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Lee County, AL

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS
OF
BRIDGEWATER AT CARY CREEK**

THIS INSTRUMENT PREPARED BY:
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Book/Pg: 2619/64
Term/Cashier: CHPJDSK12 / RB
Tran: 24269.359005.470120
Recorded: 01-14-2021 15:28:26
REC Recording Fee
Total Fees: \$ 275.00

275.00

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS
OF
BRIDGEWATER AT CARY CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS of Bridgewater at Cary Creek (“Declaration”) is made as of the date set forth on the signature page hereof by Bridgewater at Cary Creek, LLC, an Alabama limited liability company (the “Declarant”).

WHEREAS, Declarant is the Owner of the real property described on Exhibit “A,” which is attached and incorporated by reference. This Declaration imposes upon the real property mutually beneficial covenants, conditions, restrictions and easements under a general plan of improvement for the benefit of the current and future owners of each portion of the real property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the real property. In furtherance of such plan, this Declaration provides for the creation of the Bridgewater at Cary Creek Homeowners Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the Bylaws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

WHEREAS, by this Declaration, the Declarant intends to divide the property into separate residential real estate Lots to establish a residential subdivision and associated residential homeowners association under the provisions of the Alabama Homeowners' Association Act, §§35-20-1, et seq., Code of Alabama, (as may be amended), hereinafter called the Act; and

WHEREAS, under said Act it is necessary that the rights, privileges, covenants, condition, easements and obligations of the Declarant, Owners, Occupants, the Association, Mortgagees, and others who may be interested therein, be explicitly set forth.

NOW THEREFORE, Declarant declares that the real property described in Exhibit “A” and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held, developed, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth for the purpose of protecting the value, desirability, and aesthetically pleasing atmosphere of the real property and which shall run with the real property submitted to the Declaration.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Act": The Alabama Homeowners' Association Act, §§35-20-1, et seq., Code of Alabama, (as may be amended), as may be amended from time to time.

1.2 "Additional Property": All of that certain real property which is more particularly described on Exhibit "B", which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.3 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Bridgewater at Cary Creek Homeowners Association, Inc., as filed with the Secretary of State of the State of Alabama, as they may be amended.

1.4 "Association" or "HOA": Bridgewater at Cary Creek Homeowners Association, Inc., an Alabama nonprofit corporation, its successors and assigns, organized pursuant to the Act, of which all Owners shall be members, and which shall operate and manage the Subdivision.

1.5 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and serving as the board of directors of the Association under Alabama corporate law.

1.6 "Builder": Any Person who purchases one (1) or more Lots for the purpose of constructing improvements thereon for later sale to consumers in the ordinary course of such Person's business or who enters into a construction contract with an Owner of a Lot for the construction of a residential dwelling. Any Person occupying a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

1.7 "Bylaws": The duly adopted Bylaws of Bridgewater at Cary Creek Homeowners Association, Inc., attached as Exhibit "C," as they may be amended.

1.8 "Bridgewater" or "Bridgewater at Cary Creek": the residential development to which all Property and all Lots therein is a part and subject to this Declaration.

1.9 "Cary Creek Development": Cary Creek Development shall mean and refer to the Cary Creek Planned Development District as may be further amended from time to time.

1.10 "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term also shall include any Exclusive Common Area, as defined below.

1.11 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Subdivision and all Owners, including, but not limited to, the maintenance, administration, improvement and repair of the Common Areas, and any reasonable reserve, as the Association may find necessary and appropriate pursuant to the Governing Documents.

1.12 "Common Surplus": The excess of all receipts of the Association including, but not limited to, rents, dues, assessments, profits and revenues from the assets of the Association remaining after the deduction of the Common Expenses and allowing for the retention of a reasonable reserve for future expenditures, all as fixed by the Association.

1.13 "Community-Wide Standard": The standard of conduct, maintenance, or other activities generally prevailing throughout the Subdivision. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the DRB.

1.14 "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of real property adjacent to, in the vicinity of, or within the Property, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property, including, but not limited to, that certain Declaration of Master Covenants, Conditions, Restrictions and Easements of The Cary Creek Master Owners' Association, Inc., by and among the Declarant and its Affiliates, recorded in the Office of the Judge of Probate of Lee County, Alabama, as amended and supplemented (the "Master Declaration").

1.15 "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.16 "Declarant": Bridgewater at Cary Creek, LLC, an Alabama limited liability company or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale of the Subdivision and Lots therein, and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.17 "Declarant Control Period": The period of time during which the Declarant shall unilaterally control the Property pursuant to the terms herein, commencing on the date of recording this Declaration until the earlier of: (i) when one hundred percent (100%) of the total number of Lots permitted by the Master Plan for the property described on Exhibits "A" and "B" have been conveyed to Persons other than Declarant or Builders; or (ii) terminated pursuant to the Act; or (iii) when, in its discretion, the Declarant so determines and voluntarily relinquishes such control.

1.18 "Declaration": This instrument, by which the Property is submitted to the provisions of the Act, and such instruments as from time to time amend the same in accordance with said Act, the Bylaws, and this Declaration.

1.19 "Design Guidelines" or "Design Review Manual": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Property promulgated and administered pursuant to Article 9.

1.20 "Design Review Board" or "DRB": Shall have the meaning as described in Article 9 herein.

1.21 "Detention Facility": Any area within the Property serving as a detention structure or facility, including but not limited to berms, swales or any facility designated as a "detention pond" or a "proposed detention facility" on a recorded plat of all or any portion of the Property.

1.2 "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, any Additional Property, or any Private Amenity, or has the unilateral

right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.23 “Dwelling”: A private, single-family home constructed on any Lot within the Property.

1.24 “Exclusive Common Area” or “Limited Common Area”: A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Lots, as more particularly described in Article 2.

1.25 “General Assessment”: Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots and Common Areas, as more particularly described in Sections 8.1 and 8.2.

1.26 “Governing Documents”: The Master Declaration (including its Articles, Bylaws, Rules and Regulations), this Declaration, Bylaws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Subdivision or any of the above, as each may be supplemented and amended from time to time.

1.27 “Improvements”: Any and all structural items placed on a Lot, also including any modification of any existing Improvement.

1.28 “Majority”: Those votes, Owners or other group, as the context may indicate, totaling seventy-five percent (75%) of the total eligible votes of the Association.

1.29 “Master Association”: Master Association shall mean the Cary Creek Master Owners Association, Inc., its successors and assigns.

1.30 “Master Declarant”: Master Declarant shall mean and refer to Cary Land Company, LLC, an Alabama Limited Liability Company, and its successors or assigns.

1.31 “Master Declaration”: Master Declaration shall mean the Master Declaration of Covenants, Conditions, Restrictions, and Easements for The Cary Creek Master Owners Association, Inc., and all amendments or supplements thereto from time to time, as recorded in the Judge of Probate Office of Lee County, Alabama.

1.32 “Master Plan”: The land use plan or development plan for Bridgewater at Cary Creek, as such plan may be amended from time to time, which plan includes the property described on Exhibit “A” and all or a portion of the Additional Property described on Exhibit “B” that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit “B” from the Master Plan bar its later annexation in accordance with Article 7.

1.33 “Member”: A Person subject to membership in the Association pursuant to Section 3.1.

1.34 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.35 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.36 “Owner”: One (1) or more Persons, individually or collectively, or the entity, who holds the recorded fee simple title to any Lot, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.37 “Plat” or “Subdivision Plat”: The recorded plat of Bridgewater Subdivision attached herewith as Exhibit "A", as may be amended or supplemented.

1.38 “Person”: A natural person, a corporation, a partnership, a limited liability company, trust, fiduciary acting on behalf of another person or any other legal entity and their successor in interest.

1.39 “Private Amenity”: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Property which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes. The Declarant reserves the right to designate additional Private Amenities in its sole discretion. The use of the term “Private Amenity” shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

1.40 “Property” or “Properties”: The real property described on Exhibit “A” as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7, as well as all improvements thereon, easement rights and appurtenances thereunto belonging, and all other property, real, personal or mixed, intended for use in connection with the Subdivision.

1.41 “Public Records”: The Office of the Judge of Probate of Lee County, Alabama or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.42 “Residence”: A private, single-family dwelling constructed on any Lot within the Property.

1.43 “Rules and Regulations”: The Rules and Regulations from time to time that may be approved and adopted by the Association.

1.44 “Subdivision”: The Bridgewater at Cary Creek residential development to which the Property and all Lots therein is a part and subject to this Declaration.

1.45 “Special Assessment”: Assessments levied in accordance with Section 8.4.

1.46 “Specific Assessment”: Assessments levied in accordance with Section 8.5.

1.47 “Supplemental Declaration”: An instrument filed in the Public Records which subjects Additional Property to this Declaration, amends this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.48 “Lot”: shall mean and refer to any improved or unimproved parcel of land located within the Property which is used or intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, include within its meaning (in way of illustration, but not limitation) single family attached and detached houses, single family townhomes, and undeveloped Lots intended for single family detached houses, single family attached houses, twin homes, townhomes, patio or zero lot line homes, or as otherwise approved by Declarant, as may be developed, used, and defined, as

herein provided or as provided in subsequent Declarations covering all or a part of the Property. For the purpose of this Declaration, Lot shall come into existence upon the date that a plat showing said Lot is recorded in the Office of the Judge of the Probate Court of Lee County, Alabama.

ARTICLE 2: PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Areas, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;
- (d) The right of the Association to rent, lease or reserve any portion of the Common Areas to any Owner for the exclusive use of such Owner and his/her/its respective lessees, invitees, and guests upon such conditions as may be established by the Board;
- (e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Areas amid Exclusive Common Areas pursuant to Section 4.3;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission, maintenance fees, or other use fees for the use of any facility situated upon the Common Areas;
- (g) The right of the Board to permit use of any facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Areas, subject to any approval requirements set forth in the Governing Documents;
- (j) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Areas designated "Exclusive Common Areas," as more particularly described in Section 2.2; and
- (k) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his/her/its right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his/her/its Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

2.2 Exclusive Common Area (also referred to as Limited Common Area). Certain portions of the Common Areas may be designated as Exclusive Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants of specified Lots. By way of illustration and not limitation, Exclusive Common Areas may include shared driveways, landscaped medians and cul-de-sacs, and other portions of the Common Areas benefiting certain Lots. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Lots to which the Exclusive Common Areas are assigned as a Specific Assessment.

During the Development Period, any Exclusive Common Areas shall be designated as such, and the exclusive use thereof shall be assigned in the deed by which the Common Area is conveyed to the Association, or in this Declaration or any Supplemental Declaration and/or on the Plat relating to such Common Area. Any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots during the Development Period.

2.3 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Areas. No Person shall seek any judicial partition unless the portion of the Common Areas which are the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.4 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Areas and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Areas shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Areas under threat of condemnation only if approved by Members holding at least a Majority of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Areas on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Areas to the extent available, unless within sixty (60) Days after such taking, Members holding at least a Majority of the total Class "A" votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the DRB. The provisions of Section 6.2 regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

2.5 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view from Lots over and across the Common Areas, including any lake, water, creek, pond, will be preserved without impairment. The Association shall have no obligation to prune or thin trees or other

prepare and submit to the Declarant a report detailing the management, maintenance, operation and control of the Properties.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Areas and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Alabama.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any pond or other body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect upon the rights of the Owners.

The Association agrees that the Common Area, including all improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Areas. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Areas or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Areas which exist and are assignable.

4.3 Enforcement. The Board or any committee established by the Board, within the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the Bylaws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any Person's right to use any recreational facilities within the Common Areas and any part of the Exclusive Common Areas; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and
- (e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed, the fine may first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, repair, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the Bylaws. The Association may levy Specific Assessments to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit of law to recover monetary damages or in equity to enjoin any violation or both without the necessity of compliance with the procedures set forth in the Bylaws.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorney's fees and court costs, incurred in such action, regardless of whether suit is filed and including any appeals.

The Association shall not be obligated to take action to enforce (in the exercise of its business judgment) any covenant, restriction, or rule which the Board determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Common Areas from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Common Areas.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the Bylaws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2 Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Each Class "A" Member shall have one (1) equal vote for each Lot in which he/she/it holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. All Class "A" votes shall be cast as provided in Section 3.2(d) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws and the Articles, are specified in the relevant sections of this Declaration, the Bylaws and the Articles. The Class "B" Member may appoint the members of the Board of Directors until the first to occur of the following:

- (i) when one hundred percent (100%) of the total number of Lots permitted by the Master Plan for the property described on Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Persons other than Declarant or Builders;
- (ii) or pursuant to the Act; or
- (iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

At such time, the Class "B" membership shall terminate, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns. After termination of the Class "B" membership, (i) the Declarant shall have a right to disapprove actions of the Board, the DRB, and committees as provided in the Declaration, and (ii) the Declarant shall have the right, in its sole discretion, to appoint one member to the Board during the Development Period. Within one hundred eighty (180) Days after the termination of the Class "B" membership, the Association shall

The Association, by contract or other agreement, may enforce county, city, state and federal laws and ordinances, if applicable, and permit local and other governments to enforce laws and ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights amid powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for utility facilities, bus stops and shelters, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.6 Indemnification. The Association shall indemnify every officer, director, DRB member and committee member against all damages, liabilities, and expenses, including reasonable attorney's fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, DRB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Alabama law.

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

4.7 Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Areas to the City of Auburn, Lee County, Alabama, or to any other local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company.

4.8 Security. Each Owner and occupant of a Lot, and their respective guests and invitees shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. The Association may maintain and operate an entry gate which will control vehicular access to and from the Properties, but no representation or warranty is made that the entry gate cannot be circumvented or that it can prevent illegal

activity within the Properties. No representation or warranty is made that any security system or measure, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

4.9 Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Areas, to be used as recreational bike and pedestrian pathways and trails (“trail system”). Each Owner acknowledges, understands and covenants to inform the occupants of such Owner’s Lot, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, their tenants, occupants, guests and invitees.

4.10 Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association’s annual budget. For the purposes of this Section a “tax-exempt organization” shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including, but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.11 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense provided the service or facility is provided to all Lots. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.12 Rezoning. No Owner or any other Person may apply or join in an application to amend, vary or modify any governmental rule, regulation or zoning ordinance imposed by the City of Auburn, Lee County, Alabama applicable to or rezone or apply for any zoning variance or waiver as to all or any portion of the Properties without the prior written consent of Declarant. Each Person that acquires any interest in the Properties acknowledges that Bridgewater at Cary Creek is a master planned community, the development of which is likely to extend over several years, and agree not to protest or challenge (a) changes in uses or density of property within Bridgewater at Cary Creek, or (b) changes in the Master Plan. Declarant may apply for rezoning as to any portion of the Properties owned by it at any time.

