall also include: (a) all reserves required by any law, ordinance or legislative rule, or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of a master antenna television system or duly franchised cable television service, if any, obtained pursuant to a bulk contract; (c) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications and surveillance systems; (d) costs attributable to any Units acquired by the Association or conveyed to the Association including, without limitation, assessments payable with respect thereto, the real property taxes attributable thereto and the costs of maintenance and insurance thereof; and (e) costs attributable to the Common Elements, including but not limited to expenses of operation and maintenance thereof. Except as otherwise determined by the Association, Common Expenses shall not include (i) any separate obligations of individual Unit Owners; or (ii) any costs attributable to Limited Common Elements.

1.13 **"County"** means the County of Greenville, State of South Carolina.

1.14 **"Declaration"** means this instrument, and all exhibits attached hereto, as same may be amended from time to time.

1.15 **"Developable Area"** means the Initial CUREF Parcel plus all portions of the Campus which are available to be sold to Unit Owners and/or developed by CUREF, expressly excluding (i) Common Elements (but not Limited Common Elements), (ii) portions of the Campus which are designated to be (or which are or have been) conveyed or dedicated to public use (such as roads), (iii) any land conveyed or dedicated to public or municipal purpose (such as for a police or fire station or substation); and (iv) any CUREF-owned property which is shown as being undevelopable on the Campus master plan, as may be approved and/or amended from time to time by CUREF and Clemson University.

1.16 **"CUREF"** means Clemson University Real Estate Foundation, Inc., a South Carolina not-for-profit corporation, its successors and such of its assigns as to which the rights of CUREF hereunder are specifically assigned. CUREF may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Campus. In the event of any partial assignment, the assignee shall not be deemed CUREF, but may exercise such rights of CUREF as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis.

1.17 **"Dispute,"** for purposes of **Section 12.16** means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or Bylaws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit; (ii) require that CUREF take an action or not take an action involving the Developable Area; (iii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or

Bylaws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of its books and records. **"Dispute"** shall not include any disagreement that primarily involves title to any Unit or Common Elements, the interpretation or enforcement of any warranty, or the levy of a fee or Assessment or the collection of an Assessment levied against a party.

1.18 **"Improvements"** mean all structures, or any portion thereof, and artificial changes to the natural environment (exclusive of landscaping), located on and within the Campus, including, but not limited to, any Building.

1.19 **"Insured Property"** means all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property.

1.20 **"Institutional First Mortgagee"** means a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("**FNMA**"), the Federal Home Loan Mortgage Corporation ("**FHLMC**") or any other lender generally recognized as an institutional lender.

1.21 **"Limited Common Elements"** mean any portion of a Unit or Units which is shared by and serves only one (or some) other Unit(s) (but not all Units).

1.22 **"Material Amendment"** means an amendment to this Declaration which: (i) does or could reasonably be expected to have a material and adverse impact upon any Unit Owner, or (ii) changes any provision of Section 11.6 hereof.

1.23 **"Person"** means an individual, corporation, limited liability company, limited partnership, trust, partnership, joint venture or any other business organization.

1.24 **"Prime Rate"** means the rate designated as the "Prime Rate" from time to time by The Wall Street Journal.

1.25 **"Unit" or "Parcel"** means a part of the Campus which is subject to exclusive ownership, and includes but is not limited to the Initial CUREF Parcel.

1.26 **"Unit Owner" or "Owner"** means a record owner of legal title to a Unit, and CUREF, so long as CUREF holds title to any of the Developable Area. In the event that a Unit Owner develops and subjects its Unit to the condominium form of ownership, the condominium association shall be deemed to be the Owner of the Unit, and owners of individual condominium units shall be deemed to be authorized occupants of the Unit.

1.27 **"Voting Interests"** means the voting rights of Members provided for herein and/or in the Bylaws, providing for each Member having one vote for each acre of land within the Unit(s) owned by said Member and with fractional votes for any fractional acreage. The total of all Voting Interests shall be the total number of acres of Developable Area, as may exist from time to time.

1.28 "Zoning Regulations" means any and all applicable codes, ordinances, statutes, rules and regulations imposed or issued by the United States, the State of South Carolina, the County and/or any agency of any of the foregoing, and having jurisdiction from time to time applicable to the development of the Real Property.

ARTICLE II

PLAN OF DEVELOPMENT/PROPERTY RIGHTS

2.1 **Plan of Development.** Subject to other provisions of this Declaration, CUREF shall develop the Campus by dividing portions of the Real Property into Units; by selling, leasing or retaining and developing Units, or subdivisions thereof; by constructing Improvements within and upon the Real Property in its sole discretion; and/or by designating portions of the Real Property (including improvements constructed thereon, if any) as Common Elements and conveying such Common Elements to the Association.

(a) CUREF shall convey the Common Elements (as well as the responsibility for the maintenance of same) to the Association at any time, and from time to time, without the approval by the Association, but subject only to easements and rights of way of record and to this Declaration, and otherwise free and clear of all monetary liens.

(b) CUREF shall give the Association written notice of each and every conveyance or transfer of title to the Common Elements within thirty (30) days following any such transfer.

(c) The Association shall be and is fully and solely responsible and liable for the operation, maintenance and repair of all Common Elements conveyed to it from and immediately after the recordation of the deed(s) conveying same to the Association.

(d) CUREF may, but shall not be obligated to, construct recreational facilities on and within and/or as part of the Common Elements, for use by Owners and their tenants, business invitees, employees and authorized occupants (if any).

2.2 **Identification of Units.** Units shall be created and designated by CUREF as it deems appropriate, either in connection with sales and/or CUREF's own development of portions of the Developable Area. Promptly following creation and designation of any Unit, and promptly following sale or conveyance of any Unit, CUREF shall notify the Association in writing as to the identity of the Unit, its size and legal description, and the name and address of the new Unit Owner.

