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**MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS
FOR THE CARY CREEK MASTER OWNERS ASSOCIATION, INC.**

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**MASTER DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR THE CARY CREEK MASTER OWNERS ASSOCIATION, INC.**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE CARY CREEK MASTER OWNERS ASSOCIATION, INC. ("Declaration") is made as of the Effective Date (as defined herein), by **CARY LAND COMPANY, LLC**, an Alabama limited liability company, with an address of 550 Shelton Mill Road, P.O. Box 2523, Auburn, AL 36831 ("**Declarant**").

PREAMBLE

WHEREAS, the Declarant is the developer of certain real property located in Lee County, Alabama, as more particularly described in EXHIBIT "A", attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Declarant desires to establish a general plan of development for the Property as a master planned community to be known as "Cary Creek"; and

WHEREAS, Declarant's affiliated owners (hereinafter collectively referred to as "Affiliates") are the fee simple owners of said Property, and hereby or shall fully subject their Property to this Declaration, Declarant control, and general plan of development for Cary Creek by recording the necessary ratification to this Declaration in the Judge of Probate Office of Lee County, Alabama; and

WHEREAS, this Declaration provides a procedure for future expansion of the Property to include such additional property as the Declarant may determine from time to time and provides for the overall development, improvement, administration, maintenance, preservation and enhancement of the Property and such additional property now and hereafter comprising of Cary Creek which contemplated may at the complete discretion of an Affiliate and the Declarant also include within Cary Creek a residential condominium which shall function as a condominium as that term is used in Volume 19 Code of Alabama (1975), Title 35-A-101, et. seq., (Condominium Act) for those persons age fifty-five (55) years and older, in accordance with federal law under Section 807 of The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619), more specifically known as the Housing for Older Persons Act of 1995 ("HOPA"), as well as other property associations that may be established from time to time; and

WHEREAS, the Declarant desires to incorporate pursuant to the provisions of the Alabama Nonprofit Corp Act, Code of Alabama (1975) Sections 10-3A-1, et. seq. The Cary Creek Master Owners' Association, Inc., (the "Master Association") and will assign to the Master Association certain powers and responsibilities, including, without limitation: (1) the right and responsibility to own, lease, operate, administer, maintain and repair portions of the Property which may be referred to as Common Area and/or Limited Common Area; (2) the right, responsibility and obligation to administer and enforce the covenants and restrictions contained herein; and (3) the right to do whatever is reasonably necessary to carry out the intent of this Declaration.

NOW, THEREFORE, the Declarant hereby declares that the Property, shall be held, sold, conveyed, leased and mortgaged subject to all of the covenants, conditions, restrictions, easements, reservations and all other terms and provisions set forth in this Declaration. All covenants, conditions, restrictions, easements, reservations and all other terms and provisions contained in this Declaration are imposed for the benefit of, and shall burden, the Property, and shall run with title to the Property and benefit and be

binding upon all Persons having or acquiring any right, title or interest in any portion of the Property.

ARTICLE I DEFINITIONS

1.1. **DEFINITIONS.** Unless prohibited by the context in which they are used, the following words, when used in this Declaration, shall be defined as set out below:

1.1.1. **Additional Property** shall mean and refer to the land described in EXHIBIT "B" attached hereto and incorporated herein by reference or such other property as may be submitted from time to time by Declarant and its Affiliates for so long as Declarant's control exists, which is not hereby submitted to the Declaration. All or a portion of said Additional Property may be, but shall not be required to be, submitted to the terms and provisions of the Declaration, by the Declarant and its Affiliates at a future date, and upon such submission shall become a part of the Property.

1.1.2. **Affiliates** shall mean and refer to those fee simple title holders of the Property, and any Additional Property (if applicable), that submit their Property to the terms of this Declaration, the Declarant's Control, and the development plan of Cary Creek.

1.1.3. **Alterations** shall have the meaning set forth in Section 5.8.5 hereof.

1.1.4. **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of The Cary Creek Master Owners' Association, Inc., a copy of which is attached hereto as EXHIBIT "C" and incorporated herein by reference, as it may be amended from time to time.

1.1.5. **Assessment** shall mean and refer to any and all charges made by the Master Association from time to time against each Land Unit within the Property for the purposes set forth herein, including, without limitation, the Base Assessment, the Neighborhood Assessment, the Special Assessment, the Specific Assessment and the Service Area Assessment.

1.1.6. **Attached Unit** shall have the meaning ascribed thereto in EXHIBIT "H" attached hereto and incorporated herein by reference. Additional capitalized terms relating to Attached Units are defined in EXHIBIT "H".

1.1.7. **Base Assessment** shall mean and refer to annual assessments levied by the Master Association to fund Common Expenses as determined in accordance with Section 7.2.

1.1.8. **Board** shall mean and refer to the Board of Directors of the Master Association.

1.1.9. **Builder** shall mean and refer to any person or entity acquiring one or more Land Units for the purpose of constructing homes or other improvements thereon for re-sale to consumers, or who purchases a Land Unit within Cary Creek for further subdivision, development, and/or resale in the ordinary course of its business.

1.1.10. **Business Day(s)** shall mean and refer to a day (other than a Saturday, Sunday or legal holiday) on which national banks are open for business.

1.1.11. **Bylaws** shall mean and refer to the Bylaws of the Master Association, a copy of which is attached hereto as EXHIBIT "D" and incorporated herein by reference, as it may be amended from time to time.

1.1.12. **Cary Creek** shall mean and refer to the Property subject to this Declaration as it may be amended from time to time.

1.1.13. **Cary Creek Standard** shall mean and refer to the standard of conduct, maintenance, management, operation, use or other activity generally prevailing throughout Cary Creek. Such standard is expected to evolve over time as development progresses and may be more specifically determined by the Board, the Declarant and the Design Review Board, if any, established pursuant to Article V of this Declaration.

1.1.14. **Certificate of Approval** shall have the meaning set forth in Section 5.8.4 hereof.

1.1.15. **Certificate of Termination of Interest** shall mean and refer to an instrument which has been executed by the Declarant and recorded in the public records of the County which specifies rights reserved to the Declarant which are being terminated.

1.1.16. **City** shall mean and refer to the City of Auburn, Alabama, a municipal corporation organized and existing under the laws of the State of Alabama.

1.1.17. **Class "A" Member** shall mean and refer to all Owners, with the exception of the Declarant.

1.1.18. **Class "B" Member** shall mean and refer to the Declarant.

1.1.19. **Commercial** shall mean and refer to all uses, which are not Institutional or Residential. The term shall not include Common Area or other property dedicated to the public unless otherwise provided in the deed conveying such property, in the Declaration or in the Supplement to the Declaration, in each case pertaining to such property.

1.1.20. **Commercial Land Unit** shall mean and refer to a Land Unit intended for any type of independent ownership for use and occupancy for Commercial purposes. A "Commercial Land Unit" shall include, without limitation, any interest in real property appurtenant to the ownership of the Commercial Land Unit and all Improvements on or within the Commercial Land Unit.

1.1.21. **Common Area(s)** shall mean and refer to all real and personal property including, without limitation, easements, leased property, and improvements thereon, if any, which the Master Association owns, leases, otherwise holds possessory or use rights in, or has the obligation to maintain or assumes other responsibilities therefor, for the common use, benefit and enjoyment of all Owners. Common Area shall also include those areas, if any, which by the terms of this Declaration, any Supplement to the Declaration or other applicable covenants, or by contract become the responsibility of the Master Association. Common Area is more fully defined and described in Section 4.5. Common Area includes the Exclusive Common Area defined below.

1.1.22. **Common Expenses** shall mean and refer to all actual and estimated expenses and fees as defined herein and set out in the annual budget incurred or anticipated to be incurred by the Master Association in connection with its ownership, operation, management, maintenance, repair, replacement and use of the Common Areas, any services contemplated herein (including, without limitation, Communications Services and any costs for the purchase, installation, maintenance and operation of infrastructure to be used to provide Communications Services}, any obligations set forth herein, or as may be otherwise determined by the Board, including, without limitation, any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses may further include the costs for any services that are defined presently or in the future under Alabama or federal law, including Federal Communications Commission regulations, as communications, cable, broadband or information services.

1.1.23. **Community; Enhancement Association** shall have the meaning set forth in Section 7.12.5

hereof.

1.1.24. Community Enhancement Fee(s) shall mean and refer to the fees levied upon certain real property transfers within Cary Creek as more specifically set forth in Section 7.12.

1.1.25. Condominium shall mean and refer to all Land Units which have been submitted to the condominium form of ownership under a Declaration of Condominium pursuant to Alabama law, and which are subject to the jurisdiction of a Condominium Association.

1.1.26. Condominium Association shall mean and refer to a condominium association organized and existing under the laws of the State of Alabama.

1.1.27. Condominium Common Area shall mean and refer to the area or areas exclusively used and owned in common by the Owners of the Land Units in a Condominium, which area or areas are more particularly described in the Declaration of Condominium.

1.1.28. Condominium Land Unit shall mean and refer to a Land Unit located within a Condominium, together with its appurtenant share of the undivided interest in the Condominium Common Area and Limited Common Area as described in the Declaration of Condominium.

1.1.29. County shall mean and refer to Lee County, Alabama, a political subdivision of the State of Alabama.

1.1.30. Declarant shall mean and refer to Cary Land Company, LLC, an Alabama limited liability company, and its successors or assigns who are assigned any of the rights, duties, responsibilities or obligations of the Declarant under this Declaration pursuant to a recorded instrument executed by the Declarant, or if previously assigned by the Declarant, then executed by the holder of such rights, duties, responsibilities or obligations.