4.13 Presence and Management of Wildlife. Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties may be located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife, including without limitation, deer, coyotes, foxes, opossums, reptiles, and snakes. Neither the Association, the Board,

the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, this includes the right to manage and control any populations of white-tailed deer, feral hogs, raccoons, alligators and other wildlife through a variety of techniques, including organized hunting, shooting, trapping, relocating, sterilization, and habitat manipulation. Declarant may, in its sole discretion, commission environmental studies and reports relating to the Properties and the wildlife habitats located thereon, and may elect to follow or disregard any recommendations resulting from such studies. The Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by General Assessments.

ARTICLE 5: MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Common Area and Limited Common Area, which shall include, but need not be limited to:

- (i) all Common Areas;
- (ii) all landscaping and other flora, parks, lakes, ponds, structures, and improvements, including any entry features, gates, gate systems, gate houses, parking areas, sprinkler and irrigation systems, sidewalks, bike and pedestrian pathways/trails, gardens, clubhouse, sporting venues/facilities and swimming pools situated upon the Common Areas;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, bus stops and shelters, sprinkler and irrigation systems, buffers, entry features and gates, gate systems, gate houses, walls, fences, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;
- (v) such additional portions of any property included within the Common Area and Limited Common Area as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association;

(vi) all Detention Facilities, ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthmen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith unless such facilities are located within a Private Amenity and are maintained by the owner of the Private Amenity;

(vii) any private streets located on Common Areas (if any);

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

(ix) any wetlands or other natural areas which shall remain in its natural state located within the Properties; provided, however, that such natural areas do not have to be maintained to the same standard as other areas maintained by the Association; and

(x) any signage located outside of the Properties which advertises or promotes the development or name of Bridgewater at Cary Creek and any landscaping related to such signs.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, private streets, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall maintain the facilities and equipment within the Common Area and Limited Common Area in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding a Majority of the Class "A" votes in the Association, and during the Development Period the Declarant, agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Common Area and Limited Common Area shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area and Limited Common Area shall be a

Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portion of the Common Area and Limited Common Area pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Specific Assessment against the particular Lots to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(e) The Association, shall install, construct, monitor, maintain, replace, repair, operate, remove and keep in good condition, the force main sewer lines located in or under the private utility easement adjacent to the respective Lots 10 through 27, as further set forth in Article 15 below and recorded on the final Plat.

(f) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain his/her/its Lot(s) and any dwelling or improvement located on his/her/its Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by the Association. Each Owner shall also maintain the driveway serving his/her/its Lot and shall be responsible for the replacement of any landscaping, shrubbery and trees on the Owner's Lot. Additionally, each Owner shall be responsible for keeping any storm drain(s) located upon his/her/its Lot clear of debris. In addition to any other enforcement rights, if an Owner fails properly to perform his/her/its maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.5(c). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry under this Section shall not constitute a trespass.

Each Owner of a force main sewer Lot (Lots 10 through 27 as shown on the final Plat) shall install, construct, monitor, maintain, replace, repair, operate, remove and keep in good condition, the force main sewer lines, pipes, pumps, meters, boxes, septic facilities and associated sewage equipment servicing such Lot and located in, on or under such Lot and all the way to the sewer valve box located in the private utility easement, in good working order and in a manner consistent with the Community-Wide Standard and all Governing Documents as further set forth in Article 15 below. In the event an Owner fails in this regard, then the Association may, but shall not be obligated to, perform such Owner responsibilities described in this paragraph, and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.5(c). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association hereunder shall not constitute a trespass.

5.3 Standard of Performance. Unless otherwise specifically provided herein (including, but not limited to Section 5.1(a)) or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association or any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, Property which the Association or such Owner does not

own except to the extent that the Association or such Owner has been negligent in the performance of its maintenance responsibilities which detrimentally affect such Property.

5.4 Cost Sharing Agreements. As the Subdivision lies within the Cary Creek Development, adjacent to or in the vicinity of the Properties, there may be certain residential, nonresidential or recreational areas, including without limitation single family residential developments, retail, commercial, or business areas and Private Amenities, which are not subject to this Declaration and which are neither Lots nor Common Areas as defined in this Declaration (hereinafter "adjacent properties"). The owners of such adjacent properties shall not be Members of the Association, shall not be entitled to vote, and shall not be subject to assessment under Article 8 of this Declaration.

As such, the Association may enter into one (1) or more Cost Sharing Agreements with the owners or operators of portions of the adjacent properties:

- (a) to obligate the owners or operators of such adjacent properties to perform and/or to share in certain costs associated with, the maintenance, repair, replacement and insuring of portions of the Common Area and Limited Common Area, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties;
- (b) to permit use of any recreational and other facilities located on the Common Areas by the owners or operators of such adjacent properties;
- (c) to permit use of any recreational and other facilities located on such adjacent properties by the Owners of all Lots;
- (d) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties; and/or
- (e) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such adjacent properties and the owners within the Properties.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s). If the Association is obligated to share costs incurred by the owners of such adjacent properties, such payments by the Association shall be deemed to constitute Common Expenses of the Association unless the Cost Sharing Agreement provides otherwise. The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Areas, if any, and on other portions of the Common Area and Limited Common Area to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then “broad forum” coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on all public ways located within the Properties and on the Common Area and Limited Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers’ compensation insurance and employers’ liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s best business judgment but not less than an amount equal to one-fourth (1/4th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Areas containing structural improvements are or shall become located in an area identified by the Federal Emergency Management Agency (“FEMA”) as an area having special flood hazards, a “blanket” policy of flood insurance on the Common Areas must be maintained in the amount of one hundred percent (100%) of current “replacement cost” of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less.

Premiums for all insurance on the Common Area and Limited Common Area shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.5.

The Association shall have no insurance responsibility for any portion of the Private Amenities.

The Board of Directors of the Association is hereby irrevocably appointed agent for each Member; each mortgagee and for each holder of any other lien secured by any portion of the Properties, for the purpose of compromising and settling all claims arising under insurance policies obtained by the Association, and executing and delivering releases upon payment of claims.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the City of Auburn, Alabama. The company or companies with whom the Association shall place its insurance coverage must meet the following requirements: a B Rating Guide, or an A or higher rating from Demotech, Inc.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. Unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$10,000 or 1% of the hazard insurance policy face amount. However, for losses related to a Lot owned by the Association which is covered by a blanket policy, if any, the deductible related to the individual Lot should be the lesser of \$1,000 or 1% of the Lot's replacement cost. The deductible shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(c) All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Alabama which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) an endorsement requiring at best thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and

(vii) include a specific endorsement to preclude the insurer's denial of an Owner's claim because of the negligent acts of the Association.

(d) In addition, the Board shall use reasonable efforts to secure insurance policies which may provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and manager, the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (v) a cross liability provision;
- (vi) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;
- (vii) a construction code endorsement; and
- (viii) a machinery coverage endorsement.

(e) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Areas shall be repaired or reconstructed unless the Members holding at least a Majority of the total Class "A" votes in the Association, and during the Development Period the Declarant, decide within sixty (60) days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the

Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Director's may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his/her/its Lot, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising his/her/its Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

6.3 Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Areas, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Owner or any member of a Owner's immediate household, guest, lessee, agent, contractor, licensee or invitee for any injury or damage sustained in the Common Area and Limited Common Area, the Common Areas or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Owners or their family members, guests, invitees, agents, servants, contractors or lessees, whether such loss occurs in the Common Areas or in individual Lots.

Each Owner, by virtue of the acceptance of title to his or her Lot, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section 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 under this Section.

ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation by Declarant. Until fifteen (15) years after the recording of this Declaration in the Public Records, Declarant may from time to time, unilaterally, subject to the provisions of this Declaration annex all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

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

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of the Members holding a Majority of Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

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

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall execute a written consent to such withdrawal.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 8: ASSESSMENTS

8.1 Creation of Assessments. There are hereby created assessments for the Association expenses as the board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.6. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish which may include discounts for early payment or similar time/price differentials. The Board may require advance payment assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance in annual installments due on the first day of each calendar year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the thirtieth (30th) day following the due date unless otherwise specified by Board resolution.

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

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

8.2 Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3. For so long as the Class "B" membership exists, Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the total Class "A" votes of the Association and the Class "B" Member.

General Assessments shall be levied equally against all Lots. Furthermore, all costs associated with maintenance, repair and replacement of the force main sewer lines located in the private utility easement shall be a Common Expense to be allocated among all Lots as part of the General Assessment as further set forth below in Article 15.

The assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves and amounts due pursuant to any Cost Sharing Agreement. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreement.

For so long as the Class "B" membership exists, Declarant shall fund any deficit during any fiscal year. The Declarant may fund a deficit by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or advancement against future sums due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense Budget. The "deficit" shall be the difference between: (i) the amount of all income and revenue of any kind received by the association, including but not limited to, assessments collected on all Lots, use fees, advances made by Declarant, and income from all other sources, and (ii) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses, such as depreciation or amortization, and all expenditures made from reserve funds. Calculation of the deficit shall be performed on a cash basis of accounting.

The Board shall provide a copy of the budget and notice of the amount of the General Assessment for the following year for which it is to be effective to each Owner within at least thirty (30) days after said budget has been adopted. Such budget and assessment shall become effective unless disapproved at a meeting within thirty (30) days after receipt of the budget by Members holding at least a Majority of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligations to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meeting in Section 2.4 of the Bylaws, which petition must be presented to the Board within twenty (20) days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall provide a copy of the revised budget to each Owner at least thirty (30) days prior to it becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.3 Reserve Budget. The Board may, in its sole discretion, annually prepare a reserve budget, which takes into account the number and nature of replaceable assets within the Common Areas, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general budget reserve amounts sufficient to meet the projected needs of the Association. Each Owner acknowledges and consents that such funds held pursuant to the reserve budget are the exclusive property of the Association, and no Owner shall have any interest or right to any such funds. Additionally, the Association shall establish and maintain a force main sewer line reserve at all times in the amount not less than \$10,000.00 for purposes of funding all maintenance, replacements, repairs, or removal of the same as necessary to keep such force main sewer lines good condition as further set forth below in Article 15; however, as set forth herein, each Owner of a force main sewer Lot (Lots 10 through 27 as shown on the final Plat) shall bear the sole responsibility of the construction, maintenance, repairs and operation of the

force main sewer lines, pipes, pumps, meters, boxes, septic facilities and associated sewage equipment servicing the Owner's respective Lot, and located in, on or under such Lot.

8.4 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessments shall be levied and allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least a Majority of the total Class "A" votes and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the Bylaws, which petition must be presented to the Board within twenty (20) days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special assessment is approved.

8.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner(s) pursuant to special services which the Board may from time to time authorize to be offered to Owners and occupants, which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Lots; and

(c) to cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot(s), their agents, contractors, employees, licensees, invitees, or guests; and

(d) to cover all costs incurred to install, maintain, operate, repair, replace or remove the force main sewer and associated equipment located on any force main sewer Lot (Lots 10 through 27 as shown on the final Plat) in which the associated Owner has failed to install, maintain, operate, repair, replace or remove in accordance with such Owner's responsibilities as further stated herein Article 15 below.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

8.6 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of laws of the State of Alabama), late charges in such amount as the Board may establish (subject to the limitations of the laws of the State of Alabama), costs of collection and reasonable attorney's fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Declarant or the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall both be personally liable for assessments on such Lot due prior to such acquisition of title except as otherwise limited by the laws of the State of Alabama. Such unpaid assessments shall remain the personal obligation of the owner of the Lot prior to foreclosure, and, unless and until collected from such prior owner, shall be deemed to be Common Expense collectible from Owners of all Lots subject to assessment under Section 8.7, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to a Person other than a Builder or Declarant or the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. With respect to any Lot acquired by a Builder, assessments shall commence for such Lot upon the earlier of (a) actual occupancy of the Improvement on such Lot, excluding any period that such Improvement is being used exclusively as a model home; or (b) twelve (12) months after the date of conveyance of such Lot to the Builder. Notwithstanding anything contained herein to the contrary, a Builder holding any Lot for twelve (12) months after purchase shall be obligated to pay the annual assessment and capital contributions under Section 8.11 for such Lot, commencing on the twelfth (12th) month anniversary of such Builder's acquisition of the Lot. The first annual General Assessment levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot and shall be due and payable at closing or, with respect to such Builders, upon demand of the Association.

8.8 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9 Exempt Property. The following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Common Area pursuant to Section 5.1 and any model homes owned by Declarant;
- (b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility; and

(c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes.

8.10 Capitalization of Association. Upon acquisition of record to a Lot by the first Owner thereof other than the Declarant or a Builder or upon occupancy of Lot by a Person other than Declarant and upon each subsequent transfer of title to a Lot, a contribution shall be made by or on behalf of the Owner or occupant to the working capital of the Association in an amount equal to one-quarter (1/4) of the Lot's associated annual General Assessment (also may be referred to as an "Initiation Fee"). Such Initiation Fee shall be collected from the new Owner and paid to the Association at the time of the new Owner's closing transaction of the Lot. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot to the Owner thereof other than the Declarant or a Builder, or if the obligation to make the capital contribution arises by virtue of occupancy of a Lot by a Person other than a Builder or Declarant or by a Builder holding a Lot for twelve (12) months after acquisition pursuant to Section 8.8, the capital contribution shall be paid immediately upon demand by the Association. The Association may increase or decrease the amount of the capital contribution at any time and from time to time in the sole and absolute discretion of the Board. Any change in the amount of the capital contribution shall become effective unless disapproved at a meeting by Members holding at least a Majority of the total Class "A" voted and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any change in the amount of the capital contribution except on petition of the Members as provided for special meetings in Section 2.4 of the Bylaws, which petition must be presented to the Board within twenty (20) days after the date of the notice of such change in the amount of the capital contribution. Capital contributions shall be used by the Association in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents. Notwithstanding the foregoing, the contribution set forth in this Section 8.11 shall not be due and payable for the following transactions (the "Excepted Transactions"):

- (a) the transfer of a Lot, or portion thereof, to the spouse of a deceased Owner or to a direct lineal descendant of the deceased Owner;
- (b) the transfer of a Lot, or portion thereof, to a trust whose beneficiaries are solely the spouse and/or direct lineal descendants of the Owner;
- (c) the transfer of a Lot, or portion thereof, to an entity in which the Owner owns, directly or indirectly, not less than 50.1% of the ownership interests in such entity;
- (d) the transfer of a Lot, or portion thereof, to an entity that owns, directly or indirectly, not less than 50.1% of the ownership interests in Owner;
- (e) a Mortgagee acquiring title to a Lot, or portion thereof, pursuant to a foreclosure action or a conveyance in lieu of foreclosure;
- (f) any transfer for which the Declarant, in its sole discretion, waives in writing the required contribution; or
- (g) any transfer for which the Association, in its sole discretion, waives in writing the required contribution.