2.3 **Limited Common Elements.** Each applicable Unit or Units may have as a Limited Common Element, regardless of whether same is appurtenant to one, or more than one, Unit, any portion of such Unit or Units which is shared by and serves only one (or some) other Unit(s) (but not all Units). Limited Common Elements (if any) shall be designated as such by CUREF. For purposes of determining Assessments and Unit Owner voting rights, designated Limited Common Elements (or the applicable portion thereof) within a Unit or Units shall be considered to be part of the Unit or Units to which they are appurtenant. In the event of any doubt or dispute as to whether any portion of the Common Elements not expressly so designated

constitutes a Limited Common Element, or in the event of any question as to which Units are served thereby, a decision shall be made by the Board of Directors and shall be binding and conclusive when so made.

(a) The right to use all appropriate appurtenant Limited Common Elements shall not be separated from the Unit(s) to which they are appurtenant, and shall pass with the title to the Unit, whether or not separately described. No action for partition of the Campus or any part thereof shall lie which would separate any Limited Common Element from the Unit(s) to which it is appurtenant.

(b) Each Unit Owner is and shall be required to maintain the portion of any designated Limited Common Element located within and/or relating to its Unit, in the same manner as it is required otherwise to maintain its Unit; provided, however, that if it is determined by the Association that it is impracticable for individual Unit Owners physically to perform such maintenance as to Limited Common Elements shared by Unit Owners, or in the event that Unit Owners which share a Limited Common Element do not agree with the Association as to the maintenance or payment of the cost of the Limited Common Element, the Association may elect to perform such maintenance and allocate the expense for same by and among the Unit Owners who share such Limited Common Element. In such event, the cost of such maintenance shall be allocated among all Unit Owners which share the applicable Limited Common Element, *pro rata* in accordance with the acreage of the Units to which the Limited Common Element is appurtenant. The allocated cost of same shall be promptly paid by the applicable Owner following demand as part of the Assessment to which the Unit or Parcel is subject (such that, upon the Owner's failure timely to make payment, the Association shall have the right to impose a lien upon the Unit or Parcel for the cost of such maintenance, repair or restoration).

2.4 **Additional Property.** CUREF reserves the right and option at any time (so long as CUREF continues to own any of the Developable Area) and from time to time, to submit all or any portion of the Additional Property to the provisions of this Declaration, in its sole discretion, and thereby to cause the Additional Property (or such portion thereof designated by CUREF) to become part of (and thereafter fall within the definition of) the Real Property, as if included within the description of Real Property initially submitted to this Declaration on the date hereof. Such submission (if any) shall be effected by CUREF's execution and recording in the Office of the Register of Deeds of the County an instrument entitled "**Declaration of Inclusion**" describing the portion of such Additional Property to be submitted to the Declaration.

At such time as the Additional Property is submitted to the terms of this Declaration, the number of Units eligible to vote on Association matters (and the number of votes) shall be increased based upon the acreage of such Additional Property in accordance with the formula set forth in **Article III** below.

2.5 **Disclaimer of Warranties.** CUREF hereby disclaims any and all express or implied warranties as to design, construction, sound transmission, furnishing and equipping of the Common Elements of the Campus, to the maximum extent permitted by applicable law. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby

disclaimed. Without limiting the generality of the foregoing, (effective upon transfer or conveyance of any Improvement or Common Element to the Association) CUREF further disclaims any liability to comply with, or upgrade any such Improvements and/or the Common Elements of the Campus as a result of any changes or modifications to, or adoption of further, federal, state or municipal laws, codes, ordinances, regulations or rules hereafter applicable to the Campus. Notwithstanding the foregoing, concurrently with the transfer or conveyance of any Improvement or Common Element to the Association, CUREF shall assign any and all warranty rights it has related to such Improvement or Common Element being transferred or conveyed to the extent assignable. All Unit Owners, by virtue of acceptance of title to their respective Units (whether from CUREF or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

ARTICLE III **THE ASSOCIATION: MEMBERSHIP/VOTING RIGHTS**

3.1 **Membership in the Association.** Each Owner of any Unit or Parcel shall be a member ("Member") of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Unit or Parcel (except that an Owner may collaterally assign the benefits and voting rights of its membership to any person or entity having a leasehold or mortgage interest in the Unit or Parcel). Only one person or entity shall be entitled to exercise the rights and benefits of membership in the Association with respect to any single Unit or Parcel. The Association shall adopt and be governed by Bylaws adopted by it and amended from time to time.

3.2 **Voting Rights.** Each Member of the Association shall be entitled to vote on matters presented for a vote to the Members of the Association according to the following formula:

(a) Each Member shall have one vote for each acre of land owned by such Member in the Campus and a fractional vote for any fractional acreage owned by such Member in the Campus. The total number of votes of all Members shall be the total number of acres (including fractional/partial acres) located within the Developable Area. All decisions of the Association shall be by majority vote of the Members casting votes, either in person or voting by proxy (assuming a quorum has been established), unless and except a greater percentage is required in this Declaration or the Bylaws. The number of votes constituting all Voting Interests will change, as and when (i) any land which may have been considered part of the Developable Area is dedicated or conveyed for public purpose or public or municipal use, and (ii) any Additional Property is submitted to the terms of this Declaration.