1.1.31. Declarant's Control Period shall mean and refer to the period from the Effective Date of this Declaration until the first of the following to occur:

1.1.29.1. Twelve (12) months after ninety percent (90%) of the total number of Land Units which may be developed on the Property and Additional Property are owned by Class "A" Members (as set forth in Section 3.13.1) other than Builders. The total number of Land Units which may be developed on the Property and Additional Property shall be determined from time to time as the number of units allocated by the Declarant to the Property and the Additional Property consistent with the maximum entitlements for such units in the Development Order.

1.1.29.2. Fifty (50) years after the date on which the Declaration is recorded in the Official Records of Lee County, Alabama; or

1.1.29.3. When, in its sole and absolute discretion, the Declarant so determines.

1.1.32. Declaration shall mean this 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, and the covenants, conditions, restrictions, easements, reservations and other provisions hereinafter set forth, which shall constitute covenants running with the land, shall be binding on the Property and all Owners of all or any portion thereof.

1.1.33. Declaration of Condominium shall mean and refer to the covenants, conditions, restrictions,

easements, reservations and other provisions imposed by a recorded instrument, which subjects all or a portion of a Parcel or a Land Unit to a condominium form of ownership pursuant to Alabama law.

1.1.34. **Design Review Board** shall mean and refer to one or more Persons designated by either the Declarant or the Board, as applicable, to act on such party's behalf with respect to reviewing applications for design controls as more specifically set forth in Article V.

1.1.35. **Design Review Manual** shall mean and refer to the architectural, design, construction and development guidelines and review procedures, if any, prepared pursuant to this Declaration for Cary Creek and applicable to the Property as the same may be amended from time to time.

1.1.36. **Development Agreement** shall mean and refer to the Development Agreement, which may exist between the Declarant and the City of Auburn, Alabama.

1.1.37. **Drainage Areas** shall have the meaning set forth in Section 4.5.4 hereof.

1.1.38. **Effective Date** shall mean and refer to the date and time of recording of this Declaration in the public records of the County upon which all of the covenants, conditions, restrictions, easements, reservations and all other terms and provisions set forth in this Declaration shall become effective.

1.1.39. **Eligible Holder** shall have the meaning set forth in Section 15.1 hereof.

1.1.40. **Estoppel Certificate** shall have the meaning set forth in Section 11.6 hereof.

1.1.41. **Limited Common Area** shall mean and refer to a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Land Units, as more particularly described in Section 4.7, and not otherwise designated as Condominium Common Area or Neighborhood Common Area as shown on the associated condominium plat or neighborhood plat.

1.1.42. **Governing Documents** shall mean (i) in the case of the Master Association, this Declaration, any amendment or Supplement to the Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, and the Design Review Manual, as any of the foregoing may be amended from time to time, and (ii) in the case of a Sub-Association(s), or the Master Association to the extent no Sub-Association(s) is created, the Neighborhood Declaration, any amendment or supplement to the Neighborhood Declaration, the articles of incorporation, the bylaws and the rules and regulations for such Neighborhood, as any of the foregoing may be amended from time to time. In the event of conflict or inconsistency among Governing Documents applicable to the Master Association, to the extent permitted by law, the Declaration and any amendment or Supplement to the Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, and the Design Review Manual, in that order, shall control. In the event of conflict or inconsistency between the Master Association Governing Documents and any Neighborhood Governing Documents, to the extent permitted by law, the Master Association Governing Documents shall control. One Governing Document's lack of a provision with respect to a matter for which provision is made in another Governing Document shall not be deemed a conflict or inconsistency between such Governing Documents.

1.1.43. **Government Authorities** shall mean and refer to (a) the United States of America, or any state, county or city, or any political subdivision or public corporate body of any of the foregoing; (b) any board, bureau, council, commission, department, agency, court, legislative body or other instrumentality of the United States of America, or any state, county, city or political subdivision of any of the foregoing; or (c) any District, specifically excluding any public utility provider unless specifically stated otherwise herein.

1.1.44. **Improvements** shall mean and refer to all structures of any kind including, without limitation, any building, amenity, shed, pool, driveway, fence, wall, sign, paving, grading, parking area, building addition, decorative building, alteration, screen enclosure, sewer, drain, conduit, disposal system, recreational facility, landscaping, exterior lighting, landscape device or object, and other physical improvements, and any and all modifications, alternations, additions and replacements thereto, located on, or attached or affixed to, the Property, or any portion thereof.

1.1.45. **Institutional** shall mean and refer to uses such as, but not limited to, public parks, amphitheaters, churches, schools, libraries, museums, governmental facilities, fire and police facilities.

1.1.46. **Institutional Mortgagee** shall mean and refer to the Declarant, a bank, savings bank, savings and loan association, insurance company, real estate investment trust, any other recognized lending institution, or any lender whose loans are guaranteed by the federal government such as *FHANA*, or when loans meet the criteria of FMNA, FHLMC or other similar programs, an institutional or governmental holder of a Mortgage which makes, holds, insures or guarantees Mortgage loans in the ordinary course of business.

1.1.47. **Institutional Land Unit** shall mean and refer to a Land Unit intended for any type of ownership for use and occupancy for Institutional purposes. An Institutional Land Unit shall include, without limitation, any interest in real property appurtenant to the ownership of the Institutional Land Unit and all Improvements on or within the Institutional Land Unit.

1.1.48. **Master Association** shall mean The Cary Creek Master Owners Association, Inc., a not-for-profit Alabama corporation, its successors or assigns.

1.1.49. **Master Association Trees** shall have the meaning set forth in Section 4.12.1 hereof.

1.1.50. **Medians** shall mean and refer to the grassed or landscape islands or the raised hardscaped surface within the Streets.

1.1.51. **Member** shall mean and refer to a Person entitled to membership in the Master Association, as provided in Section 3.12.

1.1.52. **Mixed-Use Land Unit** shall mean and refer to a Land Unit which is zoned, developed and used for a combination of Residential, Commercial or Institutional purposes, which Mixed-Use Land Unit is not capable of separate ownership for each area within the Mixed-Use Land Unit zoned, developed and used for Residential, Commercial or Institutional Purposes. An example of a Mixed-Use Land Unit is a Land Unit with a multi-story building located thereon, wherein the ground floor is zoned, developed and used for Commercial purposes, and the upper floor or floors are zoned, developed and used for Residential purposes, and, wherein such Mixed-Use Land Unit is not a Condominium or the subject of another legal structure which allows separate ownership of each floor of such building zoned, developed and used for different purposes. A Land Unit which is zoned, developed and used for any one of Residential, Commercial or Institutional purposes, shall not be deemed a Mixed-Use Land Unit unless it is zoned, developed and used as provided herein. Incidental, secondary or ancillary use of a Land Unit for other than the purposes for which it is zoned, developed and used, shall not cause such Land Unit to be Mixed-Use Land Unit. For example, use of a portion of a Residential Land Unit for home office purposes not readily discernible by other residents and ancillary to the Residential use of said Land Unit shall not cause said Land Unit to be a Mixed-Use Land Unit.

1.1.53. **Mortgage** shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to a Parcel or Land Unit.

1.1.54. **Mortgagee** shall mean and refer to the holder of a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to a Parcel or Land Unit.

1.1.55. **Neighborhood** shall mean and refer to one or more areas into which one or more Land Units are treated as a neighborhood for purposes hereof as described in Section 3.2. A Neighborhood may include more than one housing type and may include Parcels, which do not border on each other. If the Master Association provides benefits or services to less than all Land Units within a particular Neighborhood, then the Master Association may levy a Neighborhood Assessment against just those Land Units for such benefits and services. A Sub-Association may include one or more Neighborhoods.

1.1.56. **Neighborhood Assessments** shall mean and refer to assessments levied against the Land Units in a particular Neighborhood or Neighborhoods or under a Sub-Association to fund Neighborhood Expenses or Sub-Association Expenses for which it is subject to. Neighborhood Assessments may be levied by the Master Association or a Sub-Association, as applicable.

1.1.57. **Neighborhood Common Area** shall mean and refer to all real and personal property, including without limitation, easements and Improvements thereon, if any, which either the Master Association or the Sub-Association, as applicable, owns, leases, otherwise holds possessory or use rights in, or has the obligation to maintain or assumes other responsibilities therefor, for the common use, benefit and enjoyment of all Owners within a particular Neighborhood exclusively. The term Neighborhood Common Area shall specifically include Condominium Common Area wherever in this Declaration the context so allows.

1.1.58. **Neighborhood Declaration** shall mean and refer to any and all covenants, conditions, restrictions, easements, reservations and other provisions imposed by a recorded instrument, applicable to a specific Neighborhood, which shall constitute covenants running with the land. The term Neighborhood Declaration shall specifically include a Declaration of Condominium wherever, in this Declaration the context so allows.

1.1.59. **Neighborhood Expenses** shall mean and refer to the actual and estimated expenses incurred or anticipated to be incurred by the Master Association or the Sub-Association, whichever is applicable, for the benefit of Owners within a particular Neighborhood or Neighborhoods, including any reasonable reserve for capital repairs and replacements, and administrative charges applicable to such Neighborhood or Neighborhoods.

1.1.60. **Neighborhood Voting Representative** shall mean and refer to the representative selected by the Owners within each Neighborhood to be responsible for casting all votes attributable to Land Units in such Neighborhood on matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and the Bylaws). The term Neighborhood Voting Representative shall include an alternate Voting Representative acting in the absence of the Neighborhood Voting Representative.

1.1.61. **Notice of Noncompliance** shall have the meaning set forth in Section 5.8.5 hereof.

1.1.62. **Owner(s)** shall mean and refer to a record owner of fee simple title to any Land Unit, or portion thereof, located within the Property, but excluding those having an interest in a Land Unit, or portion thereof, merely as security for the performance of an obligation.

1.1.63. **Parcel** shall mean and refer to each separately described contiguous portion of the Property, subjected to the encumbrance of this Declaration.