The transferring Owner shall give the Association at least thirty (30) days prior written notice of any transfer which is an Excepted Transaction with sufficient documentation to establish that the transfer is an Excepted Transaction.

If the transfer of a Lot, or portion thereof, is deemed in that particular instance to be an Excepted Transaction, the subsequent transfer of that Lot, or portion thereof, shall again be subject to the contribution unless such subsequent transfer independently qualifies as a separate Excepted Transaction in accordance with this Section.

8.11 Contributions by Declarant. In accordance with Section 8.2, the Declarant shall support the Association by funding operating deficits for so long as the Class "B" membership exists. At the sole election of Declarant, Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account for the Association, or from the working capital contributions collected at the sale of Lots, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

In the event a utility company or governmental authority requires a deposit to be made by the Declarant, and such deposit shall be refunded at some time in the future, then the Declarant (and not the Association) shall be entitled to receipt of the refunded funds. In addition, should construction payments made by the Declarant be refunded by a utility company or governmental authority at some time in the future, then the Declarant (and not the Association) shall be entitled to receipt of the refunded funds or the Association shall reimburse the Declarant for such payments prior to the time that the Owners other than the Declarant elect a majority of the members of the Board of Directors of the Association.

8.12 Assessment Roster and Certificate. A roster of the Owners, Lot numbers and assessments applicable thereto shall be kept in the office of the Association and shall be open to inspection by any Owner. If the Owner does not reside on the Lot, Owner is required to provide their current mailing address to the Association, together with the names of any persons residing on the Lot.

ARTICLE 9: DESIGN REVIEW

9.1. Intent. Each Owner, including all Builders, by accepting a deed or other instrument conveying any interest in any portion of the Property or effectuation of a contract to construct an Improvement within the Property, acknowledges that the Declarant, as owner and developer of the

Development, has a substantial interest in ensuring that the Improvements and landscaping within the Property enhance the Development, and do not impair Declarant's ability to market, sell or lease the Property. It is the intent of this Article 9 that the Development will be developed as a community with Improvements harmonious with surrounding structures and topography; and have landscaping and other site improvements consistent with the aesthetic quality of Cary Creek. Furthermore, it is also the intent of this Article 9 that all Improvements developed or constructed in Development shall be in conformance with all building, use and other restrictions imposed by this Declaration, any Design Guidelines and the Declarant from time to time, and that all Improvements are maintained in a manner consistent with the aesthetic quality of the Improvements as originally approved and constructed in accordance with this Article 9.

9.2. Design Review by Declarant. Declarant shall have exclusive authority to administer and enforce design controls for all Improvements in the Development and to review and act upon all applications for seeking approval of Improvements within the Development. Declarant's rights under this Article 9 shall continue during the Declarant's Control Period, unless Declarant earlier terminates its rights in an instrument recorded in the public records of the County. Declarant may designate one or more Persons to act on its behalf in reviewing applications. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

During the Declarant's Control Period, Declarant may from time to time delegate or assign all or any portion of its rights under this Article to the Design Review Board. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason.

9.3. Design Review Board. Upon Declarant's delegation, or upon expiration or termination of the Declarant's Control Period, the Design Review Board shall assume jurisdiction over the approval of any Improvements to be constructed, installed or placed on the Property, or any portion thereof, or any modifications thereto or alterations or replacements thereof. The members of the Design Review Board shall be appointed by the Declarant so long as Declarant has any rights under this Article 9. During such time, Declarant shall determine the number of members of the Design Review Board. Thereafter, the members of the Design Review Board shall be appointed by the Board and may be removed and replaced in the Board's discretion. During such time the Board shall determine the number of members of the Design Review Board, Members of the Design Review Board need not be Members of the Association.

9.4. Meetings of the Design Review Board. The Design Review Board shall meet from time to time as necessary to perform its duties hereunder. The Design Review Board may from time to time, by resolution unanimously adopted in writing, designate a representative(s) of the Design Review Board (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Board. In the absence of such designation, the vote of a majority of the members of the Design Review Board shall constitute an act of the Design Review Board. So long as Declarant has any rights under this Article 9, the Design Review Board shall notify Declarant of any action to be taken under this Article 9. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any action the Design Review Board takes; provided, Declarant's right to veto must be exercised within ten (10) Business Days after it receives notice of the Design Review Board's action. The party submitting the plans for approval shall not be notified of the Design Review Board's approval or disapproval until after Declarant's right to veto has been exercised or has expired. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Design Review Board or the Declarant's rights under this Article 9 terminate, the Association shall have no jurisdiction over the approval of any Improvements to be constructed, installed or placed on the Property, or any portion thereof, or any modifications thereto or alterations or replacements thereof.

9.5. Review of Proposed Development. No Improvements shall be constructed, installed or placed upon any portion of the Property; nor shall any modification thereto or alteration or modification thereof occur; nor shall any landscaping or other site improvement (including, without limitation, staking, clearing, excavation, grading and other site work) occur; nor shall any permits, licenses or approvals be applied for until the site plan and all plans and specifications showing the foregoing, including, without limitation, the proposed design, nature, kind, shape, size, color, materials and location of the same shall have been submitted to and approved in writing by the Design Review Board, or the Declarant, if the Declarant has not delegated such right in writing to the Design Review Board. Prior to making any application to the City or any other Government Authorities for approval of any development plan for any portion of the Property, the Owner or Builder shall submit to the Design Review Board, or the Declarant, if the Declarant has not delegated such right in writing to the Design Review Board, such documents and materials as may be required by the Design Review Board or the Declarant, if the Declarant has not delegated such right in writing to the Design Review Board (the "Submittals"), including, but not limited to site analysis, schematic landscape plan, floor plans and exterior elevations, color and material samples, and foundation and framing plan. Each Owner and Builder agrees that no grading, site work, planting or removal of plants, trees, shrubs or other landscaping materials, or construction, installation or modification of any Improvements on the Property, or a portion thereof (collectively, the "Work") shall be commenced on such Owner or Builder's Lot, unless and until they have received written approval for such Work pursuant to this Article 9 either from the Declarant, or if applicable, the Design Review Board. All Submittals submitted by an Owner or Builder shall comply with:

9.5.1. Development Guidelines. Any site development guidelines stated herein or which may be promulgated;

9.5.2. Covenants, Conditions, & Restrictions or "CC&R". All other recorded covenants, restrictions and easements applicable to the Property, including, but not limited to, the Governing Documents;

9.5.3. City of Auburn. All requirements of the City of Auburn, Alabama;

9.5.4. Other. All other applicable laws and permits.

9.5.5. Design Review Manual. All requirements of the Design Review Manual, as may be amended from time to time.

9.5.6 Rules and Regulations as may be promulgated by Declarant, and upon termination of Declarant's control by the Association.

9.6. Design Review Manual. The Declarant has prepared a Design Review Manual (which may be amended from time to time in the sole and absolute discretion of the Declarant or the Design Review Board, as applicable), which sets forth acceptable design, construction and maintenance standards for the Property and review procedures. The Design Review Manual shall be used as a guideline by the Owners and Builders in its selection of concepts, designs, materials and other specifications for construction within the Development and shall in no way preclude the Declarant's or the Design Review Board's, as applicable, right to disapprove any Submittals for any reason.

9.7. Approval of Submittals. The Declarant or the Design Review Board, as applicable, shall accept, reject or accept with conditions, such proposed Submittals, in its sole and absolute discretion. The Declarant or the Design Review Board, as applicable, may condition its approval of the Submittals as it deems appropriate, may charge a fee for its review of the Submittals as provided for in the Design Review

Manual, and may require submission of additional or revised Submittals or other information prior to giving its approval or disapproval. The Declarant or the Design Review Board, as applicable, may postpone review of any Submittals until it has received all required plans and specifications, and any fee, which it may have established. Fees for review of the Submittals may include the reasonable costs incurred in having any Submittals reviewed by architects, engineers or other professionals. The Declarant or Design Review Board, as applicable, may employ architects, engineers or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's operating budget as a Common Expense. After receipt of all Submittals and fees, the Declarant or the Design Review Board, as applicable, shall, within a reasonable time thereafter, approve or reject any such Submittal in writing, as provided in the Design Review Manual. The approval by the Declarant or the Design Review Board, as applicable, of any Submittals, or any other matter requiring the approval, consent, or other action of the Declarant or the Design Review Board, as applicable, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar proposal which may subsequently be submitted for approval or consent. Unless otherwise provided in the Design Review Manual, or as part of approval of the Submittal, construction in accordance with the approved plans shall commence within four (4) months of their final approval. As used in this Section, construction is deemed to have commenced when earth has been moved in association with the Submittal. If construction does not commence within such four-month period, unless otherwise provided in the Design Review Manual or approved in the Submittal, approval shall be deemed withdrawn and the Owner or Builder must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. Except as otherwise (i) agreed to by the Declarant and a Builder pursuant to a separate written instrument, in connection with the conveyance of certain Lot(s) by Declarant directly to such Builder, (ii) specified in the notice of approval or the Design Review Manual, or (iii) granted by the Declarant or the Design Review Board, as applicable, in its sole and absolute discretion, in favor of an Owner or Builder of an extension, all Work shall be completed within one (1) year of commencement of such Work. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant or any aggrieved Owner. The Declarant or the Design Review Board, as applicable, may, in its sole and absolute discretion, exempt certain activities from the application and approval requirements of this Article 9, provided such activities are undertaken in strict compliance with the requirements of such exemption. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application, if so approved by the Declarant or Design Review Board, as applicable. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

9.8. Inspection of Property. The Declarant or the Design Review Board, as applicable, shall have the right to enter upon and inspect any portion of the Property at any time prior to, during and after the construction or alteration of any work to assure compliance with this Article 9.

9.8.1. Noncompliance. If, during any inspection, whether interim, final or thereafter, the Declarant or the Design Review Board, as applicable, finds that the Work is or was not performed, or is not being or was not constructed in substantial compliance with the approved Submittals; or if during subsequent inspections the Declarant or the Design Review Board, as applicable, notes that previously inspected Work is not being maintained in compliance with this Article 9, then the Declarant or the Design Review Board, as applicable, shall notify the Owner or Builder and the Board in writing of such noncompliance. The notice shall specify the particulars of noncompliance, and shall demand that the Owner or Builder immediately bring such Work into compliance.

9.8.2. Association Action. If correction of the noncompliance is not commenced within fifteen (15) days of such notice, or if such correction is not continued thereafter in an expeditious manner until completion, the Declarant or the Association, as applicable, shall be entitled to seek legal action to force the Owner or Builder, or any grantee of the Owner at its own expense, to complete the construction of the Work substantially in accordance with the Submittals.

Should the construction of the Work not be completed in a timely manner as determined by the Declarant or the Design Review Board, as applicable, or should the correction of the noncompliance not be commenced within fifteen (15) days after notice, and continued thereafter in an expeditious manner until completion, or should the construction of the Work not be completed substantially in accordance with the Submittals approved by the Declarant or the Design Review Board, as applicable, then the Association shall also have the right to enter upon the Lot and make such corrections or modifications as are necessary to cause the Work to be completed substantially in accordance with the approved Submittals, or make such corrections or modifications as are necessary to correct any condition of the Work on the Lot which is detracting from the value or aesthetics of the Property, Development, and/or adjacent Lots, or if under the circumstances it is more practical to remove incomplete Work, remove any such incomplete Work on the Lot. The cost of any such corrections, modifications or removal shall remain the obligation of the Owner or if applicable, the Builder. If such costs are not promptly reimbursed to the Declarant or the Association, as applicable, the Association shall levy a Specific Assessment against the Lot as provided in Article 8 for such costs, together with interest at the maximum rate allowed by law. In addition, the Association may levy such fines as it may deem appropriate, in its sole and absolute discretion for violation of the provisions of this Article 9 per day for each day a violation continues after notification by either the Declarant or the Association. In addition, in the event a violation of this Article 9 occurs by an Owner or Builder, neither the Owner nor the Builder causing such continuing violation to occur shall be entitled to make Submittals to the Declarant or the Association, as applicable, for approvals required under this Article 9 pertaining to the Work in violation, or for any new or existing Work not in violation, until all continuing violations of said Owner or Builder have been cured.

9.8.3. Nonwaiver. If, for any reason, the Declarant or the Design Review Board, as applicable, fails to notify an Owner or Builder of any noncompliance, such failure of notice of noncompliance will not relieve the Owner or Builder from the requirement to comply with this Declaration.

9.8.4. Certificate of Approval. Upon completion of the Work, or upon correction of deficiencies cited by the Declarant or the Design Review Board, as applicable, the Owner or Builder shall notify the Declarant or the Design Review Board, as applicable, in writing to inspect the Work. The Declarant or the Design Review Board, as applicable, shall, within fifteen (15) Business Days of receiving such notice, make an inspection (interim or final as the case may be) to verify correction or completion of the construction of the Work in accordance with the approved Submittals. If the Declarant or the Design Review Board, as applicable, determines that the Work has been constructed in accordance with the approved Submittals, the Association shall issue to the Owner or Builder a "Certificate of Approval", executed by an officer of the Association. Until such time as a Certificate of Approval is issued, the current Owner or Builder and all future Owners of the Lot shall be obligated to complete the Work in accordance with the approved Submittals. The issuance of a Certificate of Approval shall be conclusive evidence that the Work has been completed in accordance with the approved Submittals, but shall not excuse the Owner or Builder from the requirement that future alterations or changes to the Work be submitted to and approved by the Declarant or the Design Review Board, as applicable.

9.8.5. Alteration of Existing Work and Improvements. Any Owner or Builder who makes exterior additions to, or changes or alterations to, any Work, or constructs any new work on the Lot after the initial construction and issuance of a Certificate of Approval as described in Section 9.8.4, must complete all such work (the "Alterations") in a timely manner and substantially in accordance with all Submittals approved by the Declarant or the Design Review Board, as applicable. The

Owner or Builder shall notify the Design Review Board, as applicable, in writing when the Alterations have been completed and the Declarant or the Design Review Board, as applicable, shall, within fifteen (15) Business Days after receiving such notice, cause an inspection to be made to verify the completion of construction of the Alterations in accordance with the approved Submittals.