3.3 **The Board of Directors.** The Board of Directors (the "Board") of the Association shall consist of either five (5), or seven (7), or nine (9), individuals (the "Directors"). The initial Board shall consist of five (5) Directors. The number of Directors may be changed from time to time [so long as there are either five (5), or seven (7), or nine (9) Directors as a result of such change] by a vote of a majority of the Directors then serving. The Directors shall be elected annually, in accordance with the provisions of this Section. The procedures and administration for the Board of Directors will be set forth in the Bylaws;

provided, however, that the provisions in the Bylaws concerning election of Directors may not be contrary to the terms of this Section. The Board of Directors shall constitute the final administrative authority of the Association, and all decisions of the Board of Directors made in accordance with the Bylaws and this Declaration shall be binding upon the Association and its Members. All decisions of the Board of Directors shall be by simple majority vote unless expressly set forth to the contrary herein or in the Bylaws; provided, however, that in the event of any conflict between the Bylaws and this Declaration as to the number of Directors required to approve any decision, the terms of this Declaration shall control. All rights, titles, privileges and obligations vested in or imposed upon the Association shall be held and performed by the Board of Directors.

(a) CUREF shall have the right to appoint a majority of the Board of Directors [i.e., three (3) Directors on a five (5) person Board; four (4) Directors on a seven (7) person Board; and five (5) Directors on a nine (9) person Board]; provided, however, that CUREF shall defer to Clemson University as to the right to make any or all of these appointments if so requested by Clemson University. CUREF's appointment rights shall extend until the earlier to occur of (i) the date upon which CUREF no longer owns any portion of the Real Property, or (ii) the fiftieth (50th) anniversary of the recording of this Declaration (following which 50th anniversary CUREF shall have the same voting rights with respect to any part of the Real Property still owned by it as any other Member).

(b) In order to exercise this right to appoint Directors in accordance with this Section, CUREF must send written notice to the Association at least thirty (30) days prior to the annual meeting of the Association, advising the Association (i) if it has chosen to exercise its right of appointment; (ii) if so, as to how many seats on the Board; and (iii) identifying the individuals who will be Directors appointed in accordance with this Section. Should CUREF fail timely to exercise its right of appointment provided for herein in connection with any annual meeting and election, such shall not be considered as a waiver of the right of appointment for any subsequent annual meeting and election.

3.4 **Rules and Regulations.** The Board of Directors, acting on behalf of the Association, shall have the authority from time to time to adopt rules and regulations ("**Rules and Regulations**") governing the administration and operation of the Common Elements and the Association Property, subject to the terms of this Declaration.

3.5 **Management and Management Contract.** The Board of Directors, on behalf of the Association, may retain a professional management company, professional manager, or full-time employee(s) to manage the Association and the Common Elements (the "**Manager**"). The Manager may be an entity related to CUREF.

3.6 **Determination of Common Expenses and Fixing of Assessments Therefor.** The Board of Directors, on behalf of the Association, may from time to time, prepare, review and approve and adopt (by majority vote) a budget for the Campus, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Campus and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the Bylaws. The total of all Common Expenses will be allocated *pro rata*,

on a per acre basis, to the Developable Area, and shall be assessed to Unit Owners *pro rata* based upon the number of acres (including fractional/partial acres) owned by each Unit Owner. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective Institutional First Mortgagees. The Common Expenses shall include the expenses of and reserves for the operation, maintenance, repair and replacement of the Common Elements and/or Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by this Declaration, the Articles or Bylaws of the Association, the Rules and Regulations, or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time and need not be restricted or accumulated. Any budget adopted shall be subject to change, upon the approval of such change by the Board, to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the Bylaws.

ARTICLE IV **ASSOCIATION: DUTIES AND POWERS**

4.1 **Acts of the Association.** Unless the approval or action of Unit Owners and/or a certain specific percentage of the Board of Directors is specifically required in this Declaration, the Articles or Bylaws, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal. References to a majority or percentage vote of Unit Owners shall be to the votes thereof and not to the number of Unit Owners voting.

4.2 **Powers and Duties.** Except as otherwise expressly provided herein to the contrary, the Association shall be the entity responsible for the operation and maintenance of the Common Elements, and (jointly with CUREF, so long as CUREF owns any Developable Area) the enforcement of this Declaration. The powers and duties of the Association shall include those set forth in the Bylaws and Articles, as amended from time to time but shall not be inconsistent with this Declaration. In addition, the Association shall have all the powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to Common Elements (and any Limited Common Elements) for the maintenance, repair and replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements or the Association Property

(although nothing herein shall be construed as requiring or obligating the Association to enter upon and/or repair any portion of any Unit);

(b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, maintain, repair and replace the Common Elements and Association Property;

(c) The duty to maintain accounting records according to accounting practices normally used by similar associations, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request;

(d) The power to contract for the management and maintenance of the Common Elements and to authorize a management agent (who/which may be an Affiliate of CUREF or CUREF itself) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by this Declaration, the Articles, Bylaws, and all applicable statutes, ordinances, rules and regulations including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association;

(e) The power to borrow money, execute promissory note(s) and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the Unit Owners;

(f) The power to acquire, and (as to Association Property) convey, lease and encumber personal and real property, whether or not contiguous to the lands of the Campus. The expenses of ownership of Association Property (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses;

(g) The power to adopt and amend, upon a majority vote of the Board, rules and regulations covering the details of the operation and use of the Common Elements and/or the Association Property;

(h) The power to employ personnel (part-time or full-time); and

(i) All of the powers which a corporation not for profit in the State of South Carolina may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, and the laws of South Carolina.

In the event of any conflict between the powers and duties of the Association or the terms and provisions of this Declaration, and the exhibits attached hereto or otherwise, the Declaration shall take precedence over the Articles of Incorporation, Bylaws and applicable rules and

regulations; the Articles shall take precedence over the Bylaws and applicable rules and regulations; and the Bylaws shall take precedence over applicable rules and regulations, all as amended from time to time.

4.3 **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair Common Elements and/or Association Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Common Elements and/or Association Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations, improvements or other activities done by or on behalf of any Unit Owner(s), regardless of whether or not same shall have been approved by the Association pursuant to **Article VII** hereof. Further, the Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms or as a result of the Association's failure or inability to access a Unit in accordance with **Section 4.2** above.