1.1.64. **Party Roof** shall mean any roof built as part of the original construction (and any replacement thereof) of two or more Land Units, which Land Units are connected by one or more Party Walls.

1.1.65. **Party Wall** shall mean any fence or wall built as part of the original construction (and any replacement thereof) of two or more Land Units which is placed on the dividing line or platted lot line between such Land Units, and any wall built as part of the original construction of a Land Unit which is placed on the dividing line between the Unit.

1.1.66. **PDD Ordinance** shall mean and refer to that certain Ordinance of the City of Auburn Amending and Restating the Development Requirements for the Cary Creek Planned Development District, as the same may be further amended from time to time.

1.1.67. **Person** shall mean and include an individual, corporation, limited liability company or partnership, governmental agency, business trust, estate, trust, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity.

1.1.68. **Property** shall mean and refer to that certain real property being more particularly described in EXHIBIT "A", together with such portion of the Additional Property or such other real property as may from time to time be annexed thereto, and excluding any real property as may from time to time be withdrawn thereto, in accordance with the provisions of Article II of this Declaration.

1.1.69. **Land Unit** shall mean and refer to each portion of the Property, which is capable of independent ownership and conveyance including, without limitation, all Commercial Land Units, Condominium Land Units, Institutional Land Units, Residential Land Units, Mixed-Use Land Units and all Improvements located thereon. Common Areas, Limited Common Areas, Neighborhood Common Areas, or property dedicated to the public or owned by any District shall not be deemed to be a Land Unit. Without limiting the generality of the foregoing and by way of example, each unit comprising of a townhome, triplex, duplex or big home, which is capable of independent ownership shall each be considered one Land Unit. A Land Unit may be divided into additional Land Units, but only with the prior written approval of the Declarant and consent of Title Holder, in its sole and absolute discretion, as long as Declarant or any affiliate of Declarant owns any property within the Cary Creek PDD. For example, a Land Unit may be conveyed to a Builder for the purpose of improving the Land Unit with single-family or multi-family residential dwelling units. In such case, the Builder may not subdivide or plat (or re-plat) its Land Unit or create a Condominium on its Land Unit, unless the Builder obtains the prior written approval of the Declarant, which may be granted or withheld in Declarant's sole and absolute discretion as long as Declarant or any affiliate of Declarant owns any property within the Cary Creek PDD. Upon such platting or creation of a Condominium, each platted parcel or condominium unit shall be deemed a Land Unit for purposes of this Declaration, provided such platted parcel or condominium unit is capable of independent ownership and conveyance and is not part of the Common Areas, Neighborhood Common Areas, common elements in the Condominium, property dedicated to the public or owned by any District or Government Authorities.

1.1.70. **Provider** shall have the meaning set forth in Section 9.1 hereof.

1.1.71. **Recreational Facilities** shall have the meaning set forth in Section 4.5.2 hereof.

1.1.72. **Residential** shall mean and refer to use and occupancy for purposes of a residence or dwelling.

1.1.73. **Residential Land Unit** shall mean and refer to a Land Unit, which is capable of independent ownership and conveyance, and which is intended for development, use and occupancy for Residential

purposes. Residential Land Unit shall, unless otherwise specified, include within its meaning, by way of illustration, but not limitation, Residential Condominium Land Units, single family detached units, and single family attached units, so long as such units are capable of independent ownership and conveyance. For purposes of this Declaration, a "Residential Land Unit" shall also include a Residential Rental Property, except to the extent otherwise provided herein. A "Residential Land Unit" shall include, without limitation, any interest in real property appurtenant to the ownership of the Residential Land Unit and all Improvements on or within the Residential Land Unit. Land Units in a model center, which are used on an interim basis for sales purposes, but which will be occupied or sold in the future for Residential use, shall be deemed Residential Land Units for purposes of this Declaration.

1.1.74. **Residential Rental Property** shall mean and refer to a Residential Land Unit, or a portion thereof, owned by an Owner and zoned, developed and used for occupancy as a multi-family rental apartment project. The term shall refer to the land, if any, which is part of the Residential Rental Property as well as any Improvements thereon, whether improved or unimproved. Only property and improvements zoned for, developed, and used as a multi-family rental apartment project shall be Residential Rental Property. Residential Rental Property shall be assigned a number of Land Units for Assessment liability to the Master Association and voting rights for the Owner as a Member of the Master Association at the time such Residential Rental Property is submitted to the terms of this Declaration, pursuant to Article II of the Declaration. Provided, however, in the event that a Land Unit which is a Residential Rental Property is converted by the Owner thereof to the Condominium form of ownership, the Residential Rental Property shall, upon filing of a Declaration of Condominium, cease to be a Residential Rental Property, and each residential dwelling unit in the Condominium which is capable of independent ownership and conveyance, shall become a Land Unit. The Owners of such Land Units shall become Class "A" Members with the rights and obligations of Class "A" Members. Such conversion shall require the written consent of the Master Association. In addition, the Declarant's prior written consent to such conversion shall be necessary during the Declarant's Control Period.

1.1.75. **Rules and Regulations** shall have the meaning set forth in Section 3.7 hereof.

1.1.76. **Service Area** shall mean and refer to two or more Land Units, or any combination thereof, to which a Limited Common Area is assigned, as described in Section 4.7, or which receives benefits or services from the Master Association which are not provided to all Land Units, as determined by the Master Association, in its sole and absolute discretion. A Land Unit may be part of more than one Service Area and there may be an overlap of Service Areas.

1.1.77. **Service Area Assessment** shall mean and refer to an assessment levied against the Land Units in a particular Service Area to fund Service Area Expenses, as described in Section 7.5.

1.1.78. **Service Area Expenses** shall mean and refer to the actual or estimated expenses incurred or anticipated to be incurred by the Master Association in the delivery of benefits or services to the Owners and occupants of Land Units within a particular Service Area.

1.1.79. **Special Assessment** shall mean and refer to an assessment levied in accordance with Section 7.6.

1.1.80. **Specific Assessment** shall mean and refer to an assessment levied in accordance with Section 7.8.

1.1.81. **Streets** shall mean and refer to any private streets or publicly dedicated streets (inclusive of any bridge and alleys) located within Cary Creek or which provide access to Cary Creek or its neighborhoods.

1.1.82. **Streetscape** shall mean and refer to the entire area within the limits of the right-of-way of a Street, excluding that portion which is paved or otherwise improved and intended for motorized vehicular

traffic (e.g. a bridge), which may include, without limitation, sidewalks, bikeways, trails, landscaping and related irrigation, walls, berms, swales, signage, light fixtures, conduits, landscape lighting and street furniture.

1.1.83. Sub-Association shall mean and refer to any property owners association, homeowners association, Condominium Association, or other such entity, its successors and assigns for any particular Neighborhood or Neighborhoods including, but not limited to, multi-family property associations, residential property owners' associations, commercial property owners' association, retail property owners' association, owners' associations, and condominium property owners' association as may be established from time to time. The relationship of the Sub-Association(s) to the Master Association is more particularly described in Article III of this Declaration. This Declaration does not require the creation of any Sub-Association.

1.1.84. Submittals shall include all plans, drawings, plats, pictures, material samples, engineering studies, traffic studies and analysis, specifications and any other documents or information required by the Design Review Manual or required by the Design Review Board, or the Declarant, if the Declarant has not delegated such right in writing to the Design Review Board.

1.1.85. Supplement shall mean a document and the exhibits thereto which when recorded in the Public Records of the County, amends, supplements or modifies any terms of this Declaration and/or adds real property to, or withdraws real property from, the provisions of this Declaration.

1.1.86. Stormwater Management Facilities shall mean and refer to the master surface water management system serving the Property consisting of any swales, inlets, culverts, retention ponds, detention ponds, outfalls, storm drains, pump stations, connecting pipes, mitigation areas, conservation areas and similar systems used in connection with the retention, detention, drainage and control of surface water.

1.1.87. Use Restrictions shall mean and refer to the use restrictions attached hereto as EXHIBIT "E" and incorporated herein by referenced, as may be amended from time to time.

1.1.88. Voting Group shall mean and refer to one or more Neighborhood Voting Representatives, or a group of Members, who vote on a common slate for electing members of the Board as provided in Section 3.16.

1.1.89. Work shall have the meaning set forth in Section 5.5 hereof.

ARTICLE II PROPERTY SUBJECT TO DECLARATION

2.1. **Property.** All of the Property is, and shall be subject to the encumbrance, operation and effect of this Declaration and any Supplement to the Declaration, which may be subsequently applicable thereto, and the Property shall be transferred, demised, sold, conveyed and occupied subject to the terms of this Declaration.

2.2. **Subsequent Additions to the Property.** At any time during Declarant's Control Period, the Declarant, in its sole and absolute discretion, shall have the right, but not the obligation to submit or cause to be submitted, Additional Property (with the consent of its owner) or any portion thereof, to the encumbrance, operation and effect of this Declaration. Each such submission of Additional Property, or a portion thereof, to this Declaration shall be made by a Supplement to the Declaration describing the portion of the Additional Property being subjected to the terms of the Declaration, and need only be executed by the Declarant, and the owner of such portion of the Additional Property, if not the Declarant, and shall not require the execution or consent of the Master Association, any Sub-Association, any Owners, any Neighborhood Voting Representative, any Mortgage or lien holders or any other Person whatsoever. The Supplement to the Declaration shall describe the Additional Property, or portion thereof, which is being subjected to this Declaration, and shall contain such other terms and provisions as the Declarant may determine, in its sole and absolute discretion. Such Supplement to the Declaration shall be recorded in the public records of the County. Upon submission of all or any portion of the Additional Property to the Declaration by the Declarant and its owner pursuant to a Supplement to the Declaration, such Additional Property, or portion thereof, shall be subject to the encumbrance, operation and effect of the Declaration and any other terms and provisions in any applicable Supplement to the Declaration. Such Additional Property, or portion thereof, submitted by the Declarant to the Declaration shall be considered to be part of the "Property" (as that term appears in this Declaration, as it may be amended from time to time, except to the extent otherwise provided in said Supplement), from and after the recordation of the Supplement to the Declaration submitting the Additional Property, or any portion thereof, to the terms of the Declaration.