Should the Declarant or the Design Review Board, as applicable, determine that the Alterations have not been completed substantially in accordance with the approved Submittals, the Declarant or the Design Review Board, as applicable, shall notify the Owner in writing citing deficiencies and the Owner or Builder shall, within fifteen (15) days after receipt of notice, commence correction of the deficiencies, and continue in an expeditious manner until all deficiencies have been corrected. The Association shall be entitled to issue a notice of noncompliance setting forth that the Owner or Builder has not completed the Alterations substantially in accordance with approved Submittals and that the Declarant or the Design Review Board, as applicable, has the right to seek legal action to force the Owner or Builder, or any grantee of the Owner or Builder, to complete the correction of the Alterations substantially in accordance with the Submittals (the “Notice of Noncompliance”). The Notice of Noncompliance shall contain the legal description of the Lot. Once issued to the Owner or Builder, the Notice of Noncompliance shall constitute constructive notice to all potential purchasers from the Owner or Builder that the Declarant or the Design Review Board, as applicable, has the right to force completion of the Alterations against the Owner or Builder, or any grantee of the Owner or Builder.

Once the Declarant or the Design Review Board, as applicable, determines that the Alterations have been completed substantially in accordance with the approved Submittals, the Association shall issue to the Owner a written “Certificate of Approval”, which shall make reference to the issued “Notice of Noncompliance”, and shall be executed by an officer of the Association. The issuance of the Certificate of Approval in this instance shall be conclusive evidence that the Alterations as approved by the Declarant or the Design Review Board, as applicable, have been completed, but shall not excuse the Owner or Builder from the requirement that future changes, modifications or alterations be submitted to and approved by the Declarant or the Design Review Board, as applicable.

9.8.6. Subsequent “Certificate of Approval” Not Necessary Unless “Notice of Noncompliance” Issued. Notwithstanding anything herein to the contrary, the provisions of Section 9.8.4 shall be applicable to initial construction of the Work on the Lot. After the initial construction and the issuance of a “Certificate of Approval”, it will not be necessary for an Owner or Builder to obtain a “Certificate of Approval” for any Alterations unless a “Notice of Noncompliance” is issued in accordance with Section 9.8.5. Subsequent purchasers of Work must only determine that one (1) “Certificate of Approval” has been recorded unless a “Notice of Noncompliance” is also issued.

9.9. Non-liability for Actions. Neither the Design Review Board nor the Declarant, nor the Association (nor any of their members, officers, directors, employees, or its independent contractors, and duly authorized representatives) shall be liable to any Person for any loss, damage, injury or inconvenience arising out of or in any way connected with the performance or nonperformance of the Declarant’s or the Design Review Board’s, as applicable, duties. Neither the Declarant, the Design Review Board nor the Association (nor any of their members, officers, directors, employees, and its independent contractors, and duly authorized representatives) shall have any responsibility for the adequacy of the approved Submittals, or be subject to any liability to the Owner or Builder of any Parcel or Lot or to any third parties in the event such approved Submittals or the design represented thereby, is deficient in any manner, including without limitation, any violation of laws or any defect in the design, structural integrity, soundness or construction of any building, structure or other aspect of the Work constructed, erected, placed or installed pursuant to

or in accordance with the approved Submittals. Plans, specifications and other materials submitted to and approved by the Declarant or the Design Review Board, as applicable, are reviewed and approved on the basis of aesthetic considerations only, and shall not be reviewed or approved for their compliance with any applicable laws, including, without limitation, any applicable building or zoning laws, ordinances, rules or regulations. An Owner, Builder, or any third party, shall not be entitled to and shall not bring any action, proceeding or suit against the Declarant, the Design Review Board, the Association (nor any of their members, officers, directors, employees, and duly authorized representatives), any Member of the Association, any member of the Board, or any member of the Design Review Board, for the purpose of recovering any such damages or other relief in connection with the approval of such Submittals.

9.10. Expenses. The Owner or Builder of a Lot shall be solely responsible for all costs, expenses, fees and charges associated or incurred in connection with planning and construction of any Work to any Lot, whether foreseen or unforeseen, and neither the Declarant, the Design Review Board nor the Association (nor any of their members, officers, directors, employees, and duly authorized representatives) shall have any responsibility or liability therefor.

9.11. Variance. The Declarant or the Design Review Board, as applicable, in its sole and absolute discretion may authorize variances from compliance with any of the provisions of this Article 9 or the Design Review Manual when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations justify a variance, however, under no circumstances shall the Declarant or the Design Review Board, as applicable, be obligated to grant variances. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or in conflict with any government code or regulation, or (c) estop the Declarant or the Design Review Board, as appropriate, from denying a variance in other circumstances. If a variance is granted, no violation of this Article 9 shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Article 9 for any purpose except as to the particular Lot and particular provisions covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot including, but not limited to, zoning ordinances and set-back lines or requirements imposed by any governmental or municipal authority. For purposes of this Section, the inability to obtain approval of any Government Authorities, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.12. Inconvenience to Owners. Each Owner and Builder acknowledges that until construction of Work is completed on each Lot, and thereafter during periods of Alteration to Work on a Lot, construction activity will take place within the Property. The Declarant and each applicable Owner and Builder covenants and agrees to use reasonable efforts to limit the inconvenience to the other Owners and Builders resulting from such construction activity. All Owners and Builders covenant and agree to refrain from interfering with such construction activity.

9.13 Design Standards & Restrictions. Unless otherwise amended or waived by the Declarant, and subsequent to the Declarant's control the Board, the design standards and restrictions as defined in the Cary Creek Design Review Manual shall apply to all Lots, Dwellings, and Improvements within the Properties to which all Owners, Builders, tenants, guests, and invitees shall be bound. Furthermore, the following provisions shall apply to all Lots, Dwellings, and Improvements within the Properties to which all Owners, Builders, tenants, guests, and invitees:

9.13.1 Underground Utilities.

(a) All utility lines, pipes, conduits, and wiring for electrical; gas, telephone, water, sewer, cable television, security, and any other utility service for any portion of the Properties shall be installed and maintained below ground.

(b) No Owner, Builder or tenant shall erect, or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the DRB. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables.

(c) In order to permit installation of underground electric service no Owner, Builder, or tenant shall commence construction of any Improvement or structure until such Owner, Builder, or tenant (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral, and (3) otherwise complies with the applicable rules and regulations for underground distribution on file with and approved by the Alabama Public Service Commission. If required by the electric utility, such electric utility, its successors and assigns, may retain title to the underground service lateral and outdoor metering trough or power box (exclusive of circuit breakers), and said service entrance facilities provided by such utility will remain personal property belonging to such utility, its successors and assigns, in accordance with the Alabama Public Service Commission.

9.13.2 Building Setbacks.

(a) Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling or Improvement to be constructed thereon shall be set forth on the site development plan for such Lot which must be approved by the DRB. Notwithstanding anything provided to the contrary, the DRB may require building setback requirements different from those described in below, including building setbacks which are greater than those specified in below.

(b) Subject to the provisions below, minimum and/or maximum building setback lines for all structures shall be established either (i) by the City of Auburn, Alabama Zoning Ordinance, (ii) the DRB, (iii) or the recorded Subdivision Plat, or (iv) the deed from Declarant to the Owner or Builder.

(c) No Dwellings, Improvements, or structures shall be built within the setback areas established in accordance with any of the procedures specified in the Section above. All porches, terraces, decks, and patios shall be deemed a part of the structures for the purposes of determining building setback areas pursuant to this Section.

9.14 Declarant's Exemption. The Declarant shall be exempt from the provisions of this Article 9. The Declarant shall not be obligated to obtain Design Review Board approval for any Work, or Alterations, or for any other matter which may require Design Review Board or any other approval under this Article 9, which the Declarant may elect to make at any time on the Property.

9.15 Enforcement. Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee or other invitee of an Owner or Builder who fails to comply with the terms and provisions of this Article 9 from continuing or performing any further activities in the Property, or from seeking or obtaining any approvals for any subsequent Submittals. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article 9 and the decisions of the reviewing entities under this Article 9. The Declarant shall have the right, but not the obligation, to demand that the Association enforce the provisions of this Article 9. In the event that the Association fails to take enforcement action within thirty (30) days after receipt of a written demand from Declarant identifying the violator and specifying the nature of the violation, then the Association shall reimburse the Declarant for all costs reasonably incurred by the Declarant in taking enforcement action with respect to such violation if Declarant prevails in such action.

ARTICLE 10: USE RESTRICTIONS

10.1 General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Declarant and/or Builders, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B", offices for any property manager retained by the Association, business offices for the Declarant or the Association and related parking facilities) consistent with this Declaration and any Supplemental Declaration.

10.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Declarant or the Board (and during the Development Period, with the consent of the Declarant) may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and during the Development Period, the written consent of the Declarant.

10.3 Occupants Bound. All provisions of the Declaration, Bylaws, and any of rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4 Leasing. In order to protect the equity of the individual Owners and to carry out the purpose of preserving the character of the Properties as a homogenous residential community of Owner-occupied homes, no Owner may lease his or her Lot, except in accordance with the laws of the State of Alama and in accordance with the regulations and ordinances of the City of Auburn, Alabama, and such lease shall be for minimum term of six (6) months.

The the Declarant or the Board (and during the Development Period, with the consent of the Declarant) shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with this Declaration and the Bylaws, in order to enforce the provisions of this Section. Any transaction which does not comply with this Section shall be voidable at the option of the Board.

10.5 Residential Use. Lots may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long

as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees of door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. There shall be no solicitation by any person in the Properties for charity, food delivery or for any cause whatsoever.

No other business or trade of similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provisions of goods or services to person other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot in accord with Section 10.4 shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

10.6 Occupancy of Unfinished Dwellings. No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed and obtainment of certificate of occupancy issued by the local governing authority.

10.7 Vehicles.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Lots unless otherwise approved by the DRB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on pathways, sidewalks, or unpaved Common Area except for public safety vehicles authorized by the Board. In addition, no vehicle shall block the sidewalks.

(b) No recreational vehicles shall be permitted to be parked or stored at any place on any Lot except for inside a closed garage. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, campers, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision shall be considered a nuisance and may be removed from the Properties.

(c) No commercial vehicles shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages. The term "commercial vehicle" shall include all automobiles,

trucks and vehicular equipment, including station wagons, which bear signs or shall have printed on the same some reference to any commercial undertaking or enterprise. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services.

(d) Service and delivery vehicles may be parked in the Properties during hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(e) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Governing Documents.

10.8 Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association. With the prior written approval of the Declarant or the Board of Directors (and during the Development Period, with the consent of the Declarant), and subject to any restrictions imposed by the Declarant or the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Declarant or the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves/itself and his/her/their/its guests, occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees. The Association shall determine an appropriate fee for reservation and use of the Common Areas and may request execution of a liability waiver prior to approval of use of the Common Areas.

10.9 Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of domesticated dogs and cats, or other usual and common, indoor household pets not to exceed three (3) of any one type in number. The keeping of a dog or other domestic pet is not a right, but a conditional license which may be revoked as set forth below. Pets may not be tied outside without constant supervision. "Usual and common household pets" include birds and fish, but do not include wild, exotic or bizarre animals such as, but not limited to, pigs, chickens, snakes, reptiles, rodents or animals of similar import, or as further defined by the DRB or Declarant. No animals shall be kept, bred or maintained for commercial purposes without prior written Declarant or Board approval. All permitted pets shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking, moaning, crowing or other acts. All Owners or occupants must strictly comply with all applicable laws and ordinances concerning pets. Noncompliance may result in the pick-up of animals by the appropriate governmental authorities. The owners of the pet shall be responsible for all of the pet's actions. Pets shall not be permitted in any lake, pond or other body of water, within any Private Amenity except in compliance with conditions established by the owner of such Private Amenity. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, then this conditional license may be terminated by the Board and such animal shall be removed from the Properties. In the event any of the conditions set forth in this Section 10.9 are violated, then this conditional license may be terminated by the Board, in its sole discretion, and such animal shall be removed from the Property. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3. This provision shall not be construed to interfere with any provision under the Americans with Disabilities Act or any similar applicable federal, state or local law, ordinance or regulation.

10.10 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his/her/its Lot(s). No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot(s) to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might, in the sole discretion of the Board, disturb the peace, quiet, safety, comfort, or serenity or the occupants surrounding the property.

No noxious or offensive activity shall be conducted within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. **There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Furthermore, no farming activities and harvesting activities, including raised garden beds or similar and rain barrels or similar, may be allowed within the Property unless completely screened from any public street or adjacent property. All such activity shall be approved in writing by the DRB.** Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the DRB, shall be located, installed or maintained upon the exterior of any Lot unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.11 Storage of Materials, Garbage and Dumping. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any pond, lake, drainage ditch or stream within the Properties or on any Common Area, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff. Each Owner shall maintain his/her/its Lot(s) in a neat and orderly condition at all times and also throughout the construction of the dwelling or other approved improvements, and not allow trash or debris from any activities thereon to be carried by the wind, water or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and all other portions of the Properties clear of silt, construction materials and trash from any activities at all times. Trash and debris during construction of a Dwelling or other approved Improvements shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from the Lot(s) and shall not be buried or covered on the Lot(s). Any Lot(s) on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by Declarant in preparation for special events.

10.12 Combustible Liquid. There shall be no storage of gasoline, kerosene, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn equipment, grills, and similar tools or equipment and except as may be approved in writing by the DRB. Furthermore, any and all fuel tanks/containers as permitted herein, must be properly screened or buried. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. No exterior

fires whatsoever; except fire pits and barbecue fires contained in proper receptacles, shall be permitted within the Properties (except as permitted by the applicable governmental authority during construction).

10.13 Guns. The discharge of firearms on the Properties is prohibited. The term “firearms” includes without limitation “B-B” guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.14 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant’s prior written consent during the Development Period, and the prior written consent of the DRB thereafter. In addition, no dwelling shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Lots or other portion of the Properties which it owns without the consent of any Owner or mortgagee holding a mortgage on any Lot. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.15 Sight Distance at Intersections. All Property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge, shrub or other obstruction shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.16 Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Contractor, Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on his/her/its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from his/her/its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties or any Private Amenities with excessive water flow from his/her/its Lot(s). Owner shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(d) Use of any areas designated as “drainage easement areas” on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The

exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(f) All Persons shall comply with any and all applicable erosion control ordinances and regulations in construction of improvements on any Lot and in conducting any activity within non-disturbance buffer zones.

(g) All Persons shall comply with any and all applicable state or county ground disturbance laws.

10.17 Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any ponds, or other body of water within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating Common Areas.