4.4 **Approval or Disapproval of Matters.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder Owners of record is specifically required by this Declaration or by law.

4.5 **Effect on CUREF.** If CUREF holds title to any portion of the Campus for sale in the ordinary course of business, or for development and lease or operation by CUREF, the Association may not and shall not take any action that would be detrimental to the sale, lease and/or development of any portion of the Campus by CUREF; provided, however, that an increase in Assessments for Common Expenses without discrimination against CUREF shall not be deemed to be detrimental to such sale, lease and/or development.

ARTICLE V

COVENANT AND LIEN FOR ASSESSMENTS/REMEDIES

5.1 **Liability for Assessments.** Each Unit Owner, regardless of how title is acquired, including ownership through purchase at a judicial sale, shall be liable for all Assessments coming due while it is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his share of the Common Expenses or otherwise up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit against which the Assessments are made or otherwise.

5.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

(a) "Special Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements;

(b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and its Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property; or

(c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable by Unit Owners in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed the amount of Five Thousand and No/100 Dollars (\$5,000.00) per acre or cause the total Assessments levied to exceed one hundred fifteen percent (115%) of Assessments for the preceding calendar year (on a per acre basis), the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum (as defined within the Bylaws) is attained.

5.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the greater of (i) an amount equal to the Prime Rate plus three percent (3%), and (ii) twelve percent (12%) per annum, from the date due until paid, and shall be subject to an administrative late fee in an amount not to exceed the greater of One Hundred and No/Dollars (\$100.00) or five percent (5%) of each delinquent installment; provided, however, that in no event will interest be due or collected at a rate in excess of the maximum non-usurious amount allowed under the usury laws of South Carolina, as now or hereafter construed by the courts having jurisdiction over such matters, and if any interest charged or money collected by the Association shall be deemed to be in excess of the maximum non-usurious amount, the excess so charged or collected shall be deemed a mistake and such excess automatically cancelled (and if previously paid, such excess shall either be returned to Owner or credited against the principal amount of any Assessment due, at the option of the Association).

(a) The Association will have a lien on each Unit for any unpaid Assessments on such Unit, interest thereon and reasonable attorneys' fees and costs incurred by the Association incident to the collection of the Assessments or enforcement of the lien. The lien is and shall be effective from, and shall relate back to, the date of the recording of this Declaration. The lien shall be evidenced by the recording of a claim of lien in the office of the Register of Deeds of the County, stating the description of the Unit, the name of the record Owner, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall continue for a longer period than one (1)

year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment of the lien in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is and shall be entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

(b) As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the next twelve (12) months of Assessment installments to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

5.4 **Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the Unit and, upon such mailing, the notice shall be deemed to have been given.

5.5 **Appointment of Receiver to Collect Rental.** If the Unit Owner remains in possession of the Unit after a foreclosure judgment in favor of the Association has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

5.6 **Institutional First Mortgagee.** The liens provided for in this Declaration shall be subordinate to the first mortgage liens of any Institutional First Mortgagee. An Institutional First Mortgagee which acquires title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's receipt of the deed. However, absent an express written agreement to the contrary, the Institutional First Mortgagee's liability is and shall be limited to Assessments incurred for a period not exceeding six (6) months prior to its acquisition (by foreclosure or deed in lieu of foreclosure) of title to such Unit. In no event shall the Institutional First Mortgagee be liable for more than six (6) months of the Unit's unpaid Common Expenses or Assessments

accrued before the acquisition of title to the Unit by the Institutional First Mortgagee. An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

5.7 **CUREF's Liability for Assessments.** CUREF will pay Assessments for Common Expenses based upon the Developable Area owned by CUREF from time to time, at times and in amounts (on a per acre basis) as assessed against and paid by all other Unit Owners.

5.8 **Certificate of Unpaid Assessments.** Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit.

5.9 **Installments.** Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association.

5.10 **Application of Payments.** Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installments, as aforesaid, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

ARTICLE VI RESERVED

ARTICLE VII OBLIGATIONS RELATING TO MAINTENANCE, REPAIRS, ADDITIONS, ALTERATIONS, AND IMPROVEMENTS

7.1 **Owner Maintenance.** Except as otherwise expressly provided for herein, each Owner shall be solely responsible for maintaining its Unit or Parcel and all Improvements located thereon in a first class condition, consistent with other Units and Parcels and Improvements within the Campus. Without limiting the foregoing, each Owner shall perform regular mowing of grass, pruning of trees and shrubbery, removal of broken and fallen tree limbs and underbrush. Each Owner shall also be responsible for maintaining all Improvements located within its Unit or Parcel, including, but not limited to, regular cleaning of all driveways and parking areas, cleaning of windows, and painting of the exterior of any Building located within the Unit or Parcel. In the event any Owner fails to comply with its maintenance obligations as provided for herein, the Association may (but shall not be required to) provide such Owner with a notice of such failure, describing in what respects the Owner has failed to maintain its Unit or Parcel, Buildings and Improvements, and Owner shall cure such deficiencies within thirty (30)

days of receipt of such notice. Should the Owner fail timely to cure such deficiencies, the Association shall have the right (through its agents and employees) to enter upon the Unit or Parcel and to repair, maintain and restore the Unit or Parcel, and the buildings and Improvements thereon to the condition required by this Section. The Association shall not, however, be obligated to perform such repair, maintenance and/or restoration. Should the Association conduct such repair, maintenance and/or restoration, the cost of same shall be promptly paid by the Owner following demand as part of the Assessment to which the Unit or Parcel is subject (such that, upon the Owner's failure timely to make payment, the Association shall have the right to impose a lien upon the Unit or Parcel for the cost of such maintenance, repair or restoration).