2.3. **Other Additions to the Property.** At any time during Declarant's Control Period, the Declarant (with the consent of the owner if not the Declarant), in its sole and absolute discretion, shall have the right, but not the obligation, to submit or to cause to be submitted, other real property not now included within the Additional Property to the encumbrance, operation and effect of this Declaration. Each submission of such real property to this Declaration shall be made by a Supplement to the Declaration describing such real property being subjected to the terms of the Declaration, and need only be executed by the Declarant, and the owner of such real property if not the Declarant, and shall not require the execution or consent of the Master Association, any Sub-Association, any Owners, any Neighborhood Voting Representative, any Mortgage or lien holders, or any other Person whatsoever. The Supplement to the Declaration shall describe the real property, which is being subjected to this Declaration, and shall contain such other terms and provisions as the Declarant may determine, in its sole and absolute discretion. Such Supplement to the Declaration shall be recorded in the public records of the County. Upon submission of such real property to the Declaration by the Declarant pursuant to a Supplement to the Declaration, such real property described therein shall be subject to the encumbrance, operation and the effect of the Declaration and any other terms and provisions in any applicable Supplement to the Declaration. Such real property submitted by the Declarant to the Declaration shall be considered to be part of the "Property" (as that term appears in this Declaration, as it may be amended from time to time, except to the extent otherwise provided in said Supplement), from and after the recordation of the Supplement to the Declaration submitting such real property to the terms of the Declaration.

2.4. **Additions by the Master Association.** Upon the expiration of the Declarant's Control Period,

the Master Association may submit property to the provisions of this Declaration by recording a Supplement to the Declaration describing the additional property to be submitted to the Declaration. Additions by the Master Association shall require the affirmative vote or written consent of Neighborhood Voting Representatives (or Sub-Association representative) representing more than seventy-five percent (75%) of the Class "A" votes of the Master Association represented at a duly called meeting for such purpose at which a quorum is present, and the consent of the owner of such property being submitted. In addition, so long as Declarant's Control Period has not expired, the Declarant's written consent shall be required, which consent shall be in the Declarant's sole and absolute discretion. The Supplement to the Declaration shall be signed by the President and Secretary of the Master Association, by the owner of the property being submitted to the terms of the Declaration, and by the Declarant, if the Declarant's consent is required.

2.5. **Effect of Filing a Supplement to the Declaration.** A Supplement to the Declaration shall be effective upon recording in the Judge of Probate Office of Lee County, Alabama unless otherwise specified therein.

2.6. **Withdrawal of Property by Declarant.** Until the expiration of the Declarant's Control Period, Declarant and its Affiliates reserve the right to remove any portion of the Property from the coverage, terms, conditions and effects of this Declaration. Such Supplement shall not require the consent of any Person whatsoever other than the written consent of the owner(s) of the property to be withdrawn. Withdrawals shall be accomplished by filing a Supplement to the Declaration describing the real property to be withdrawn and shall become effective when such Supplement to the Declaration is filed in the public records of the County.

2.7. **Declarant's Plans.** The Declarant's plans for the development of the Property may be modified and amended from time to time during the course of development and sale of the Property at the sole discretion of the Declarant. The Declarant shall not be bound to develop the Property, any Additional Property or any other real property, nor to develop in any particular manner the Property, any Additional Property or any other real property, nor shall the Declarant be prohibited from developing the Property, any Additional Property or any other real property in any particular manner.

2.8. **Interpretation.** Nothing contained in this Declaration, or in any Supplement to this Declaration, shall be interpreted to (a) require the Declarant or any other Person to submit any Additional Property or other real property to the encumbrance, operation and effect of this Declaration, or (b) prevent any Additional Property or other real property not submitted to the encumbrance, operation and effect of this Declaration, from being submitted to another, independent declaration or scheme of development, even though such Additional Property or other real property may be owned by the Declarant. Further, nothing contained in this Declaration shall be deemed to encumber or otherwise affect the Additional Property or any portion thereof, or any other real property (not a part of the Property), in any manner whatsoever, unless and until such time as a Supplement to the Declaration shall submit or cause to be submitted, the Additional Property or any portion thereof, or any other real property (not a part of the Property) to the encumbrance, operation and effect of this Declaration in accordance with the provisions of Sections 2.2, 2.3, or 2.4.

ARTICLE III ASSOCIATION NETWORK

3.1. **Creation of the Master Association.** The Declarant has formed the Master Association for the purpose, among other things, of exercising the powers and responsibilities provided herein, including, without limitation, the right and responsibility to own, lease, license, manage, operate, administer, maintain and repair portions of the Property (including, without limitation, the Common Area), and the right, responsibility and obligation to administer and enforce this Declaration in accordance with the rights of the Master Association provided herein or which may be assigned to it from time to time by the Declarant, or as may otherwise be provided by law. The Master Association shall also have such other powers and duties as are prescribed by the Governing Documents, and shall perform its obligations in accordance with the Governing Documents and applicable law. Each Owner shall have only those rights as may be provided in the Governing Documents and by law.

3.2. **Creation of a Neighborhood.** Every Land Unit shall be located within a Neighborhood, and each Neighborhood may also be subject to a Sub-Association. Unless and until additional Neighborhoods and Sub-Associations (if applicable) are established, the Property shall be considered a single Neighborhood governed by the Master Association. Subject to the terms hereof, the Land Units within a particular Neighborhood may be subject to covenants, restrictions, reservations and easements as set forth in Sub-Association documents in addition to those contained in this Declaration and, if required by law or if the Declarant otherwise approves, the Owners within the Neighborhood shall be members of a Sub-Association in addition to the Master Association. This Declaration or any Supplements to this Declaration, may assign a Land Unit to a specific Neighborhood which may be then existing or newly created. Until the expiration of the Declarant's Control Period, the Declarant may unilaterally, without the consent or approval of any Person whatsoever, by Supplement to this Declaration, create Neighborhoods or Sub-Associations or re-designate Neighborhood boundaries, or add or subtract an additional Parcel or Land Unit, to or from a Neighborhood or Sub-Association as set out in 3.3 below.

3.3. **Governing Documents for a Neighborhood.** The Governing Documents for any and all Neighborhoods shall be subordinate to the Governing Documents for the Master Association, and the rights and obligations of any and all Sub-Associations shall be subject and subordinate to the rights and obligations of the Master Association, and may not be contradictory thereto or inconsistent therewith. A Sub-Association may be organized with respect to specified Parcels or Land Units comprising of a Neighborhood. All Governing Documents of each Neighborhood must be approved by the Declarant, in the Declarant's sole and absolute discretion, prior to the recording the same in the public records of the County. Unless the Neighborhood Declaration and all other Governing Documents relating to a Neighborhood are approved by the Declarant prior to their recording, they shall be considered null and void and shall not be enforceable. The approval by the Declarant shall be evidenced by the signature of an officer of the Declarant on each Governing Document so approved and placed of official record in Lee County, Alabama. The Declarant may charge a reasonable fee to review such Governing Documents. After the Declarant's Control Period expires, the Master Association shall be the party required to approve such Governing Documents and the Master Association shall have the same right to charge a reasonable fee for such review. Notwithstanding, the right of the Declarant (or the Master Association, after the Declarant's Control Period expires) to approve all Governing Documents for a Neighborhood, the Declarant (or the Master Association, as applicable) shall have no liability, obligation or responsibility whatsoever with respect to such Governing Documents or the terms and provisions thereof. The foregoing approval rights of the Declarant or the Master Association, as applicable, shall also apply to any amendment of or supplement to, such Governing Documents for a Neighborhood.

3.4. **Rights and Duties of the Sub-Association.** If applicable, each Sub-Association shall: (a) abide by this Declaration and cause all Owners of Land Units in said Neighborhood to abide by this

Declaration; (b) enforce its Neighborhood Declaration or other deed and use restrictions for property located within the Neighborhood or subject to its control or jurisdiction; (c) maintain its Neighborhood Common Areas and other real property under its control or jurisdiction in good condition and repair; (d) administer the Sub-Association's affairs in accordance with the terms of the applicable Governing Documents and applicable law; and (e) perform such other duties as are prescribed by its Governing Documents or which may be assigned to it from time to time by the Master Association or the Declarant.

3.5. **Power of the Master Association over Sub-Associations.** The Master Association shall have the absolute power to veto any action taken or contemplated to be taken by a Sub-Association, and shall have the absolute power to require specific action to be taken by any Sub-Association. The Master Association shall receive the same notification of each meeting of the members of a Sub-Association or board or committee thereof required to be given for same by the Governing Documents of such Sub-Association, and a representatives of the Master Association shall have the unrestricted right, but not the obligation, to attend any such meeting. If proper notice is not given to the Master Association, any action taken at such meeting shall be considered null and void and of no force and effect.

By way of illustration and not as a limitation, the Master Association may: (a) veto any decision or action of a Sub-Association; (b) require specific action to be taken by any Sub-Association in connection with its obligations and responsibilities, (c) require specific maintenance, repair, replacement, removal or aesthetic changes to be performed to the property governed by a Sub-Association; or (d) require that a proposed budget of a Sub-Association include certain items and that expenditures be made therefor. In the event that a Sub-Association should fail or refuse to properly exercise its responsibility with respect to any matter (as determined by the Master Association, in its sole and absolute discretion), the Master Association shall have, and may exercise, the Sub-Association's right of approval, disapproval or enforcement as to the matter. If the Sub-Association fails to comply with any requirements set forth by the Master Association, the Master Association shall have the right to take action on behalf of the Sub-Association and shall levy a Specific Assessment in an amount adequate to recover the Master Association's costs and expenses (including administrative, legal and accounting costs and expenses) associated with the taking of the action. The Specific Assessment shall be levied against all Parcels and Land Units subject to the jurisdiction of the Sub-Association unless the Neighborhood Governing Documents provide a different manner of allocating such Specific Assessment, if the Sub-Association had acted in accordance with its Governing Documents.