10.18 Streams. No streams which run across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Declarant or the Board, except that the Declarant shall have such rights as provided in Article 11.

10.19 Lakes, Ponds and Other Water Bodies. All lakes, ponds, and streams within the Properties, if any, shall be used only in accordance with the rules and regulations adopted by the Declarant or the Board. Swimming, boating, fishing, and other active uses of lakes, ponds, or other bodies of water within the Properties shall be prohibited, unless the lakes, ponds, other bodies of water are part of the Private Amenities and the owners of such Private Amenities allows such use. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or other bodies of water within the Properties. Lakes, detention or retention ponds, or other wetlands in the Properties, may be designed as water management areas and are not necessarily designed as recreational or aesthetic features. Due to fluctuation in ground water elevations within the immediate area, the water level of lakes and other areas will rise and fall. Neither the Declarant nor the Association shall be responsible for maintaining, increasing or decreasing the water level within any of the lakes or other areas or removing vegetation from any of the lakes or other areas.

10.20 Wetlands. All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. All proposed fill and/or excavation within delineated wetlands on an Owner's Lot shall require compensatory mitigation prior to gaining permit approval and will need to be coordinated with the approved wetland mitigation plan for the Properties. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successor's assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

10.21 Screen Enclosures. No screen enclosures may be constructed on any Lot except as approved by the DRB and after all necessary approvals and permits have been obtained from the appropriate local governmental agencies (if applicable). No screen enclosure may be constructed in any designated building setback area on any Lot.

ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, and the owners of any Private Amenities, and their successors-in-title.

11.1 Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots, between each Lot and any adjacent Common Area, between Common Area and any adjacent Private Amenity, and between each Lot and any adjacent Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity systems, lines and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television/satellite service provider or any utility sub-metering company, the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

Except as otherwise approved by the Declarant, or the Board, all utilities, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B".

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 Easement for Slope Control Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, the owner of any Private Amenity and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties or any Private Amenity;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties or any Private Amenity.

11.4 Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, the owners of Private Amenities, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.5 Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police

officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.6 Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Lot but excluding the interior of any residential dwelling, to (i) perform its maintenance responsibilities under Section 5.1, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association may also enter a Lot, excluding the interior of any residential dwelling, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorney's fees, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 5.2.

11.7 Easements for Pond Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the Association the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the ponds, streams, and wetlands located within the Common Areas to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Common Area or any Private Amenity; (b) draw water from such sources for purposes or irrigation; (e) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant rights and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within twenty (20) feet of ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the ponds, streams, and wetlands within the Common Area; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials upon such areas. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

11.8 Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and any improvement which contributes to the lateral support of another portion of the Common Area, of another Lot, or of a Private Amenity for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.9 Easements for Private Amenities. Declarant reserves, creates, establishes, promulgates and declares for the owners of any Private Amenity the following non-exclusive, perpetual, reciprocal, appurtenant easements which shall benefit the Private Amenity:

(a) The owner of any Private Amenity within or adjacent to any portion of the Properties, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair and replacement of its Private Amenity.

(b) There is hereby established for the benefit of the owner of any of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and non-exclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenities and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after special events, tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenities have insufficient parking to accommodate such vehicles. The Private Amenities, their guests, invitees, employees, agents, contractors and designees shall have the right to be admitted through any gate, after receipt of clearance from the Private Amenity, without the payment of a fee or charge for ingress or egress, provided that the number of such persons permitted entrance to the Properties at any one time may be limited or otherwise restricted to the reasonable number of parking spaces available at the Private Amenity in order to avoid congestion and the unauthorized parking of vehicles.

(c) Any portion of the Properties immediately adjacent to the Private Amenities are hereby burdened with a non-exclusive easement in favor of the adjacent Private Amenities for overspray of water from the irrigation system serving the Private Amenities, and each Owner acknowledges that the water used for such irrigation may be untreated water. Under no circumstances shall the Association or the owner(s) of the Private Amenities be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Private Amenities, an easement and all rights to draw water from the lakes and ponds within or adjacent to the Properties for purposes of irrigation of the Private Amenities and for access to and the right to enter upon the lakes and ponds within or adjacent to the Properties, if any, for installation and maintenance of any irrigation systems.

(e) Notwithstanding anything contained herein to the contrary, the easements described hereinabove may not be amended or extinguished without the written consent of the owner(s) of the Private Amenities.

11.10 Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.11 Rights to Storm Water Runoff Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.12 Easement for Greenbelt &/or Blueway Maintenance.

(a) Declarant reserves for itself and its successors, assigns, and designees the non-exclusive right and easement, but not the obligation, to enter upon greenbelts, blueways, buffer zones and nondisturbance areas located within the Common Areas to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be automatically transferred to the Association at the expiration of the Development Period or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of greenbelt, blueway, buffer zone or nondisturbance area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over, or across greenbelts, blueways, buffer zones and nondisturbance areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with Article 9 herein above. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.13 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, the Association, their successors or assigns, including without limitation the owner(s) of any Private Amenities, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE 12: MORTGAGEE PROVISIONS

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

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in fine payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

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

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

12.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5 Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Alabama law for any of the acts set out in this Article.

ARTICLE 13: DECLARANT'S RIGHTS

13.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots and/or other Lots, projects and properties owned or controlled by the Declarant or affiliates of the Declarant, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive days. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model Lots, tents, sales offices, sales centers and related parking facilities (hereinafter collectively referred to as the "Sales Offices"). During the Development Period, Owners may be excluded from use of all or a portion of Sales Offices in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of the Sales Offices. In addition, the Declarant, affiliates of Declarant, and Builders authorized by Declarant may use the Sales Offices to promote and sell other Lots, projects and properties, owned or controlled by the Declarant or affiliates of the Declarant.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

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

13.4 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, Bylaws or Articles.

13.5 Right of the Declarant to Disapprove Actions. Until the Declarant no longer owns any portion of the Properties or has the right to annex property unilaterally pursuant to Section 7.1, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any

committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Governing Documents:

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, email or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the Bylaws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE 14: PRIVATE AMENITIES

14.1 General. Private Amenities shall not be a portion of the Common Areas, and neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the

Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users; and to require the payment of a purchase price, membership contribution, initiation fee, membership deposit, dues, use charges and other charges for use privileges; and to change, eliminate or cease operation of any or all of the facilities; and to reserve use rights; and to terminate use rights altogether, subject to the terms of any written agreements.

14.2 Conveyance of Private Amenities. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator, and (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity. No consent of the Association or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

14.3 View Impairment. Neither the Declarant, the Association, nor the owner of any Private Amenity, guarantees or represents that any view over and across any Private Amenity for Lots will be preserved without impairment. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view of a Private Amenity which the Lot may enjoy as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Private Amenity.

14.4 Cost Sharing Agreements. The Declarant or the Association may enter into a contractual arrangement or Cost Sharing Agreement with the owner of any Private Amenity obligating the Private Amenity or the Association to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance in accordance with Section 5.4.

14.5 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the owner(s) of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

14.6 Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate use restrictions or rules affecting activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenities affected thereby.

ARTICLE 15: FORCE MAIN SEWER

In order to properly establish and maintain sewer services in the Subdivision, certain Lots, as further identified on the Subdivision Plat, shall require private force main sewer lines to adequately service such Lots and ultimately effectuate the necessary sewage services of the Subdivision. As such, Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual force main sewer easements set forth herein for the enjoyment of the Declarant, the Association, and the Owners, and their successors-in-title. Such easement locations shall also be illustrated on the Subdivision Plat.

15.1 Easements for Force Main Sewer Line & Associated Equipment.

(a) Declarant reserves, creates, establishes, promulgates and declares nonexclusive, perpetual, reciprocal, appurtenant easement, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties as shown on the Subdivision Plat (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing a force main sewer line, including, but not limited to, pipes, lines, pumps, meters, boxes, septic facilities and associated sewage equipment; and an easement for access of vehicular and pedestrian traffic over, across, and through the such easement areas, as necessary, to exercise the easements described above

Declarant may assign to the local sewer service provider the easements set forth herein across the Properties for ingress, egress, installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing a force main sewer line, including, but not limited to, pipes, lines, pumps, meters, boxes, septic facilities and associated sewage equipment.

Except as otherwise approved by the Declarant, or the Board, all the force sewer main, whether in streets, rights-of-way, private utility easement or other utility easements, shall be installed and maintained underground to the extent possible, provided, however, that the sewer treatment facilities and control panels for may be installed and maintained above ground as approved by the Declarant or the Board.

(b) Any damage to a Lot resulting from the exercise of the easements described in subsection (a) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this easement. The exercise of this easement shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

15.2 Association's Responsibility.

(a) The Declarant, and subsequent to the Declarant's Control Period, the Association, shall install, construct, monitor, maintain, replace, repair, operate, remove and keep in good condition, the force main sewer lines located in or under the private utility easement adjacent to the respective Lots (Lots 10 through 27 as shown on final Plat).

(b) The Declarant, and subsequent to the Declarant's Control Period, the Association, may be relieved of all or any portion of its maintenance responsibilities herein to the extent that it is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the force main sewer lines located in the private utility easement shall be a Common Expense to be allocated among all Lots as part of the General Assessment. As such, the Association shall establish and maintain a force main sewer line reserve at all times in the amount not less than \$10,000.00 for purposes of funding all maintenance, replacements, repairs, or removal of the same as necessary to keep such force main sewer lines good condition; however, as set forth herein, each Owner of a force main sewer Lot (Lots 10 through 27 as shown on the final Plat) shall bear the sole responsibility of the construction, maintenance, repairs and operation of the force main sewer lines, pipes, pumps, meters, boxes, septic facilities and associated sewage equipment servicing the Owner's respective Lot, and located in, on or under such Lot.

(d) In the event that the Association fails to properly perform its maintenance responsibilities hereunder, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

(e) In the event an Owner fails its responsibilities as described below in Section 15.3, then the Association may, but shall not be obligated to, perform such Owner responsibilities described in below in Section 15.3, and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.5(c). However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association hereunder shall not constitute a trespass.

15.3 Owner's Responsibility.

(a) Each Owner or Builder of a force main sewer Lot (Lots 10 to 27 as shown on Final Plat) shall install, construct, monitor, maintain, replace, repair, operate, remove and keep in good condition, the force main sewer lines, pipes, pumps, meters, boxes, septic facilities and associated sewage equipment servicing such Lot and located in, on or under such Lot and all the way to the sewer valve box located in the private utility easement, in good working order and in a manner consistent with the Community-Wide Standard and all Governing Documents, and per the low pressure sanitary sewer box details, unless such maintenance responsibility is otherwise assumed or assigned by the Association.

(b) All costs associated with the installation, maintenance, operation, repair, replacement or removal of the force main sewer lines, pipes, pumps, meters, boxes, septic facilities and associated sewage equipment servicing such Lot and located in, on or under such Lot and all the way to the sewer valve box located in the private utility easement, shall be the sole responsibility of the respective Owner or Builder of such Lot.

(c) In addition to any other enforcement rights, if an Owner or Builder fails to properly perform his or her force main sewer and associated equipment installation, maintenance, operation, repair, replacement or removal responsibilities as stated herein, the Declarant or Association may perform such responsibilities and assess all costs and expenses incurred by the Declarant or Association against the Lot and the Owner or Builder as a Specific Assessment and in accordance with the terms herein. The Declarant or Association shall afford the Owner or Builder reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry under this Section shall not constitute a trespass.

(d) In the event an Owner fails in this regard, then the Association may, but shall not be obligated to, perform such Owner responsibilities described in this Section 15.3, and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.5(c). However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association hereunder shall not constitute a trespass.

ARTICLE 16: GENERAL PROVISIONS

16.1 Duration.

(a) Unless terminated as provided in Section 16.1(b), the provisions of this Declaration shall run with, bind the Properties and remain in effect perpetually to the extent permitted by law; provided, however, so long as Alabama law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for so long as permitted by Alabama law. To the extent that Alabama law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of any member of the Declarant.

(b) Unless otherwise provided by Alabama law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of one hundred percent (100%) of the total Lots within the Properties, which instrument is recorded in the Public Records; provided however, regardless of the provisions of Alabama law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After thirty (30) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least eighty percent (80%) of the Lots and constituting at least eighty percent (80%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of the Act and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.2 Amendment.

(a) By Declarant. Until termination of the Class “B” membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lot; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the Act and conforming this Declaration to any mandatory provisions thereof; (ii) to correct scrivener’s errors and other mistakes of fact; and (iii) for the purposes of bringing any provision contained herein into compliance with any other federal or state laws; provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding a Majority of the total Class “A” votes in the Association, and, during the Development Period, the written consent of the Declarant.

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

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class “B” Member without the written consent of the Declarant, the Class “B” Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

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

16.4 Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become nonproductive or unwarranted, then the parties may proceed with litigation.

16.5 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding a Majority of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

16.6 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the ownership estate of individual Lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual Lot Owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

16.7 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the ownership estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

16.8 Cumulative Effect Conflict. The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions, and declarations and the Association may, but shall not be required to, enforce such covenants, restrictions and declarations; provided however, in the event of a conflict between or among this Declaration and such covenants, restrictions or declarations, and/or the provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the Bylaws, Articles, and use restrictions and rules of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration

or other recorded covenants, restrictions and declarations applicable to any portion of the Properties from containing additional covenants, restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

16.9 Use of the "Bridgewater at Cary Creek" Name and Logo. No person shall use the words "Bridgewater at Cary Creek" or the logo for "Bridgewater at Cary Creek" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Bridgewater at Cary Creek" in printed or promotional matter where such terms are used solely to specify that particular property is located within Bridgewater at Cary Creek, and the Association and any other community association located in Bridgewater at Cary Creek, the Declarant, and the owner of any Private Amenity shall each be entitled to use the words "Bridgewater at Cary Creek" in their names.

16.10 Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association, the Declarant, or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

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

16.12 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 16.2. Exhibit "C" is attached to this Declaration and incorporated by this reference, and may be amended as provided therein.

16.13 Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent if delivered by one of the following means: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the Owner or to a person in the Owner's home who would reasonably be expected to communicate such notice promptly to the Owner; (iv) telecopier transmission to the Owner's home, with confirmation of receipt by the receiving telecopier; (v) overnight or same day delivery, charges prepaid; or (vi) electronic mail or e-mail using Internet accessible equipment and services if the Owner has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the Owner's telephone or telecopier number or sent to the Owner's home address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or email shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed or e-mailed.

16.14 Merger or Consolidation. Upon a merger or consolidation of the Association with any other association, the property, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the property rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration.