7.2 **Association Maintenance.** Except as otherwise expressly provided herein to the contrary, the Association shall be responsible for and shall maintain, repair and operate the Common Elements. Until such time as any Common Element has been conveyed to the Association, CUREF shall be solely responsible for maintaining the Campus, other than Units or Parcels which have been sold to Owners (which will be the subject of the maintenance requirements set forth in Section 7.1 above). CUREF (for itself and the Association) also reserves unto CUREF and the Association (as appropriate) an alienable, transferable easement for, and the right to construct, maintain and operate a storm drainage system and sanitary sewer system on, through, over and under the Real Property, all in conformity with Article XI.

7.3 **Units and Limited Common Elements.** All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto shall be performed by the Owner of such Unit or the Association, according to the applicable provision hereof, but in either case at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

7.4 **Common Elements and Association Property.** Except to the extent: (i) expressly provided to the contrary herein; or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements to be maintained by the Unit Owners as provided above) and Association Property shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, neglect or misuse of specific Unit Owners in the opinion of the Board, in which case such cost and expense shall be paid solely by such Unit Owners.

7.5 **Assessments for Additions, Improvements or Alterations by the Association.** Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of Five Thousand and No/100 Dollars (\$5,000.00) in the aggregate (on a per acre basis) in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Voting Interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing Five Thousand and No/Dollars (\$5,000.00) or less in the aggregate (on a per acre basis) in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements

or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

7.6 Addition, Alterations or Improvements by Unit Owner.

(a) **Consent of the Association.** No Unit Owner (other than CUREF, acting in its capacity as CUREF) shall make any addition, alteration or improvement in or to the Common Elements or the Association Property. Except as otherwise specifically provided in this Declaration, no Unit Owner (other than CUREF) shall convey any property to the Association for or as a Common Element without the prior written consent of the Association. No Unit Owner (other than CUREF) shall make any addition, alteration or improvement in or to any Limited Common Element without the prior written consent of (i) all other Unit Owners (if any) which share the applicable Limited Common Element, (ii) the Association, and (iii) CUREF. The Association shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Association's consent. The Association may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Association, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, CUREF and all other Unit Owners harmless from and to indemnify them for any liability or damage to the applicable Limited Common Elements and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither CUREF, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from CUREF, any other Unit Owner and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify

and hold CUREF, any other unit Owner and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder. Notwithstanding the above, the indemnification required under this paragraph does not apply to Clemson University or any state or federal agencies.

(b) **Improvements, Additions or Alterations by CUREF.** Subject to the other provisions of this Declaration, the foregoing restrictions of this **Section 7.6** shall not apply to any Unit(s) or Developable Area owned by CUREF, and CUREF shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit or Developable Area owned by it and Limited Common Elements appurtenant thereto.

(c) **Changes in CUREF-Owned Units or Developable Area.** Without limiting the generality of the provisions of this Section, and anything to the contrary notwithstanding, CUREF shall have the right, without the vote or consent of the Association or Unit Owners, to: (i) make alterations, additions or improvements in, to and upon Units or Developable Area owned by CUREF, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of CUREF-owned Units; (iii) change the size of CUREF-owned Units; and (iv) reapportion among the CUREF-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Expenses of any Units (other than the affected CUREF-owned Units or Developable Area) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto. CUREF shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, CUREF may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than CUREF. Any amendments to this Declaration required by changes of CUREF made pursuant to this Section shall be effected by CUREF alone pursuant to **Section 12.14(a)**, without the vote or consent of the Association or Unit Owners (or their Institutional First Mortgagees) required, except to the extent that any of same constitutes a Material Amendment. Without limiting the generality of **Section 12.14** hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of CUREF.

(d) **Unit Owners Subdivision of Units.** A Unit may only be subdivided by the Owner thereof (subject to all easements of record) with the prior written consent of the Association.

ARTICLE VIII
RESERVED

ARTICLE IX
DAMAGE TO OR DESTRUCTION OF COMMON ELEMENTS

9.1 **Determination to Reconstruct or Repair.** Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (or any portion thereof) as a result of fire or other casualty, the Board of Directors shall determine whether it is necessary or appropriate to repair or restore the damaged Insured Property, and if the decision is made to repair or restore same, shall arrange for the prompt repair and restoration of the Insured Property and shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

Whenever in this Section the words "promptly repair" or "prompt repair" are used it shall mean that repairs are to be commenced not more than sixty (60) days from the date the Association receives proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Association determines that such proceeds of insurance are insufficient to pay the estimated costs of such work.

9.2 **Plans and Specifications.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable Zoning Regulations.

9.3 **Assessments.** If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements:

9.4 **Condemnation; Taking of Common Elements.** Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

ARTICLE X
INSURANCE

10.1 **Purchase, Custody and Payment.**

(a) **Purchase.** All insurance policies described herein covering Common Elements and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in South Carolina and having a AAA rating by A.M. Best Company.

(b) **Named Insured.** The named insured shall be the Association.

(c) **Custody of Policies and Payment of Proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Association, and all policies and endorsements thereto shall be deposited with the Association.

(d) **Copies to Owners and Institutional First Mortgagees.** A copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request by any Unit Owner to such Owner and/or its Institutional First Mortgagee.