Such Specific Assessment shall be allocated against such Land Units, in the manner provided for assessments by the Governing Documents for the Sub-Association, and in the event no such provision exists, then as provided in EXHIBIT "F" attached hereto and incorporated herein by reference.

3.6. **Powers and Authority.** The Master Association shall have the power and authority to enter into contracts, leases, licenses, franchises or service agreements on a nonexclusive or exclusive basis to provide necessary outside services to the Owners, and, shall also have the power to accept and assume such contracts, leases, licenses, franchise or service agreements as the Declarant may enter into and subsequently assign to the Master Association. By way of illustration and not as a limitation, the Master Association may enter into contracts for garbage and waste collection, security and/or security monitoring, cable television, multi-channel video, high speed internet and/or voice communications systems and services, landscape maintenance and other common services; provided, however, any such contracts, leases, licenses, franchises or service agreements shall not violate the provisions of ARTICLE IX. The Master Association shall provide for payment of the cost and expense of such services by Assessment pursuant to ARTICLE VII, or provide for direct billing to each Owner or Sub-Association.

3.7. **Rules and Regulations.** The Master Association shall have the power and authority to promulgate and enforce such rules and regulations consistent with this Declaration and applicable law as it may deem to be in the best interest of the Owners from time to time ("Rules and Regulations"). A copy

of all Rules and Regulations established hereunder and any amendments thereto shall be made available, upon request, to Owners by the Master Association upon payment by the requesting party of such fee to the Master Association as it may promulgate to cover the cost and administrative expense to supply same. Failure of an Owner to obtain a copy of the Rules and Regulations shall not excuse such Owner from the requirement to abide by the Rules and Regulations. Such Rules and Regulations, and all covenants, conditions, restrictions, easements, reservations and other provisions contained in this Declaration and any Neighborhood Declarations, including without limitation, all architectural and use restrictions contained herein, may be enforced by legal or equitable action of the Master Association against all Owners and any occupants or lessees of a Land Unit. Any lease of any Land Unit shall provide or be deemed to provide that the lessee and all occupants of the leased Land Unit shall be bound by the terms and provisions of the Declaration and the Governing Documents. Sanctions for violations of Rules and Regulations may include reasonable monetary fines and suspension of any applicable right to vote, and the right to use of the Common Area by an Owner, its guests, invitees or lessees. Prior to any decision to suspend any applicable voting rights, or the right to use of the Common Area, or to impose a monetary fine, the Board shall send the Owner at the address of such Owner on file with the Master Association, notice of the meeting of the Board at which such decision is contemplated to be made, and provide such Owner the opportunity to be heard pursuant to the provisions of the Governing Documents. In addition, the Master Association, through the Board, may, by contract or other agreement, enforce City, County or other Government Authority ordinances, or permit the City, County, or other Governmental Authorities to enforce ordinances pertaining to the Property.

3.8. **Conveyance of Property to and from the Master Association.** The Declarant may convey to the Master Association, and the Master Association shall accept, personal property and fee title, leasehold, easements or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Master Association shall re-convey to the Declarant for no consideration, any portions of the Common Area, which the Declarant originally conveyed to the Master Association to the extent conveyed by the Declarant in error or needed by the Declarant to make minor adjustments in property lines. From time to time, the Master Association may convey portions of the Common Area to The City of Auburn, or to other Government Authorities, without prior approval of the Members; provided, however, the Declarants' prior written consent shall be required for any such conveyances during the Declarant's Control Period which consent shall be in the Declarant's sole and absolute discretion. Conveyances of Common Area to The City of Auburn, or to other Government Authorities, shall be subject to the application and scope of this Declaration (except as otherwise set forth in a Supplement to this Declaration).

3.9. **Articles of Incorporation and Bylaws.** The Articles of Incorporation and Bylaws are subject to amendment in accordance with their respective provisions, and it is not necessary to amend this Master Declaration in order to amend the Articles of Incorporation or Bylaws; provided, however, neither the Articles of Incorporation nor the Bylaws may, for any reason, be amended or otherwise changed or interpreted so as to be contradictory or inconsistent with this Declaration. In the event of any inconsistency, the provisions of this Declaration shall prevail.

3.10. **Cary Creek Standard.** The Master Association shall uphold the Cary Creek Standard for the Property.

3.11. **Acts of the Master Association.** Unless the approval or action of a certain specific percentage of the Members and/or the Board is required in this Declaration or the Governing Documents, all approvals, actions, duties and powers required or permitted to be given or taken by the Master Association shall be given or taken by a majority of the members of the Board present in person (which may include by telephonic or other communication) or by proxy, at a duly called meeting of the Board at which a quorum is present, without the requirement for approval by the Members or any other Person whatsoever, except for the Declarant during the Declarant's Control Period or as otherwise specifically provided in the

Governing Documents. All of the duties and powers of the Master Association existing under Alabama Law, this Declaration and the Governing Documents shall be exercised exclusively by the Board. The Board may so approve and act through the proper officers of the Master Association without a specific resolution, or may delegate the authority to manage the affairs of the Master Association to one or more managers or management companies upon terms as they deem appropriate, except for Declarant during Declarant's Control Period. When an approval or action of the Master Association is permitted to be given or taken, such action or approval may be conditioned in any manner the Master Association deems appropriate, or the Master Association may refuse to take or give such action or approval, without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

3.12. **Membership in the Master Association.** Every Owner shall be a Member of the Master Association. There shall be only one Member per Land Unit. However, if a Land Unit is subdivided or otherwise divided into additional Property Units in accordance with the terms of this Declaration, then each such Land Unit shall have one member. If a Land Unit is owned by more than one Person, all co-Owners shall share the privilege of such membership as a single member, subject to reasonable Board regulation and the restrictions on voting set forth herein and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. If a Land Unit is owned by more than one person, only one owner may cast a vote for such Land Unit, and the Owners of a Land Unit shall notify the Master Association who is authorized to vote on behalf of the Land Unit.

The membership rights and privileges of an Owner who is a natural person may be exercised by the Owner or the Owner's spouse. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Master Association. Notwithstanding anything to the contrary provided herein, all voting rights of a Member shall be exercised by that Member's Neighborhood Voting Representative (except as specifically provided in this Declaration and the Bylaws).

3.13. **Voting.** The Master Association shall have two classes of membership, which shall include Class "A" Members and the Class "B" Member.

3.13.1. **Class "A" Members.** Class "A" Members shall be all Owners. Each Class "A" Member shall have the number of votes as provided in EXHIBIT "F". No votes shall be exercised on account of any property which is totally exempt from assessments as provided herein.

3.13.2. **Class "B" Member.** The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member under this Declaration and the Bylaws are specified elsewhere in the Declaration and the Bylaws. Subject to the provisions of the Bylaws, during the Declarant's Control Period, the Class "B" Member shall appoint all members to the Board. The Class "B" Member may assign and transfer its Class "B" membership status. The Class "B" membership shall terminate upon the expiration or earlier termination of the Declarant's Control Period, or when, in its discretion, the Class "B" Member so determines and declares in an instrument recorded in the public records of the County. Upon termination of the Class "B" membership, the Declarant shall become a Class "A" Member and entitled to Class "A" votes for all Land Units which it owns.

3.14. **Current Lists of Owners.** Each Sub-Association shall provide the Master Association with the names and addresses of all Members who are subject to the jurisdiction of that Sub-Association and shall notify the Master Association in writing each time there is a change in the name and/or mailing address of a member of that Sub-Association. Each Sub-Association shall also provide the Master Association with any certificates of authority for voting purposes of proxies held in their possession. To the extent there is no separate Neighborhoods established, all Owners of a Land Unit shall provide the Master Association

with its name and address, and shall notify the Master Association in writing each time there is a change in the name and/or mailing address of the Owner of such Land Unit. Failure of a Sub-Association or Owner of a Land Unit not subject to the jurisdiction of a separate Sub-Association to notify the Master Association of the foregoing required information shall result in a Specific Assessment levied by the Master Association against all Members of the Sub-Association and/or the Owners of Land Units, as applicable, in violation of this provision for the costs and expenses incurred by the Master Association as a result of such failure.

3.15. **Neighborhood Voting Representative.** Due to the number of Land Units which may be developed in Cary Creek, a representative form of voting will be employed in order to facilitate the conduct of the Master Association business, communication among the Declarant, Board and Owners, and the smooth administration of Cary Creek in the event more than one Neighborhood is created hereunder. Each Neighborhood or Sub-Association shall elect a Voting Representative who shall be responsible for casting all votes attributable to Land Units owned by Class "A" Members in the Neighborhood on all Master Association matters requiring a membership vote, except as otherwise specified in the Governing Documents. In addition, each Neighborhood shall elect an alternate Neighborhood Voting Representative to act in the absence of a Neighborhood Voting Representative. The Neighborhood Voting Representative and alternate Neighborhood Voting Representative from a Neighborhood shall each be Owners of a Land Unit in such Neighborhood in good standing. No Owner of an Institutional Land Unit shall be deemed eligible to vote and shall not become a Neighborhood Voting Representative unless such Owner agrees to pay Assessments to the Master Association and to comply with all terms and provisions of this Declaration to which an Institutional Land Unit may otherwise be exempt. Neighborhood Voting Representatives may cast their votes as they, in their discretion, deem appropriate or as otherwise required under the applicable Governing Documents for the Neighborhood. Neighborhood Voting Representatives are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Master Association governance beyond voting on matters put to a vote of the Members. Each Sub-Association shall provide the Master Association with the list of names and addresses of the Neighborhood Voting Representatives and the alternate Neighborhood Voting Representatives and any change in names and/or addresses.