ARTICLE 17: SUBORDINATION TO THE CARY CREEK MASTER ASSOCIATION

As Bridgewater at Cary Creek Development lies in and is a part of the Cary Creek Development, all of the Properties subject to this Declaration, all of the Owners and Members of the Association, and the Association itself shall be subject to the authority and governance of the Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. as recorded in the Office of the Judge of Probate of Lee County, Alabama in Deeds Book 2455, at Page 515 (as may be amended from time to time) ("Master Declaration"), the Master Declarant therein, the Master Association therein, and any rules, regulations and restrictions may be adopted and/or amended.

In addition to being a Member of the Association, every Owner of a Lot in the Bridgewater at Cary Creek Development shall also be a Member of the The Cary Creek Master Owners Association, Inc. ("Master Association"), subject to the governing documents of the Master Association, including but not limited to, the Master Declaration as may be amended, its Articles, Bylaws, Design Review Manual, rules and regulations, and the authority of the Master Declarant. Each Member shall also be subject to any and all assessments as set forth in the governing documents of the Master Association.

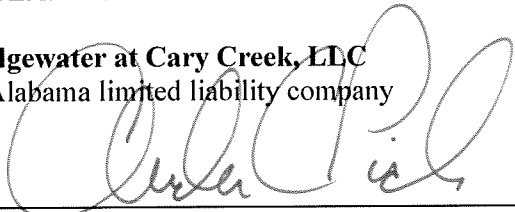
Membership in the Master Association shall be appurtenant to each Lot and shall not be severable without the express written consent of the Master Declarant, or upon the expiration of the Master Declarant's Control period, the Master Association. In addition to the Bridgewater at Cary Creek Development 's governing documents, every Owner and occupant of a Lot in the the Bridgewater at Cary Creek shall unequivocally comply with the Master Association's governing documents. All of the governing documents of the Bridgewater at Cary Creek Development, including but not limited to, this Declaration, Articles, Bylaws, Design Review Manual, rules and regulations shall be subordinate to The Cary Creek Master Owners Association, Inc.'s governing documents, including but not limited to, the Master Declaration, its Articles, Bylaws, Design Review Manual, rules and regulations as may be adopted from time to time.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 13th day of JANUARY, 2021.

DECLARANT:

Bridgewater at Cary Creek, LLC
an Alabama limited liability company

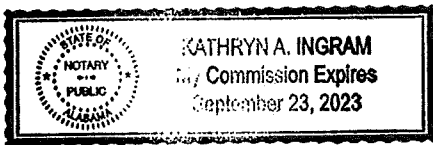


By: Charles C. Pick
Its: Manager

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Charles C. Pick, as Manager of Bridgewater at Cary Creek, LLC**, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such Manager and with full authority executed the same voluntarily on the day the same bears date as an act of said company.

Given under my hand and seal this the 13 day of January, 2021.



Kathryn A. Ingram
Notary Public
My Commission Expires: 9-23-2023

THIS INSTRUMENT PREPARED BY:
DAVIS, BINGHAM, HUDSON & BUCKNER, P.C.
ATTORNEYS AT LAW
324 EAST MAGNOLIA AVENUE
AUBURN, ALABAMA 36830

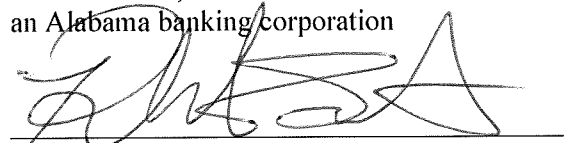
CONSENT OF LIENHOLDER

AuburnBank, an Alabama banking corporation (“Lienholder”), beneficiary under that certain Mortgage to Secure Debt dated April 2, 2019, and recorded on April 5, 2019 in the Office of the Judge of Probate of Lee County, Alabama in Mortgages Book 4458, at Page 133 (as amended from time to time, the "Mortgage"), for itself and its successor’s and assigns, hereby approves, ratifies and consents to the foregoing Declaration of Covenants, Condition, Restrictions and Easement of Bridgewater at Cary Creek (the “Declaration”), and the associated Articles and Bylaws of the associated homeowners associated created therewith. Lienholder agrees and acknowledges that, upon recordation of the Declaration, the the covenants, conditions, restrictions and easements therein, shall run with the Property described in the Declaration which serves as security for the debt evidenced by the Mortgage and further agrees that any foreclosure or enforcement of any other remedy available to Lienholder under the Mortgage will not render void or otherwise impair the validity of the Declaration.

Executed this 13 day January, 2021.

LIENHOLDER:

AuburnBank,
an Alabama banking corporation

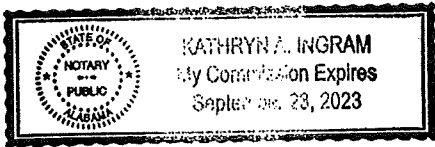


By: Robert Smith
Its: Senior Vice President

**STATE OF ALABAMA
COUNTY OF LEE**

I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Robert Smith, as Senior Vice President of AuburnBank**, an Alabama banking corporation, is signed to the foregoing consent, and who is known to me, acknowledged before me on this day that, being informed of the contents of this consent, he, with full authority executed the same voluntarily on the day the same bears date as an act of said banking corporation.

Given under my hand and seal this the 13 day of January, 2021.



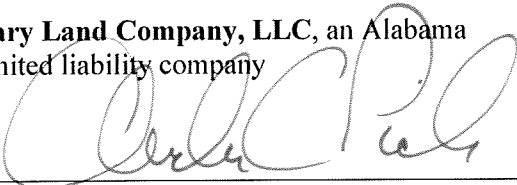
Kathryn A. Ingram
Notary Public
My Commission Expires: 9-23-2023

CONSENT OF DECLARANT OF MASTER DECLARATION

Cary Land Company, LLC, an Alabama limited liability company ("Master Declarant"), Declarant of the entire Cary Creek Development by that Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners' Association, Inc., recorded on April 6, 2015 in the Office of the Judge of Probate of Lee County, Alabama in Deeds Book 2455, at Page 515 (as amended from time to time, the "Master Declaration"), for itself and its successor's and assigns, approves the foregoing Declaration of Covenants, Condition, Restrictions and Easement of Bridgewater at Cary Creek (the "Declaration"), and the associated Articles and Bylaws of the associated homeowners associated created therewith. Master Declarant agrees and acknowledges that, upon recordation of the Declaration and in addition to the Master Declaration, the covenants, conditions, restrictions and easements contained in said Declaration shall run with the Property as set forth therein.

Executed this 13th day JANUARY, 2021.

Cary Land Company, LLC, an Alabama limited liability company

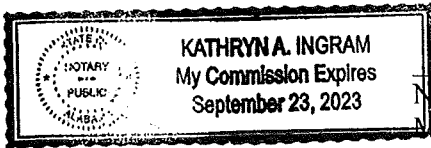


By: Charles C. Pick
Its: Manager

**STATE OF ALABAMA
COUNTY OF LEE**

I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Charles C. Pick**, as **Manager of Cary Land Company, LLC**, an Alabama limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, with full authority executed the same voluntarily on the day the same bears date as an act of said company.

Given under my hand and seal this the 13 day of January, 2021.



Kathryn A. Ingram
Notary Public
My Commission Expires: 9-23-2023

EXHIBIT "A": Legal Description of Property

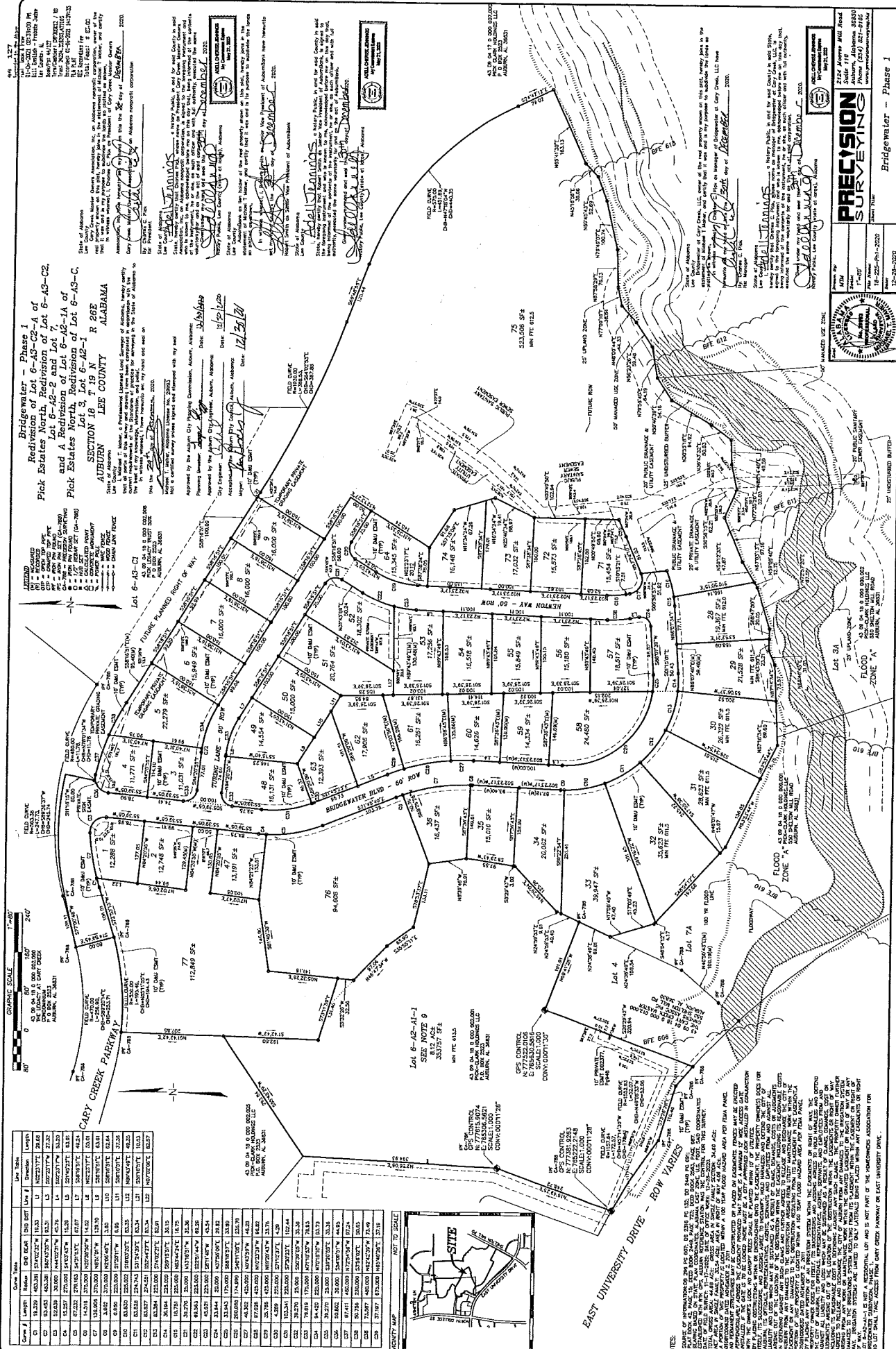
All property as shown on that subdivision plat known as Bridgewater-Phase 1, Redivision of Lot 6-A3-C2-A of Pick Estates North, Redivision of Lot 6-A3-C2, Lot 6-A2-2 and Lot 7, and a Redivision of Lot 6-A2-1A of Pick Estates North, Redivision of Lot 6-A3-C, Lot 3, Lot 6-A2-1, according to and as shown by that certain map or plat thereof recorded in Plat Book 44, at Page 127, in the Office of the Judge of Probate of Lee County, Alabama. Said subdivision plat is attached hereto as Exhibit A-1; and

AND

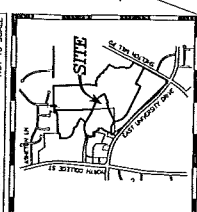
All property as shown on that subdivision plat known as Bridgewater-Phase 1B, Redivision of Lot 6-A3-C2-A of Pick Estates North, Redivision of Lot 6-A3-C2, Lot 6-A2-2 and Lot 7, and a Redivision of Lot 6-A2-1A of Pick Estates North, Redivision of Lot 6-A3-C, Lot 3, Lot 6-A2-1, according to and as shown by that certain map or plat thereof recorded in Plat Book 44, at Page 128, in the Office of the Judge of Probate of Lee County, Alabama. Said subdivision plat is attached hereto as Exhibit A-2. The property as shown on this plat of Bridgewater-Phase 1B is a subdivision of previous Lot 76 shown attached Exhibit A-1.

****All property described above was formerly a single parcel described as Lot 6-A3-C2-A of the Pick Estates North, Redivision of Lot 6-A3-C2, Lot 6-A2-2 and Lot 7, according to and as shown by that certain map or plat thereof recorded in Plat Book 42, at Page 15, in the Office of the Judge of Probate of Lee County, Alabama.

A-1



Curve Data	Curve Data	Curve Data	Curve Data	Curve Data	Curve Data
Curve ID	Length	Radius	Chord	Area	Perimeter
C1	18.29	48.31	18.29	18.29	18.29
C2	18.29	48.31	18.29	18.29	18.29
C3	18.29	48.31	18.29	18.29	18.29
C4	18.29	48.31	18.29	18.29	18.29
C5	18.29	48.31	18.29	18.29	18.29
C6	18.29	48.31	18.29	18.29	18.29
C7	18.29	48.31	18.29	18.29	18.29
C8	18.29	48.31	18.29	18.29	18.29
C9	18.29	48.31	18.29	18.29	18.29
C10	18.29	48.31	18.29	18.29	18.29
C11	18.29	48.31	18.29	18.29	18.29
C12	18.29	48.31	18.29	18.29	18.29
C13	18.29	48.31	18.29	18.29	18.29
C14	18.29	48.31	18.29	18.29	18.29
C15	18.29	48.31	18.29	18.29	18.29
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C26	18.29	48.31	18.29	18.29	18.29
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C81	18.29	48.31	18.29	18.29	18.29
C82	18.29	48.31	18.29	18.29	18.29
C83	18.29	48.31	18.29	18.29	18.29
C84	18.29	48.31	18.29	18.29	18.29
C85	18.29	48.31	18.29	18.29	18.29
C86	18.29	48.31	18.29	18.29	18.29
C87	18.29	48.31	18.29	18.29	18.29
C88	18.29	48.31	18.29	18.29	18.29
C89	18.29	48.31	18.29	18.29	18.29
C90	18.29	48.31	18.29	18.29	18.29
C91	18.29	48.31	18.29	18.29	18.29
C92	18.29	48.31	18.29	18.29	18.29
C93	18.29	48.31	18.29	18.29	18.29
C94	18.29	48.31	18.29	18.29	18.29
C95	18.29	48.31	18.29	18.29	18.29
C96	18.29	48.31	18.29	18.29	18.29
C97	18.29	48.31	18.29	18.29	18.29
C98	18.29	48.31	18.29	18.29	18.29
C99	18.29	48.31	18.29	18.29	18.29
C100	18.29	48.31	18.29	18.29	18.29



Bridgewater - Phase 1
 Redivision of Lot 6-A3-C2-A of
 Pick Estates North, Division of Lot 6-A3-C2,
 and A Redivision of Lot 6-A2-14 of
 Pick Estates North, Division of Lot 6-A3-C,
 SECTION 18 T 19 N R 26E
 ALBURN IEE COUNTY ALABAMA

Approved by the Alabama State Planning Commission, Auburn, Alabama
 Date: 12/19/2023
 Approved by the City of Auburn, Alabama
 Date: 12/19/2023

State of Alabama
 County of Auburn
 I, John J. Williams, Surveyor, do hereby certify that the above described land is the same as shown on the map of the City of Auburn, Alabama, and that the same is subject to the provisions of the City of Auburn, Alabama, and that the same is subject to the provisions of the City of Auburn, Alabama, and that the same is subject to the provisions of the City of Auburn, Alabama.