(e) **Personal Property and Liability.** Except as specifically provided herein, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Units, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

10.2 **Coverage.** Except as may otherwise be determined by the Board of Directors from time to time, the Association shall maintain insurance covering the following:

(a) **Casualty.** The Insured Property shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief;

(b) **Liability.** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors, but with combined single limit liability of not less than One Million and No/100 Dollars (\$1,000,000.00) for each accident or occurrence, One Hundred Thousand and No/100 Dollars (\$100,000.00) per person and One Hundred Thousand and No/100 Dollars (\$100,000.00) property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees;

(c) **Workmen's Compensation.** Workmen's Compensation and other mandatory insurance, when applicable;

(d) **Flood Insurance.** Flood insurance covering the Common Elements and Association Property;

(e) **Fidelity Insurance.** Fidelity Insurance covering all persons who control or disburse Association funds, such insurance to be in an amount not less than the greater of (i) three (3) times the total monthly Assessments, and (ii) Fifty Thousand and No/100 Dollars (\$50,000) per person insured, or (iii) such other amount as may be determined by the Board;

(f) **Association Property.** Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available; and

(g) **Other Insurance.** Such other insurance as the Board shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors, a member of the Board of Directors, one (1) or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

10.3 **Additional Provisions.** All insurance policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to CUREF. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

10.4 **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

10.5 **Insurance Proceeds.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, and shall provide that all proceeds covering property losses shall be paid to the Association.

10.6 **Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

(a) **Reconstruction or Repair.** Insurance Proceeds shall be disbursed for repair and reconstruction of damaged Insured Property and to cover expenses (if any) incurred in connection with the casualty causing the damage or destruction of the Insured Property.

(b) **Excess Insurance Proceeds.** If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be retained by the Association.

10.7 **Association as Agent.** The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Campus to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, if and to the extent that such Owner or mortgagee has any interest in any insurance acquired by the Association.

10.8 **Unit Owner's Personal Coverage.** Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within or upon its Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

ARTICLE XI **EASEMENTS**

11.1 **Easements for Utilities.** There is reserved for the benefit of CUREF and/or the Association (as their respective interests may appear), the alienable, transferable and perpetual right and easement, and power and authority to grant and accept easements, to and from any private or public authority, agency, public service district, public or private utility or other person, upon, over, under and across all or any portion of the Real Property for the purpose of constructing, installing, replacing, repairing, operating, maintaining and utilizing utility facilities and services, including, but not limited to, water, sewer, storm sewer, drainage, electrical, gas, telephone, television, cable system, security system, high speed data and broad band and other facilities ("**Utilities**"). Except as otherwise expressly prohibited or conditioned herein, such easements may be granted or accepted by CUREF without notice to or consent by the Association with respect to the Common Elements.

(a) To the extent reasonably possible and practicable, all utility lines serving the Campus and located therein shall be located underground.

(b) CUREF and/or Association (as appropriate), as well as any utility company or other supplier or servicer benefited by virtue of any easement granted pursuant to

this Declaration may construct, install and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities within designated easements, and in connection with same may: cut and remove any trees, bushes or shrubbery; grade, excavate, or fill; or take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

(c) No building, fence or structure shall be erected, or pavement placed upon and within any recorded utility easement without the written consent of the grantee of such easement, unless and except the instrument creating the easement specifically allow such item within the area of the Easement.

11.2 **Common Element Easements for CUREF.** CUREF shall have an alienable and transferable right and easement on, over, through, under and across the Real Property for the purpose of constructing the Common Elements and improvements, including, but not limited to recreational amenities, utilities and roadways, as CUREF desires in its sole discretion in connection with the development of the Campus. Notwithstanding the foregoing, except as otherwise expressly provided for herein, CUREF shall not have any obligation to do any of the foregoing.

11.3 **Construction Easements for CUREF.** CUREF (including its agents, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter upon any portion of the Campus (including, any Unit and any Common Element) and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, or for any other purpose, provided such right of access, except in the event of an emergency, shall not (i) unreasonably interfere with any Unit Owner's permitted use of its Unit, and except in the event of an emergency (which shall not require prior notice), entry upon any Unit shall be made on not less than one (1) day's notice to the Unit Owner (which notice shall not, however, be required if the Owner is absent when the giving of such notice is attempted), or (ii) otherwise usurp the authority granted the Association herein.

11.4 **Maintenance Easement.** CUREF (for itself and the Association, as appropriate) reserves unto itself and the Association, and their respective agents and employees, the perpetual right to enter upon any portion of the Campus for purposes such as mowing, removing, clearing, cutting or pruning, grass, brush, weeds, trees, removing trash, etc., so as to maintain reasonable standards of health, safety and appearance within the Campus.

11.5 **Environmental Easement.** CUREF reserves for itself and/or the Association (as appropriate), and their respective agents and employees, the alienable, transferable and perpetual right and easement on, over, under and across a portion of the Real Property, for the purpose of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated by any governmental authority, including (without limitation) the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

11.6 **Restrictions on Location of Easements.** All reservations, rights and easements of CUREF and/or the Association with respect to the Real Property shall be restricted and limited as set forth in this Section. From and after the date of (i) conveyance of any Unit or Parcel by CUREF to any Owner, and (ii) recording of this Declaration, CUREF and/or Association shall only have the right to grant easements, and all easements reserved for CUREF and/or the Association shall be, located within **thirty (30) feet** of the front, side and rear boundary lines for such Unit or Parcel. This restriction and limitation shall not, however, affect or diminish any easement which is or may be or may have been granted as to any such Unit or Parcel, if granted or conveyed prior to the conveyance by CUREF of the affected Unit or Parcel to the owner thereof. Furthermore, such restriction and limitation shall only apply to the Units and/or Parcels, and not to the Common Elements. Nothing in this paragraph affects the perpetual easements granted in Sections 11.4 and 11.5.

11.7 **Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner, their employees, agents, licensees and invitees, shall exist for pedestrian traffic over, through and across sidewalks, paths, walks and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purpose. None of the easements specified in this Article shall be encumbered by any leasehold or lien other than those on separate Units. Any such lien encumbering such easements (other than those on separate Units) shall automatically be subordinate to the rights of Unit owners and the Association with respect to such easements.

11.8 **Municipal Easement.** Police, fire, water, health and other authorized municipal officials, employees and vehicles shall have the unrestricted right of ingress and egress to and over the Real Property, and any portion thereof, for the performance of their official duties as required by local, state or federal law.