3.15.1. **Election of a Neighborhood Voting Representative.** The first election of a Neighborhood Voting Representative from a Neighborhood shall occur within two (2) years after the first conveyance of a Land Unit in the Neighborhood to an Owner other than a Builder. Thereafter, the Sub-Association shall call, or the Board may call, for an election of a Neighborhood Voting Representative every two years. Votes may be cast as determined by the Board. However, upon written petition signed by Members holding at least ten percent (10%) of the Class "A" votes within any Neighborhood, the election for the Neighborhood Voting Representative for such Neighborhood shall be held at a special meeting. The presence, in person or by proxy, of Members representing at least ten (10%) of the total Class "A" votes in the Neighborhood shall constitute a quorum at any Neighborhood meeting to elect a Neighborhood Voting Representative. In the event of the failure to obtain a quorum, the Board may appoint a Neighborhood Voting Representative or alternate Neighborhood Voting Representative to represent the Neighborhood until a successor is elected. Candidates for election as a Neighborhood Voting Representative shall be nominated by its Sub-Association within thirty (30) days vacancy, or may be nominated by the Board, a nominating committee the Board appoints, or by Owners in the manner provided by the Board. For any election of a Neighborhood Voting Representative, an Owner of a Land Unit in a Neighborhood shall have the number of votes provided in EXHIBIT "F" to this Declaration. The candidate who receives the greatest number of votes shall be elected as the Neighborhood Voting Representative and the candidate receiving the next greatest number of votes shall be elected as the alternate Neighborhood Voting Representative. The Neighborhood Voting Representative and the alternate Neighborhood Voting Representative shall serve until their successors are elected.

3.15.2. **Vacancy.** If there is vacancy in the position of Neighborhood Voting Representative for any Neighborhood, the Sub-Association of such Neighborhood shall, or the Board may, appoint a Neighborhood Voting Representative or alternate Neighborhood Voting Representative to represent such Land Units in such Neighborhood until a successor is elected.

3.15.3. **Removal of Neighborhood Voting Representative.** Any Neighborhood Voting Representative may be removed, with or without cause, upon the vote or written petition of Owners of Land Units holding at least a majority of the votes in such Neighborhood represented by the Neighborhood Voting Representative.

3.16. **Voting Groups.** Prior to the expiration of the Declarant's Control Period, the Declarant may combine different Neighborhoods into Voting Groups for any purpose. Voting Groups shall be designated to promote representation on the Board by groups with dissimilar interests and to avoid particular groups dominating the Board due to the number of votes held by such groups. The Declarant shall unilaterally establish Voting Groups, if at all, without the consent or approval of any Person whatsoever, by recording a Supplement to the Declaration identifying the Voting Groups by legal description or other means by which the property within the Voting Groups can clearly be determined. The Declarant may amend such designations at any time and from time to time during the Declarant's Control Period in the same manner. In any event, each Voting Group shall elect an equal number of directors to the Board after the Declarant's Control Period. After expiration of the Declarant's Control Period, the Board, with the approval of Neighborhood Voting Representatives together representing a majority of the Class "A" votes in the Master Association, may create one or more Voting Groups, or change existing Voting Groups, by recording a Supplement to the Declaration, or amending a previous Supplement to the Declaration. For purposes of this Section 3.16, other than the manner authorized herein to establish Voting Groups, no further consent or approval of any Person whatsoever shall be required, except the Declarant prior to expiration of the Declarant's Control Period which shall be in the Declarant's sole and absolute discretion. Until such time as Voting Groups are established, the Property shall be without the requirement of a Neighborhood Voting Representative. After Voting Groups are established, any portion of the Property not assigned to a specific Voting Group shall collectively constitute a single Voting Group.

3.17. **Board of Directors.** The Master Association shall be governed by the Board which shall be appointed, designated or elected and shall have a minimum of at least three (3) members at all times, as the case may be, as follows:

3.17.1. **Appointed by the Declarant.** The Declarant shall have the right to appoint all members of the Board during the Declarant's Control Period, in Declarant's sole and absolute discretion, and such Board members shall serve at the pleasure of the Declarant.

3.17.2. **Election of the Board.** After the Declarant no longer has the right to appoint all members of the Board under Section 3.17.1, or earlier if the Declarant so elects, then, and only then, shall the members of the Board be elected as provided in the Governing Documents.

3.17.3. **Vacancies.** A member of the Board may be removed and vacancies on the Board shall be filled in the manner provided by the Governing Documents. However, the Declarant may only remove any member of the Board appointed by the Declarant, and any vacancy on the Board of a member appointed by the Declarant shall be filled by the Declarant.

ARTICLE IV
USE RESTRICTIONS AND MAINTENANCE RESPONSIBILITIES

4.1. **Governmental, Educational and Religious Interests.** So long as the Declarant or any affiliate of the Declarant owns any portion of the Property, the Declarant may designate sites within the Property for Institutional use including, without limitation, government, education or religious activities and interests, fire, police, utility facilities, schools or education facilities, houses of worship, parks, recreation and other public facilities. The sites may include Common Areas and in such case, the Master Association shall dedicate and convey such sites as directed by the Declarant, and no approval of the Members or any Person whatsoever shall be required.

4.2. **Assumption of Obligations Under Development Agreement(s).** The Declarant shall have the right to assign to the Master Association any of its continuing obligations or responsibilities under the Development Agreement, and the Master Association shall accept, assume and fulfill such obligations and responsibilities. The Master Association shall indemnify and hold the Declarant harmless from any liability which may result therefrom, including any legal fees and costs incurred by the Declarant in defending itself or enforcing its rights hereunder.

4.3. **Use of Property.** The use of the Property by the Owners shall comply with the Governing Documents, all laws, including State and Federal (as it may relate) and any and all permits, licenses or other documents that may be applicable to the Property from time to time including, without limitation, the Development Agreement(s) as may be amended at the discretion of Declarant for so long as Declarant's Control Period exists.

4.4. **Prohibited Acts.** No Owner shall submit a request for rezoning or for an amendment, variance or modification to the Development Agreement(s), or other land use approvals or permits, without the express prior written consent of the Declarant, which may be withheld in the sole and absolute discretion of the Declarant.

4.5. **Common Area.** The Common Area shall be deemed to include (i) those areas which are designated as such on any recorded subdivision or condominium plat of the Property, or any portion thereof; (ii) those areas which are otherwise dedicated, conveyed, leased or licensed for the common use and enjoyment of all Owners or which the Master Association otherwise possesses; (iii) those areas of the Property for which the Master Association or the Owners have use rights, whether by agreement or otherwise; (iv) those areas which the Declarant may designate as such; and (v) those areas the maintenance of which or other responsibility for which resides in the Master Association as provided in this Declaration, is transferred to the Master Association by the Declarant or is otherwise assumed by the Master Association. The term "Common Area" shall also include any and all Improvements located on the real property classified as "Common Area." The Common Area shall be distinguished from the Neighborhood Common Area. Neighborhood Common Area shall be for the exclusive use of the Owners of Land Units of a particular Neighborhood. By way of illustration and not as to a limitation, the Common Area may include:

4.5.1. **Streets and Streetscape.** Except as otherwise assumed by the City of Auburn, or other Government Authorities (or utility providers) or as otherwise set forth herein, the Master Association shall be responsible for the maintenance, repair and replacement of any Private Streets owned by the Master Association and Streetscape lying within the medians of any Streets owned by the Master Association. The Master Association shall have the right, but not the obligation, in its sole and absolute discretion, to either maintain or supplement the cost of maintenance of all Streets and Streetscape within the medians, or abutting the Streets, and of the decorative elements of any bridge in a Street, at a higher level than that of the City of Auburn or other Government Authorities (or utility providers), or as otherwise required

herein, for the purpose of said maintenance, operation, repair and replacements and/or supplemented maintenance, operation, repair and replacement. The Declarant and/or the Master Association may enter into a maintenance agreement with the City of Auburn or other Government Authorities (or utility providers) for the purpose of said maintenance, operation, repair and replacement and/or supplemented maintenance, operation, repair and replacement. If the Declarant initially enters into such an agreement, that agreement may be assigned in whole or in part to the Master Association, and the Master Association shall be responsible to perform the obligations under the agreement so assigned. To the extent the Master Association has the right or obligation to maintain, repair or replace such areas, such areas shall be considered part of the "Common Area" or "Limited Common Area" even though not owned by the Master Association.

To the extent applicable and except as otherwise assumed by the City of Auburn, or other Government Authorities (or utility providers), each Owner, at such Owner's sole cost and expense, (unless assumed by the Master Association or a Sub-Association) shall maintain, mow, irrigate, prune and replace all landscaping (including, without limitation, all sod and trees) lying within the right-of-way of adjacent public streets (including streets owned by The City of Auburn), private streets, lakes and ponds, and alleys between the Land Unit boundary and the curb of such public street, private street or alley, and between the Land Unit boundary and the waters of any lake or pond, in a manner consistent with the Cary Creek Standard. If such areas are adjacent to a Neighborhood, then the applicable Sub-Association or Owners thereof shall be responsible for the above obligations, or if such areas are adjacent to Attached Units, the applicable Service Area shall be responsible for the above obligations. The Master Association shall be responsible for any cost for the upgraded maintenance and operation of the street lighting for the Streets, except as otherwise assumed by the City, or any other Government Authorities (or utility providers). The Master Association shall not be responsible for the upgraded cost for installation of street lighting, unless the Master Association and Declarant during Declarant's Control Period so agrees, in its sole and absolute discretion. The right of the Owners to use the Streetscape shall be in accordance with its intended use, and shall include, without limitation, pedestrian travel, walking, jogging or running, skating, bicycle riding, and similar activities, within that portion of the Streetscape reasonably intended for such purposes. An Owner shall be expressly prohibited from unilaterally modifying, altering or changing any Streetscape (including, without limitation, all sod and trees lying within the right-of-way of adjacent public streets (including streets owned by the City), private streets, lakes and ponds, and alleys between the Land Unit boundary and the curb of such public street, private street or alley, and between the Land Unit boundary and the waters of any lake or pond) without the prior written consent of the Master Association in each instance. If an Owner modifies, alters or changes any Streetscape in violation of the restrictions set forth herein, such Owner, at its expense, shall be obligated to promptly restore the Streetscape to its pre-existing condition using the same or substantially similar type, quality and size of materials to the greatest extent possible.