State of Alabama
 County of Auburn
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A-2

Bridgewater - Phase 1B
 A Redivision of Lot 6-A2-A1 of
 Pick Estates North,
 Redivision of Lot 6-A3-C2-A,
 and
 Redivision of Lot 6-A2-2
 Lot 7, and A
 Redivision of Lot 6-A2-1A of
 Pick Estates North,
 Lot 3, Lot 6-A2-1,
 SECTION 19 T 19 N
 R 26E
 ALABAMA
 AUBURN
 LEE COUNTY

NOTICE TO CONTRACTORS
 I, Michael J. Baker, a Professional Licensed Land Surveyor of Alabama, hereby certify that all portions of this plat have been surveyed and that the same are correct in accordance with the best of my knowledge, information, and belief.
 In witness whereof, I have hereunto set my hand and seal on this 15th day of December 2020.

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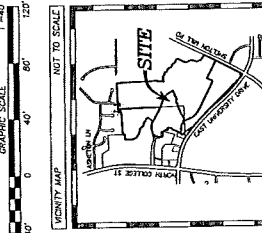
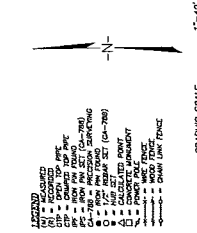
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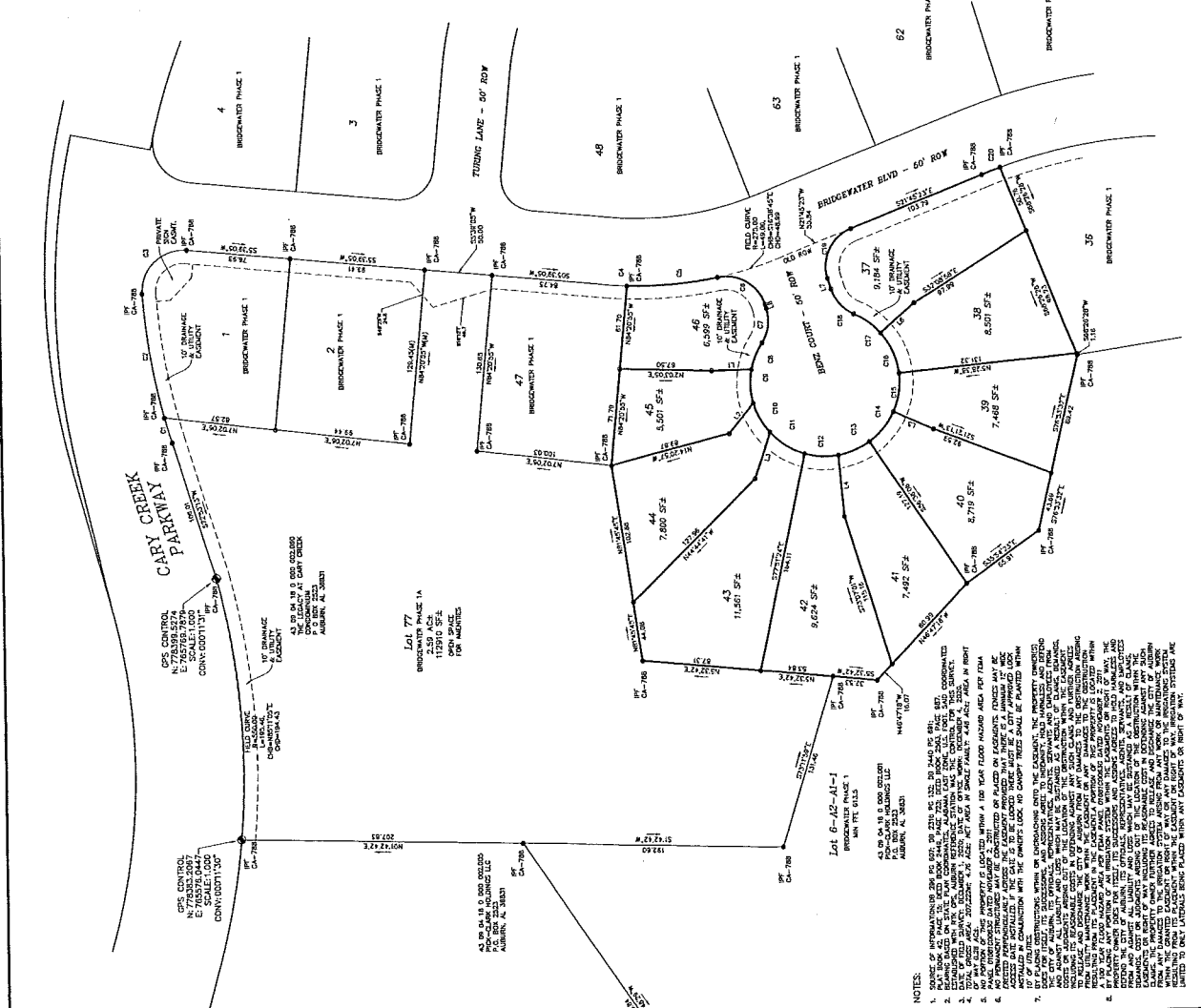
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Curve #	Location	Radius	Chord BEAR	Chord SOUT
C1	18.230	48.371	57.472737'	28.33
C2	18.230	48.371	57.472737'	28.33
C3	18.230	48.371	57.472737'	28.33
C4	18.230	48.371	57.472737'	28.33
C5	18.230	48.371	57.472737'	28.33
C6	18.230	48.371	57.472737'	28.33
C7	18.230	48.371	57.472737'	28.33
C8	18.230	48.371	57.472737'	28.33
C9	18.230	48.371	57.472737'	28.33
C10	18.230	48.371	57.472737'	28.33
C11	18.230	48.371	57.472737'	28.33
C12	18.230	48.371	57.472737'	28.33
C13	18.230	48.371	57.472737'	28.33
C14	18.230	48.371	57.472737'	28.33
C15	18.230	48.371	57.472737'	28.33
C16	18.230	48.371	57.472737'	28.33
C17	18.230	48.371	57.472737'	28.33
C18	18.230	48.371	57.472737'	28.33
C19	18.230	48.371	57.472737'	28.33
C20	18.230	48.371	57.472737'	28.33

Line #	Description	Length
L1	50.000000' E	50.0000
L2	50.000000' S	50.0000
L3	50.000000' W	50.0000
L4	50.000000' N	50.0000
L5	50.000000' E	50.0000
L6	50.000000' S	50.0000
L7	50.000000' W	50.0000
L8	50.000000' N	50.0000



NOTES:
 1. THIS PLAN IS A REDIVISION OF LOT 6-A2-A1-1, LOT 7, AND A REDIVISION OF LOT 6-A2-1A OF PICK ESTATES NORTH, REDIVISION OF LOT 6-A3-C2-A, AND REDIVISION OF LOT 6-A2-2.
 2. THIS PLAN IS A REDIVISION OF LOT 6-A2-A1-1, LOT 7, AND A REDIVISION OF LOT 6-A2-1A OF PICK ESTATES NORTH, REDIVISION OF LOT 6-A3-C2-A, AND REDIVISION OF LOT 6-A2-2.
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PRECISION SURVEYING
 227 Avenue M & Road
 Auburn, Alabama 36828
 Phone: 256-833-2538
 Fax: 256-833-2539

Bridgewater - Phase 1B
 15-11-2020

EXHIBIT "B": Additional Property subject to Article 7 of this Declaration.

None.

EXHIBIT "C": Bylaws of Bridgewater at Cary Creek Homeowners Association, Inc.

See Attached.

BYLAWS
OF
BRIDGEWATER AT CARY CREEK HOMEOWNERS ASSOCIATION, INC.

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**BYLAWS
OF
BRIDGEWATER AT CARY CREEK HOMEOWNERS ASSOCIATION, INC.**

ARTICLE 1: NAME, PRINCIPAL OFFICE, DEFINITIONS AND PURPOSE

1.1 Name. The name of the corporation is the Bridgewater at Cary Creek Homeowners Association, Inc. (the "Association"), a nonprofit corporation under the laws of the State of Alabama, formed for the purpose of managing and operating a homeowners association for a residential development located in Auburn, Lee County, Alabama, known as the Bridgewater at Cary Creek, hereinafter referred to as the "Development".

1.2 Principal Office. The initial principal office of the Association shall be located in Lee County, Alabama. The Association may have such other offices, either within or outside the State of Alabama, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, Restrictions & Easements of Bridgewater at Cary Creek, filed, or to be filed, in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

1.4 Purpose. This Association is formed under the provisions of the Alabama Homeowners' Association Act, §§35-20-1, et seq., Code of Alabama, (as may be amended), hereinafter called the "Act", to serve as the means through which the Owners, as defined in the Declaration, may express their opinions, wishes, and take action with regard to the administration, management and operation of the Association and Property as described in the Declaration.

ARTICLE 2: MEMBERSHIP, MEETINGS, NOTICE, QUORUM, VOTING

2.1 Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference. The Declarant may establish additional classes of membership as set forth in the Declaration.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient to the Properties as is possible and practical. Meetings may be held by means of telephone conference, video conference or similar

communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3 First Organizational Meeting and Annual Meetings. The first meeting of the Association, whether regular or special, shall be held within one (1) year from the date of incorporation of the Association. Meetings shall be of the Members. Thereafter, subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4 Special Meetings. After the first annual meeting, the President or Secretary may call special meetings of the Members. In addition, it shall be the duty of the President to call a special meeting within thirty (30) days if so directed by resolution of the Board or upon a petition signed by Members holding at least twenty percent (20%) of the total Class "A" votes in the Association or upon written request of the Declarant. Such written request shall state the purpose or purposes of the proposed meeting, and business transacted at such special meeting shall be confined to the purpose(s) stated in such notice.

2.5 Notice of Meetings. Written notice stating the place, day, and time of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting. No business shall be transacted at a meeting except as stated in the notice; provided however, if Members holding in aggregate more than fifty percent (50%) of the Class "A" votes are present at an annual meeting, in person or by proxy, matters in addition to those set forth in the notice of the meeting may be voted upon without further notice to the Members. Additionally, notice of all meetings at which a disposition of is to be made of assets, and/or granting rights or easements in the Property must also be given to the holders of first mortgages on any Lots therein and other necessary parties.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing given to the Board of Directors, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof; unless a specific objection as to the lack of proper notice is given at the time the meeting is called to order.

Attendance at a meeting shall also be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access. No Member who has failed to pay his or her Assessments or charges shall be eligible to vote at any meeting of the Association.

2.9 List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with the Act.

2.10 Proxies. At all meetings of the Members, each Member may cast its votes in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of the Act relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these Bylaws. Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11 Quorum. The presence, in person or by proxy, of Members holding in aggregate more than fifty percent (50%) of the Class "A" votes entitled to be cast shall constitute a quorum at all meetings of the Association. If a quorum is present at a duly called or held meeting, business may be continued until adjournment, provided that any action taken is approved by at least a

Majority of the votes required to constitute a quorum. When a quorum is once present to call the meeting, it cannot be broken by the subsequent withdrawal of a Member or Members.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted amid all other transactions occurring at such meetings.

2.13 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by at least two-thirds (2/3) of the Members entitled to vote on such matter. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Alabama. Such consents shall be filed within the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members summarizing the material features of the authorized action.

2.14 Order of Business. The order at the annual meeting of the Members shall be:

- (a) Call to order.
- (b) Calling the roll, certification of proxies, and establishing a quorum.
- (c) Reading of the minutes from the prior meeting.
- (d) Reports of the Board of Directors and/or Officers of the Condominium.
- (e) Reports of the management agency (if applicable).
- (f) Budget and financial review.
- (g) Selection and appointment of inspectors of election, if necessary.
- (h) Election of Board of Directors of the Association.
- (i) Old business.
- (j) New business.
- (k) Adjournment.

The order of business at all other meetings of the Members shall as far as practical conform to the order of business at the annual meeting insofar as the special purpose of the meeting will permit.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1 Governing Body; Composition. The affairs of the Association shall be managed and governed by a Board of Directors, each of whom shall be over the age of twenty-five (25) years and have one (1) equal vote. Except with respect to Directors appointed by the Class "B" Member or serving as a representative of the Declarant, the Directors shall be eligible Members; provided however, no more than one Owner of a Lot may serve on the Board at the same time. No Owner shall be eligible to serve as a Director if any assessment for such Owner's Lot is delinquent. In the case of a Owner which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Owner shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Owner, provided that, no Owner may have more than one (1) such representative on the Board at a time, except in the case of Directors appointed by or serving as representatives of the Class "B" Member or the Declarant. If a Director shall cease to meet such qualifications during his or her term, he or she shall cease to be a Director, and his or her place on the Board shall be deemed vacant.

3.2 Number of Directors. The Board shall consist of three (3) Directors. The number of directors may be changed by resolution of the Board, but shall consist of not less than three (3) and no more than five (5).

3.3 Directors During Class "B" Membership. The Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member for so long as the Class "B" membership exists; however, subject to Act. Directors appointed by or serving as representatives of the Class "B" Member or the Declarant shall not be subject to the qualifications for directors set forth in Section 3.1.