11.9 **Sales and Leasing Activity.** For as long as there are any unsold Units, CUREF, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property, and sales and construction offices, to show the Campus and the Common Elements to prospective purchasers and tenants of Units, to erect on any portion of the Campus not previously conveyed to a Unit Owner and/or Association Property signs and other promotional material to advertise Units for sale or lease and for any other similar purpose CUREF deems appropriate in its opinion.

11.10 **Additional Easements.** The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby irrevocably appoints the Association as its attorney-in-fact for this purpose), shall have the right; to grant such additional general and specific electric, drainage, gas or other utility, cable television, if any, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any installations pertaining thereto), or relocate any such existing utility or service easements or drainage facilities in any portion of the Campus and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Campus and/or Association Property, as the Association (upon a majority vote of the Board) shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof,

or for the general health, welfare or business opportunities of the Unit Owners or their tenants, or for the purpose of carrying out any provisions of this Declaration or otherwise, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for their lawful purposes.

11.11 **Additional Conditions.** Notwithstanding anything contained in this Declaration to the contrary, if CUREF, the Association, or any agent or employee thereof cause damages or disrupts the landscaping and/or grading of any Unit during its exercise of the rights granted in this Article XI, CUREF and/or the Association, as applicable shall be liable therefor.

ARTICLE XII **MISCELLANEOUS**

12.1 **Notices.** All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Campus, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically herein, all notices to any Unit Owner shall be sent by first class mail to the Unit, or such other address as may have been designated by the Unit Owner from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

12.2 **Interpretation.** The Board shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

12.3 **Mortgagees.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

12.4 **Exhibits.** There is hereby incorporated in this Declaration all materials contained in the exhibits annexed hereto, except that as to such exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.

12.5 **[Reserved]**

12.6 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be

amended from time to time, said dispute or litigation shall be governed by the laws of the State of South Carolina.

12.7 **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

12.8 **Waiver.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

12.9 **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and Bylaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.

12.10 **Execution of Documents; Attorney-in-Fact.** Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of CUREF, all documents or consents which may be required by all governmental agencies to allow CUREF and its Affiliates to complete the plan of development of the Campus as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby CUREF as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such owners, any and all of such documents or consents. This Power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of CUREF.

12.11 **Gender: Plurality.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

12.12 **Captions.** The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

12.13 **Liability.** Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Campus and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or

subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

(a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of South Carolina, the County and/or any other jurisdiction or the prevention of tortious activities; and

(c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents (including its attorneys and other professionals engaged or retained by the Association), contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of CUREF, which shall be fully protected hereby.

12.14 Amendments and Extensions. This Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except in accordance with the following provisions:

(a) **CUREF Amendments.** CUREF shall have the unilateral right to amend this Declaration, without the consent of the Association and without the consent of any Unit Owner (1) if such amendment is necessary to bring any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith; or (2) if such amendment is for the purpose of including, by a Declaration of Inclusion, all or any part of the Additional Property under the terms and provisions of this Declaration.

(b) **Non-Material Amendments.** Amendments to this Declaration which do not rise to the level of Material Amendments to this Declaration may be made by CUREF, with the consent of the Association (evidenced by the affirmation vote of a majority of the Board of Directors) and by the affirmative vote of the Unit Owners owning in excess of two-thirds (2/3) of the Voting Interests.

(c) **Material Amendments.** No Material Amendment shall become effective unless and until the record Owner(s) of the Unit(s) so impacted, and each Institutional First Mortgagee owning and having a first mortgage lien thereon, shall join in the execution of the amendment, and such amendment receives the affirmative vote of not less than two-thirds (2/3) of the Voting Interests in the Association.

(d) **Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed by not less than a majority of the Board of Directors of the Association. Directors and Unit Owners not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary of the Association at or prior to the meeting. Except as elsewhere herein provided, approvals of amendments proposed by the Association must be by the affirmative vote of the Board and by Unit Owners owning in excess of two-thirds (2/3) of the Voting Interests.

(e) **Mortgagee's Consent.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise materially and adversely affect any rights, benefits, privileges or priorities granted or reserved to Institutional First Mortgagees of Units without the consent of said Institutional First Mortgagees in each instance. Except as specifically provided, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.

(f) **Execution and Recording.** An amendment, other than amendments made by CUREF alone pursuant to this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate (or other instrument) is properly recorded with the Register of Deeds of the County. Each amendment made in accordance with this Section shall, upon recording of the certificate of amendment, be effective as to or binding upon CUREF, the Association, all Unit Owners, and all holders of any lien or mortgage upon and/or interest in any Unit.

12.15 **Interpretation.** If any clause, sentence, or other portion of this Declaration shall become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect. All rights created hereby are subject to all easements, rights, liens, restrictions, and reservations of record. The foregoing restrictive covenants are hereinafter collectively referred to as the "Restrictions". In the event of any violation or threatened violation by any owner, tenant, occupant, or other person or entity having an interest in any portion of the Real Property of any of the foregoing terms, covenants, or Restrictions, then, in addition, to all other remedies provided in this Declaration or available at law or in equity, CUREF and the Association shall

each have the right to enjoin such violation or threatened violation. As used herein, the term "CUREF" shall mean CUREF and any person or entity to which CUREF assigns its rights under this Declaration or any person or entity which may succeed to such rights by operation of law.

12.16 **Dispute Resolution.** All Disputes (as that term is defined in **Article I**) shall be resolved in accordance with the following procedure:

(a) **Non-Binding Mediation.** Any party to the Dispute may initiate the process to resolve such Dispute in accordance with the provisions of this Section. The first part of the process to resolve the Dispute shall be non-binding mediation ("**Mediation**"). Mediation shall be commenced by written notice (the "**Mediation Demand Notice**") sent by any party to the Dispute to all other parties involved in the Dispute, with a copy to the Association (if it is not already a party to the Dispute). The Mediation Demand Notice shall describe the Dispute and demand that Mediation be commenced in accordance with the provisions of this Section.