In addition to any other enforcement rights, if an Owner or Sub-Association fails to properly perform his, her or its maintenance responsibilities under this Section 4.5.1, the Master Association may perform such maintenance responsibilities and assess all costs incurred by the Master Association as a result thereof against the benefited Land Unit(s) and its Owner(s) in accordance with the terms hereof. In the event of a failure of a Sub-Association to properly perform its maintenance responsibilities, any resultant assessment may be imposed against all Units under the jurisdiction of such Sub-Association as provided herein. The right of the Master Association to enter any Land Unit to perform such maintenance is granted to the Master Association pursuant to the terms hereof. The Master Association shall afford the Owner or the Sub-Association at least fourteen (14) day's written notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation

4.5.2. **Recreation Areas.** Recreation areas, if any, include those portions of the Property designated for recreational use by the Declarant during the Declarant's Control Period or by the Master

Association after the expiration of the Declarant's Control Period provided that the Declarant has consented in its sole and absolute discretion so long as the Declarant or any affiliate of the Declarant owns any portion of the Property. Recreation areas shall be used only for recreational purposes in a manner consistent as established by the Masters Association, and subject to the Rules and Regulations of the Master Association. The Declarant, in its sole discretion, during the Declarant's Control Period, or the Master Association after the expiration of the Declarant's Control Period provided that the Declarant has consented in its sole and absolute discretion so long as the Declarant or any affiliate of the Declarant owns any portion of the Property, shall determine the manner of making Improvements in recreation areas and the use thereof, and may, in its sole and absolute discretion, charge a user fee for all or a portion of such recreation areas. A portion of the lands in Cary Creek may, but may not be obligated to be, utilized for a clubhouse and amenities, and other recreational facilities (collectively, the "Recreational Facilities"). The Recreational Facilities, if any, shall be operated and maintained by the Master Association as a Common Expense. The Master Association shall have the right to enter into use agreements or similar types of agreements with Persons who are not Owners in order to provide such Persons the right to use all or any portion of the Recreational Facilities for a specified fee. The Declarant shall also have the right to enter into such agreements and assign them to the Master Association during the Declarant's Control Period. Portions of the Recreational Facilities may be open to use by the general public, and, as a result, there may be use of those Recreational Facilities or portions thereof, by Persons who do not pay a fee to the Master Association for such use; provided, however, any pool facilities included within the Recreational Facilities shall not be made available to the general public without the payment of a fee to the Master Association. THE PRESENT OR FUTURE USE OF ANY PORTION OF THE PROPERTY WITHIN CARY CREEK FOR THE RECREATIONAL FACILITIES MAY BE DISCONTINUED OR SUSPENDED AT ANY TIME BY ITS OWNER, AND, AT SUCH TIME, SUCH RECREATIONAL FACILITIES MAY BE USED FOR SUCH OTHER PURPOSES AS THE OWNER THEREOF MAY DECIDE, SUBJECT TO THE CONSENT AND APPROVAL OF THE DECLARANT DURING SUCH TIME AS THE DECLARANT OWNS ANY PORTION OF THE PROPERTY. Use may be defined or limited by Sub-Association documents or by the Declarant.

4.5.3. **Open Spaces.** Open spaces mean those portions of the Property designated as open spaces by the Declarant during the Declarant's Control Period or by the Master Association after the Declarant's Control Period provided that the Declarant has consented in its sole and absolute discretion so long as the Declarant or any affiliate of the Declarant owns any portion of the Property. The Declarant during the Declarant's Control Period shall have the absolute right, in its sole discretion, to modify its plan for beautification of Cary Creek and specifically to modify the appearance of open spaces; and thereafter the Master Association shall have the same right as long as the general quality of such beautification plan is not diminished. If the Master Association does modify the appearance of open spaces in a manner which diminishes the general quality of the beautification plan instituted by the Declarant, the Declarant shall have the right to bring legal action to force the Master Association to correct the appearance of such open spaces as long as the Declarant or any affiliate of the Declarant owns any portion of the Property.

4.5.4. **Stormwater Management Systems.** The stormwater management facilities (collectively, the "Drainage Areas") shall be kept and maintained for irrigation, drainage, conservation, mitigation or beautification purposes in a manner consistent with the Declarant's original design and in accordance with the requirements, permits and approvals of the applicable Government Authorities. Unless otherwise designated by the Declarant, the Master Association shall be responsible for the maintenance, operation, and repair of the stormwater management facilities. Maintenance of the stormwater management facilities shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water management capabilities permitted by the City of Auburn. Any repair or reconstruction of the stormwater management facilities shall be as permitted or, if modified, as approved in writing by the City of Auburn. Unless otherwise designated by the Declarant, if wetland mitigation, monitoring, restoration or creation is required, the Master Association shall be

responsible to carry out this obligation, including complying with all of the City of Auburn permitting requirements associated with wetland mitigation, maintenance, and monitoring. Except as otherwise waived by the Declarant in writing, or assumed by the City of Auburn or other Government Authorities, unless otherwise designated by the Declarant, the Master Association shall also maintain the areas around the ponds which are a part of the stormwater management facilities (provided such areas are not included within a Land Unit which shall be the Owner's responsibility) and the aquatic vegetation within said ponds. Such maintenance shall not include any structural components or systems of the stormwater management facilities, unless the City of Auburn or other Government Authorities, do not assume the obligation to maintain same. Except as otherwise waived by the Declarant in writing, or assumed by the City of Auburn or other Government Authorities, the Master Association shall maintain the portion of the upland buffer areas in the, which are used by the Master Association and the Owners for paths, equestrian trails and other permitted recreational purposes and as otherwise necessary to maintain the Cary Creek Standard. The stormwater management facilities and its location may not be modified or relocated without the appropriate permit modification and the prior written consent of the Declarant, so long as the Declarant or any of its Affiliates owns any real property in the Cary Creek PDD. In the event of a dissolution or termination of the Master Association, property owned by the Master Association containing all or part of the stormwater management facilities shall be transferred only to another not-for-profit corporation or dedicated to the appropriate Government Authorities, agreeing to accept such conveyance or dedication, together with the requirement to operate and maintain the stormwater management facilities and the upland buffer areas in the as provided herein. Neither the Declarant, the Master Association nor any Neighborhood Association shall be obligated to provide supervisory personnel or lifeguards for the ponds included within the stormwater management facilities, unless otherwise specifically agreed to by the Master Association.

4.5.5. **Parks.** Parks mean those portions of the Property designated as such by the Declarant during the Declarant's Control Period or by the Master Association after the Declarant's Control Period provided that the Declarant has consented in its sole and absolute discretion so long as the Declarant or any affiliate of the Declarant owns any portion of the Property, by the applicable Cary Creek PDD, by plat or otherwise, which may or may not be dedicated to or owned by the City of Auburn or the Master Association, and all improvements located thereon. Unless owned by the Master Association, the Parks shall be maintained and repaired by the Sub-Association in which it is subject to, except as otherwise waived by the Declarant or assumed by the City of Auburn. Parks located within Neighborhoods shall be deemed Common Area, and not Neighborhood Common Area, unless otherwise designated by the Master Association. In such case, the park shall be maintained by the Master Association unless the Declarant or the Master Association requires, in its sole and absolute discretion, to have the park maintained by such Sub-Association. To the extent a park is a regional or community park maintained by the City, or other Government Authorities, the Master Association shall not be obligated to maintain and repair same; provided, however, the Master Association may elect, in its sole and absolute discretion, to supplement the cost of maintenance and repair at a higher level than that of the City or other Government Authorities.

4.5.6. **Public Improvements.** Public improvements made by the Declarant for the benefit of the County, the City of Auburn or any other Government Authorities that are not maintained at the expense of the general public and which the Master Association, in its sole and absolute discretion, elects to maintain, or elects to maintain at a higher level than that of the County, the City of Auburn or any Government Authorities.

4.5.7. **Other Improvements.** Such other property or improvements which benefit the Property or any portion thereof which the Declarant shall determine, so long as the Declarant or any affiliate of the Declarant owns any portion of the Property.

4.6. **Neighborhood Common Area.** The Neighborhood Common Area shall not be deemed to be a part of the Common Area except as provided by this Declaration.

4.7. **Limited Common Area.** Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners, occupants, lessees, and invitees of Land Units within a particular Service Area or within a Neighborhood as set forth in a Supplement to the Declaration, in a deed conveying such Limited Common Area to the Master Association, or on the plat of such Limited Common Area or otherwise. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaping, landscaped medians, driveways, alleys, cul-de-sacs, ponds, mews and other portions of the Common Area within a particular Service Area. All costs associated with maintenance, repair, replacement, and insurance of Limited Common Areas shall be assessed as a Service Area Assessment against the Owners of the Land Units to which the Limited Common Area is assigned. The Declarant, during the Declarant's Control Period, may from time to time grant to additional Land Units the right to use certain Limited Common Areas, and may assign a Common Area as a Limited Common Area and reassign an Limited Common Area as a Common Area. Thereafter, a portion of the Common Area may be assigned and re-assigned as Limited Common Area upon approval of Neighborhood Voting Representatives representing a majority of the votes of Members whose Land Units are affected by the proposed assignment or reassignment. The Master Association may permit Owners of other Land Units to use all or a portion of the Limited Common Area upon payment of user fees, which fees shall be used to offset the Service Area Expenses attributed to such Limited Common Area.