3.4 Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to Directors appointed by the Class "B" Member; Directors shall be nominated from the floor by at least thirty percent (30%) of the Members eligible to vote and may also be nominated by a nominating committee, if such a committee is established by the Board. Such committee shall report its nominees by notice send by mail to all Members at least ten (10) days prior to the date of the annual meeting. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Directors appointed by or serving as representatives of the Class "B" Member or the Declarant shall not be subject to these nomination requirements.

(b) Election Procedures. Each Member may cast the vote(s) assigned to the Member's Lot(s) for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms. Voting may be verbal, by show of hands, or by written ballot. In the event voting is by written ballot, the President shall appoint inspector(s) of the election who shall collect, receive, canvass, and report votes cast at such election. Inspectors shall not be candidates.

3.5 Election and Term of Office. Notwithstanding any other provision of these Bylaws, not later than the first annual meeting after the termination of Class "B" membership, the Directors appointed by the Declarant shall resign, and the Association shall hold an election at which time Class "A" Members shall be entitled to elect the Directors; provided, however, that during the Development Period, the Declarant shall have the right, in its sole discretion, to appoint all Directors. Directors elected by the Class "A" Members shall serve for the following terms: Two (2) Directors shall serve a term of two (2) years and one (1) Director shall serve a term of one (1) year; as such Directors determine among themselves. Upon the expiration of the term of office of each Director elected by the Class "A" Members, the Class "A" Members shall elect a successor to serve a term of two (2) years. Directors shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any Director elected by the Class "A" Members may be removed, with or without cause, by the Class "A" Members holding at least two-thirds (2/3) of the total Class "A" votes allocated to Lots. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such Director.

Any Director elected by the Class "A" Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is an officer, director, partner, member, employee, or trust officer of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the Directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of an elected Director or the adoption of a Board resolution increasing the number of Directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term. Upon receipt of a letter of resignation from a Director to the Board, President, or Secretary, unless otherwise specified in the

letter of resignation, the resignation shall take effect immediately. Acceptance of the letter of resignation shall not be necessary to make it effective. A resignation will not relieve the resigning Director from his/her liability by reason of malfeasance or negligence while in office.

If a Director shall cease to be a Member during his/her term of office, he/she shall be deemed to have resigned effective as of the date of the sale of his/her Lot.

This Section shall not apply to Directors appointed by the Class "B" Member nor to any Director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a Director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.7 Organizational Meetings. Within thirty (30) Days after the election or appointment of new Directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least one (1) such meeting shall be held during each year.

3.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two (2) Directors (or by majority of Directors if more than three (3) total).

3.10 Notice. Notice of a regular meeting shall be communicated to Directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to Directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using internet accessible equipment and services if the Director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices

shall be given at the Director's telephone or telecopier number or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed, e-mailed, or given to the telegraph company.

3.11 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13 Quorum of Board of Directors. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members holding a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided

that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Directors, excluding the interested Director.

3.15 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.16 Open Meetings. Subject to the provisions of Sections 3.12 and 3.17, all meetings of the Board shall be open to all Members, but attendees other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on an attendee's behalf by a Director. In such case, the President may limit the time any individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board, reconvene in executive session, and exclude Persons other than Directors, to discuss matters of a sensitive nature, including, but not limited to pending or threatened litigation and personnel matters.

3.17 Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.18 Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by the Act. The Board may do or cause to be done all acts and things which the Governing Documents or the Act do not direct to be done and exercised exclusively by the membership generally.

3.19 Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing the respective annual assessment of each Members;
- (b) levying and collecting such assessments from the Members;
- (c) providing for the operation, care, upkeep, replacement and maintenance of the Common areas or other areas as set forth in the Declaration;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) contracting for repairs, additions, and improvements to or alterations of the Common Areas or other areas in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association in accordance with the Governing Documents;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the costs of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Member, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area or other areas set forth in the Declaration as reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a Director, Officer or DRB or committee member, or former Director, Officer or DRB or committee member of the Association to the extent such indemnity is required or permitted under the Act or the Governing Documents; and

(p) assisting in the resolution of disputes between Members and others without litigation as set forth in the Declaration.

(q) prevent loss or damage to the Development by paying taxes, insurance, garbage, Assessments or water bills or other liens against any part of the Association's interest in the Properties and to assess the same against the Lot(s) as may be subject to such liens.

(r) temporarily close or restrict the use of Common Area or other areas as set forth in the Declaration when required for a special use.

(s) borrow money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Common Areas or other areas as set forth in the Declaration.

(t) pay the cost of all power, water, sewer, or other utility services rendered to the Common Areas or other areas as set forth in the Declaration which are not separately billed to the Members.

(u) sell, lease, mortgage, or otherwise deal with Lots acquired by the Association.

(v) hire and discharge persons employed for the operation of the Property on such terms and conditions as the Board in its sole discretion may deem advisable.

(w) do any and all things which prudent operation of the Property would require.

3.20 Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one (1) of its Members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) an annual financial report shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

3.22 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members holding a Majority of the total votes of the Association prior to borrowing such money.

3.23 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or resident, associations, within and outside the Properties.

3.24 Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be

imposed, (iii) a statement that the alleged violator may present a written rebuttal to the Board within fifteen (15) days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a written rebuttal within fifteen (15) days of the notice is received. If a timely rebuttal is not received, the sanction stated in the notice shall be imposed; provided however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without further notice to the violator. The Board may, but shall not be obligated to, adopt a schedule of sanctions for violations of the Governing Documents.

(b) No Hearing. The alleged violator shall be afforded a reasonable opportunity to respond in writing to the sanctions within the allotted fifteen (15) day period; however, there shall be no formal hearing. It shall be the sole and absolute discretion of the Board to suspend any proposed sanction. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the Association's records. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by time officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator responds in writing to the proposed sanction. The Association's records shall contain a written statement of the results of the rebuttal and the sanction imposed, if any.

ARTICLE 4: OFFICERS

4.1 Officers. The Officers of the Association shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Directors of the Board; other Officers may, but need not be Directors. The Board may appoint such other Officers, including one (1) or more Vice Presidents, one (1) or more assistant Secretaries and one (1) or more assistant Treasurers, as it shall deem desirable, such Officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The Board shall elect the Officers of the Association at the first meeting of the Board following each election of new Directors. Such Officers shall serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer at any time in its sole discretion with or without cause and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4 Powers and Duties. The Officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association and shall have all the powers and duties usually vested in a President of an Association, including, but not limited to, the power to appoint committees with the consent of the Board, presided over all meetings of the Members and of the Board, sign as President all deeds, contracts, and other instruments that have been duly approved by the Board, to call meetings of the Board whenever necessary in accordance with the rules set forth herein, and to have general supervision, direction, and control of the affairs of the Association. Furthermore, the President shall exercise such other powers and duties prescribed by the Board, see that all orders and resolutions of the Board are carried into effect, and in the event of a Vice President, delegate some of his/her duties. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. Furthermore, the Treasurer shall keep the financial records of the Association, the books of accounts, have custody of all Association funds, keep assessment rolls, deposit all monies and other valuables in the name of and to the credit of the Association in such depositories as designated by the Board, disburse funds as authorized by the Board, keep vouchers and receipts for such disbursements, render an annual report at the annual meeting to the Members, and collect assessments/common expenses on behalf of the Association. The Secretary shall be responsible for preparing minutes of meetings of the Association and the Board, authenticating records of the Association, attend to giving all notices as stated herein, have custody of the Association seal and affix the same to such instruments as may require a seal, prepare and have available at each meeting a certified alphabetical list of Owners' names and their associated Lots, certify that Members are entitled to vote, and sign all instruments that require a secondary signature by the Association. Furthermore, the Secretary shall perform all duties as may be required by the President or the Board.

4.5 Resignation. Any Officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Execution of Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) Officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of Officers shall be subject to the same limitations as compensation of directors under Section 3.14.

ARTICLE 5: COMMITTEES

5.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Any such committee shall consist of at least three (3) members, at least one (1) of whom shall be a Director. Unless otherwise provided by the Board, committee members shall be eligible Members; provided however, no Class "A" Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the Association without the consent of the Board. Any such committee shall keep regular minutes of its proceedings and shall report the same to the Board.

ARTICLE 6: FISCAL MANAGEMENT

6.1 Assessment Roll. The Assessment roll shall be maintained in a set of accounting books, duly approved by an accountant, in which there shall be an account for each Lot. Such account shall designate the name and address of the Owner(s), the amount of each Assessment against the Owners, the dates and amounts in which the Assessments come due, the amounts paid upon the account and the balance due on the Assessments. In making up the Assessment roll, the Lot is treated as such and no division shall be made because the Lot is held by more than one (1) person.

6.2 Annual Budget. The Board shall prepare, or cause to be prepared, an annual budget for each fiscal year, to be adopted, containing reserve accounts for, but not limited to, capital expenditures and deferred maintenance, and, for each year shall contain estimates of the cost of performing the various functions of the Association and shall include among its items:

1. General Assessment budget:
 - a. Maintenance and operation of Common Areas, Limited Common Areas, landscaping, street, walkways, and parking.
 - b. Utility services, septic/sewer systems and garbage.
 - c. Casualty insurance.
 - d. Liability insurance.
 - e. Fidelity and/or employee dishonesty insurance
 - f. Administration.
 - g. Ad valorem taxes.
 - h. Municipal assessment.
 - i. Reserves.

j. Any other items which the Board finds necessary to include therein.

2. The proposed Assessment against each Owner and the manner of payment.

6.3 Copies of Budget. Copies of the budget and Assessments shall be transmitted to each Member. If the budget is subsequently amended before the Assessments are made, a copy of the amended budget shall be furnished to each Member concerned.

6.4 Depository. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board. The monies of the Association shall be deposited therein. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board.

6.5 Financial Summary. A financial summary of the accounts of the Association shall be made annually by a certified public accountant and a copy of the report shall be furnished to each Member not later than one hundred twenty (120) days after the end of the year for which the report is made.

6.6. Bonds. Bonds may be required by the Board from all Officers and employees of the Association. The amounts of such bonds shall be determined by the Board. The premium on such bonds shall be paid by the Association.

6.7 Assessments. On or before the first day of each fiscal year for which the Assessments are made, each Member shall be notified of his/her/its share of the General Assessments for such year as shown by the annual budget. The Assessments shall be as set forth in the Declaration, but the yearly General Assessment for each Member shall be in proportion to the Member's Lot compared to all lots in the Development, which may be amended from time to time as set forth in the Declaration.

The Board may cause to be sent to each Member, on or before the first day of each year, a statement of the annual General Assessment. However, the failure to send or receive such annual statement shall not relieve the Member of his/her/its obligation to make timely payment of the annual General Assessment. If the Board shall not approve an annual budget or shall fail to determine new annual General Assessments for any year, or shall be delayed in doing so, each Member shall continue to pay the amount of his/her/its annual General Assessment as last determined. No Member shall be relieved of his/her/its obligation to pay his/her/its General Assessment by abandonment of his or her Lot or lack of use of the Common Areas or Limited Common Areas within the Property.

6.8 Failure to Make Timely Payment of Assessment Installment. If an Member shall be in default in the payment of any installment of an annual General Assessment for more than sixty (60) days, the Board may accelerate all remaining installments due for the balance of the term covered by the annual budget, and the same shall thereupon become immediately due and payable. In addition, late payment or non-payment of General Assessment may result in other penalties as may be determined by the Board, including, but not limited to, fines or suspension/revocation of parking or other privileges afforded to Members of the Association.

6.9 Special & Specific Assessments. The Board can cause to be sent to each Member statements for all Special and/or Specific Assessments, in accords with the Declaration, for which the Members are liable to the Association.

6.10 Supplemental Assessments. If during the course of any fiscal year, it shall appear to the Board that the annual General Assessments, as determined in the annual budget, are insufficient or inadequate to cover the estimated budgeted items for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency. Copies of the supplemental budget shall be delivered to each Member, and thereupon a supplemental Assessment shall be made to each Member for his or her proportionate share of the supplemental budget.

6.11 Annual Statement. Within one hundred twenty (120) days after the end of each fiscal year, the Board shall cause to be furnished to each Member, a statement for the year so ended showing the receipts and expenditures of the Association, and such other information as the Board may deem desirable.

6.12 Accounting Records. The Board shall cause to be kept, in accordance with generally accepted accounting principles, a record of all receipts and expenditures; as well as an account for each Lot showing the Assessments or other charges due, due dates thereof, present balance due, and any interest in common surplus. Such records shall be open to inspection by Members at reasonable times.

ARTICLE 7: MISCELLANEOUS

7.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

7.2 Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order Newly Revised* (current edition) shall govern the conduct of Association proceedings

when not in conflict with Alabama law, the Certificate of Formation, the Declaration, or these Bylaws.

7.3 Conflicts. If there are conflicts between the provisions of the Act, Alabama law, the Cary Creek Master Association Declaration and Governing Documents, the Certificate of Formation, the Declaration, and these Bylaws, the provisions of the Act, Alabama law, the Cary Creek Master Association Declaration and Governing Documents, the Declaration, the Certificate of Formation, and the Bylaws (in that order) shall prevail.

7.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to such Person's interest in a Lot: the Cary Creek Master Association Declaration and Governing Documents, the Declaration, Bylaws, and Certificate of Formation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association, which may include the office of the Association's management agent, if any, or at such other place within the Properties as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make a copy of relevant documents at the expense of the Association.

7.5 Notices. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, and other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

7.6 Amendment.

(a) By Declarant. Until termination of the Class “B” membership, the Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Properties; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs (“VA”), the U.S. Department of Housing and Urban Development (“HUD”), the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Properties; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner. In addition, during the Development Period, the Declarant may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By the Board. The Board shall be authorized to amend these Bylaws without the consent of the Members (i) for the purpose of submitting the Properties to the Act and conforming these Bylaws to any mandatory provisions thereof, (ii) to correct scrivener’s errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members; and (iii) for the purpose of bringing any provision contained herein into compliance with the any federal laws. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

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

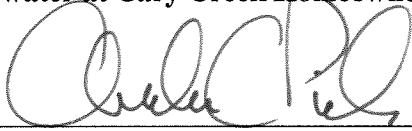
(d) Validity and Effective Date. Any amendment to these Bylaws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

No amendment may remove, revoke, or modify, any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

IN WITNESS, WHEREOF, the undersigned have subscribed their names to the Bylaws of the Bridgewater at Cary Creek Homeowners Association, Inc., on this the 17th day of January, 2021.

Bridgewater at Cary Creek Homeowners Association, Inc.



By: Charles C. Pick, President

Attest:



By: Christina Pick, Secretary

THIS INSTRUMENT PREPARED BY:
DAVIS, BINGHAM, HUDSON & BUCKNER, P.C.
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