(i) All parties to the Dispute will attempt in good faith to agree upon an impartial mediator (the "**Mediator**") within ten (10) days from the date upon which the Mediation Demand Notice was sent. In the event that the parties are unable to agree on a Mediator, the Association shall select the Mediator (even if the Association is one of the parties to the Dispute).

(ii) Unless the parties to the Dispute agree otherwise, the Mediator shall be an attorney in good standing, licensed to practice law in the State of South Carolina.

(iii) Unless all parties to the Dispute agree to the contrary, Mediation will take place in the County, within thirty (30) days from the date upon which the Mediator has been selected.

(iv) Mediation will be conducted as specified by the Mediator. The parties to the Dispute will discuss their differences in good faith and attempt to reach an amicable resolution of the Dispute. Mediation will be treated as a confidential settlement discussion. The Mediator may not testify for any party to the Dispute in any later proceeding. No recording or transcript shall be made of the Mediation Proceedings.

(v) Each party will bear its own costs in connection with the Mediation. The fees and expenses of the Mediator will be shared equally by all parties to the Mediation.

(b) **Binding Arbitration.** In the event that a Dispute has not been resolved by Mediation within ninety (90) days from the date upon which the Mediation Demand Notice was sent (or such longer period as may be agreed to by all parties to the Dispute), the Mediation shall terminate and the Dispute shall be resolved exclusively by mandatory binding arbitration ("**Arbitration**"), conducted in accordance with the following terms and conditions:

(i) Arbitration will be conducted by a sole, impartial arbitrator (the "Arbitrator"), selected in accordance with the rules of the American Arbitration Association (the "AAA").

(ii) The Arbitration process shall be initiated by a notice and demand for Arbitration (the "Arbitration Demand Notice") sent by the party to the Dispute which sent the Mediation Demand Notice to the AAA, with copies to all other parties to the Dispute and to the Association (if it is not already a party to the Dispute).

(iii) Arbitration shall be conducted within the County in accordance with the rules of the AAA.

(iv) In the event that the Arbitrator determines that one or more parties to the Arbitration is the prevailing party, the Arbitrator shall award to such prevailing party(ies), and assess against any party(ies) determined by the Arbitrator to be the non-prevailing party, an amount determined by the Arbitrator to reimburse the prevailing party(ies) for its/their costs, including reasonable attorneys' fees incurred in connection with the Arbitration (but not the Mediation). Additionally, the non-prevailing party(ies) will be responsible for payment to the Arbitrator (or AAA, as appropriate) of all fees and costs of the Arbitrator and the AAA in connection with the Arbitration (and, to the extent that the prevailing party(ies) paid the fee required to initiate the Arbitration, the non-prevailing party(ies) will be required to reimburse the prevailing party(ies) for the fee paid to initiate Arbitration).

(v) The result of such Arbitration will be binding upon all parties to the Dispute. If necessary, the prevailing party(ies) in the Arbitration may file an action in a court of competent jurisdiction to enforce the judgment rendered by the Arbitrator. In the event that it is necessary for the prevailing party(ies) in the Arbitration to file such an action to enforce the judgment of the Arbitrator, such party(ies) will be entitled (in addition to any and all other relief) to an award reimbursing it/them for its/their reasonable costs, including attorneys' fees, incurred in connection with such enforcement action.

12.17 **Miscellaneous.** This Declaration shall run with the land, both as respects benefits and burdens created herein, subject to such exceptions and limitations in time as may be provided for herein, and shall be binding upon and inure to the benefits of the successors and assignees of the respective parties. All of the covenants, restrictions, terms, and conditions shall inure to the benefit of CUREF, as long as CUREF owns an interest in fee simple in and to any of the Real Property.

IN WITNESS WHEREOF, CUREF has executed this Declaration the day and year first stated above.

Signed, Sealed and delivered
In the Presence of:

CUREF:

Clemson University Real Estate Foundation, Inc.

Sandra L. Henderson
Print Name: Sandra L. Henderson

By: Douglas D. Richardson
Name: Douglas D. Richardson
Title: Treasurer

Charles S. Verdin, IV
Print Name: Charles S. Verdin, IV

STATE OF South Carolina
COUNTY OF Greenville

The foregoing instrument was acknowledged before me this 3rd day of August, 2004, by Douglas D. Richardson, as Treasurer of Clemson University Real Estate Foundation, Inc., a South Carolina not-for-profit corporation ("CUREF"), on behalf of CUREF, who is personally known to me.

Charles S. Verdin, IV
Notary Signature

Print Name: Charles S. Verdin, IV
Commission Expires: 8/12/07

EXHIBIT "A"

INITIAL CUREF PARCEL

All those certain pieces, parcels or lots of land, lying and being in the City of Greenville, South Carolina, shown on the "SUMMARY PLAT FOR HOLLINGSWORTH FUNDS, INC., MICHIGAN AGRI-CHEMICAL, INC., and CR-MERC, LLC," prepared by Freeland & Associates, Inc., dated December 9, 2003, recorded in the Office of the Register of Deeds for Greenville County, South Carolina on December 12, 2003, in Plat Book 47-S at Page 44, and designated thereon as Lot 1, consisting of approximately 5.001 acres; Lot 2-A, consisting of approximately 18.216 acres; Lot 2-B, consisting of approximately 3.033 acres; Lot 3, consisting of approximately 5.00 acres; Lot 4-A, consisting of approximately 15.01 acres; Lot 4-B, consisting of approximately 15.851 acres; and Lot 5, consisting of approximately 13.770 acres, having such courses, metes, measurements, and boundaries as appear thereon.