4.8. **Conveyance to the Master Association.** The Declarant shall have the right to convey title to any property owned by it or its Affiliates, or any interest therein, to the Master Association as Common Area. The Declarant may also convey or assign to the Master Association any maintenance responsibilities the Declarant has undertaken involving portions of the Property not within Common Area, and real and personal property not within the defined "Property" but contiguous to portions of the Property. As an example, the Declarant may, but shall not be obligated to, maintain the Streetscape within Cary Creek, even though such areas may not be included within the Property, and may assign such obligations to the Master Association or Sub-Association.

The Declarant may require the Master Association, by written notice to the Master Association, to operate and/or maintain as Common Area, any property owned by the Declarant which the Declarant intends to convey in the future (or transfer an interest or use or possessory right therein in the future) to the Master Association. In that event, such property shall be deemed Common Area even though not yet owned by the Master Association (or an interest or use or possessory right therein has not yet been transferred to the Master Association). If the Declarant thereafter determines not to convey the property (or transfer an interest or use or possessory right therein) to the Master Association as Common Area, the Declarant shall so notify the Master Association in writing, and thereafter such property shall no longer be deemed to be Common Area, and the Master Association will no longer have any obligation or right to operate and/or maintain such property, except as otherwise specifically agreed or provided herein. The Declarant shall not have the obligation to develop and/or convey any property (or transfer an interest or use or possessory right therein) to the Master Association as Common Area. If the Declarant desires to convey any property (or transfer an interest or use or possessory right therein) to the Master Association, the timing and method of the conveyance (or transfer of an interest or use or possessory right therein) shall be in the sole and absolute discretion of the Declarant. Once any portion of the Common Area is conveyed (or transfer of an interest or use or possessory right therein occurs) to the Master Association or any maintenance responsibilities are assigned to the Master Association, the Master Association shall assume all obligations relating to such Common Area and/or maintenance responsibilities, and further shall indemnify and hold the Declarant harmless from any liability which may result therefrom, including any legal fees and costs incurred by the Declarant in defending itself or enforcing its rights hereunder.

4.9. **Method of Conveyance.** The Declarant may transfer title (or any interest or use or possessory right therein) to any portion of the Common Area to the Master Association by bill of sale, deed,

easement, assignment, agreement or other appropriate instrument, which may be recorded in the public records of the County. The Master Association shall be obligated to accept the transfer as delivered by the Declarant and to maintain the Common Area for the use and benefit of the Owners. Notwithstanding the foregoing, property, which may be Common Area, may be owned by the City of Auburn, or other Government Authorities, and notwithstanding the foregoing, the Master Association may be obligated to maintain same as provided in this Declaration, even if not owned by the Master Association.

4.10. **Use of the Common Area.** Every Owner shall have the nonexclusive right to use, access and enjoy the Common Area subject to the following:

4.10.1. **Transfer of a Common Area or Limited Common Area.** Except as is provided in this Declaration; once title to the Common Area is transferred to the Master Association, it shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered without first obtaining the written approval of the Declarant so long as the Declarant or any affiliate of the Declarant owns any portion of the Property. Subject to the Declarant's approval so long as the Declarant or any affiliate of the Declarant owns any portion of the Property, the Master Association may dedicate portions of the Common Area to the City of Auburn or to any other Government Authorities or quasi-governmental entities (or utility providers). The Master Association, subject to the Declarant's approval as provided above, may encumber the Common Area provided such encumbrance is solely to secure a loan obtained for improving the Common Area being encumbered, and provided that the lien of such loan is not superior to the provisions of this Declaration. For so long as Declarant's control exists, the Declarant reserves the right to modify the Common Area or the Limited Common Area and the Association shall sign all documents requested in this regard.

4.10.2. **Use by the Owners.** A nonexclusive and perpetual right of use of all Common Areas (exclusive of any Limited Common Area, unless reserved for the benefit of an Owner pursuant to Section 4.7) shall be deemed to have been granted to: (a) all Owners, their family members, and their tenants, occupants, licensees, guests and invitees; (b) United States mail carriers, and representatives of fire departments, police and sheriff's departments, and other necessary Government Authorities (in their official capacity); and (c) holders of bona fide security interests and Mortgages on any portion of the Property (for the purpose of reasonable inspections of such portion of the Property). The foregoing nonexclusive and perpetual rights of use by all Owners, and their family members, tenants, licensees, guests and invitees shall be subject to:

4.10.2.1. The terms of this Declaration, the Bylaws, Rules and Regulations and any other applicable Governing Documents and covenants, restrictions and easements, including any declaration of easements and covenants to share costs or similar instruments relating to such Common Area which grant non-Owners rights to use and enjoy portions of the Common Area upon payment of fees or a portion of the costs relating to such Common Area or Limited Common Area;

4.10.2.2. Any restrictions or limitations contained in any deed conveying such Common Area to the Master Association, and any matters to which the Common Area or Limited Common Area is subject at the time of conveyance to the Master Association;

4.10.2.3. The right of the Board to adopt Rules and Regulations regulating the use and enjoyment of the Common Area, including Rules and Regulations restricting, limiting or prohibiting use of any Common Area to Owners of Parcels or Land Units and their family members, tenants, licensees, guests, employees and invitees, and Rules and Regulations limiting the number of family members, tenants, licensees, guests, employees and invitees who may use the Common Area;

4.10.2.4. The right of the Board to permit use of any Recreational Facilities situated on the Common Area by persons other than Owners, their family members, tenants, licensees, guests,

employees and invitees upon payment of user fees established by the Board or such other use restrictions as the Board shall determine;

4.10.2.5. The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Area", as more particularly described in the manner provided in this Declaration;

4.10.2.6. The right of the Master Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to the provisions of the Governing Documents, or to an Owner of a Land Unit for the purpose of making minor adjustments to the boundary lines of such Land Unit, subject to the terms of the Governing Documents;

4.10.2.7. The terms and provisions of the Development Agreement, Cary Creek PDD, permits and approvals of the applicable Government Authorities, The City of Auburn, and the rights of any of the foregoing therein;

4.10.2.8. The right of the Board to suspend the right of an Owner, its family members, tenants, licensees, guests, employees and invitees, to use Common Areas and Recreational Facilities within the Common Areas (i) for any period during which any Assessment, fine or other monetary charge against such Owner's Land Unit or against such Owner, its family members, tenants, licensees, guest, employees and invitees which remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and a hearing;

4.10.2.9. The right of the Board to levy a fine against an Owner, its family members, tenants, licensees, guests, employees and invitees as a result of a violation by such Person of the terms of the Governing Documents pertaining to such Common Areas, which fine may be levied per violation, and each day of a continuing violation, as further provided in Section 4.18.

4.10.2.10. The right of the Board to impose membership requirements and charge membership, admission or other fees for the use of any Recreational Facilities situated upon the Common Area;

4.10.2.11. The right of the Board to mortgage, pledge or hypothecate the Common Area as security for money borrowed or debts incurred subject to the terms and provisions of the Governing Documents.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, tenants, licensees, guests, employees and invitees, subject to reasonable regulation as provided for in this Declaration. An Owner who leases all of his or her Land Unit shall be deemed to have assigned all such rights to the tenant of such Land Unit for the term of such lease.

4.10.3. **Use of Stormwater Management Facility System.** Subject to any applicable laws, rules, regulations and ordinances imposed by, and any agreements entered into with any Government Authorities, and unless and until the Declarant has assigned such rights to the Master Association, the City of Auburn (or any other Government Authorities) or Declarant's Affiliates, the Declarant shall retain all right, title and interest to the stormwater management facilities (including, without limitation, all water in any ponds and water courses within the Property), and shall further have the sole right to control the water level and maintenance of all ponds, slopes and banks, water courses, drainage control devices and all other areas and apparatus comprising the stormwater management facilities and, unless such right is assigned to and assumed by the Master Association, the City of Auburn or the applicable Government Authorities. Subject to regulations, ordinances and agreements imposed by or made with the City of Auburn or any Government Authorities, the Declarant, and any assigns of the Declarant, shall have the

right to use the water, and control the level thereof, in all ponds and water courses in the stormwater management facilities for any purpose as determined by the Declarant, or such other Persons as the Declarant may designate, and shall have the right to charge the Master Association a reasonable fee for any such services provided to the Master Association benefitting the Property for irrigation purposes.

4.10.4. **Prohibited Uses.** Subject to local laws and City of Auburn Regulations, no Person (other than employees or agents of the Declarant) shall, without the written approval of the Declarant, in its sole and absolute discretion, do any of the following on any part of the Common Area:

4.10.4.1. Operate motor vehicles for any purpose other than as a means of transportation;

4.10.4.2. Use watercraft of any nature on or in any portion of the stormwater management facilities or fish or swim on or in any portion of the stormwater management facilities, other than in areas specifically designated for those purposes by the Declarant (but only in accordance with the approvals, permits and any agreements of or with the City of Auburn and applicable Government Authorities);

4.10.4.3. Permit the walking or running of animals except when on a leash;

4.10.4.4. Light any fires except in designated locations in designated picnic areas; (e) fell any trees or injure or damage any landscaping;

4.10.4.4. Interfere with any drainage, utility or access easements;

4.10.4.4. Build any structures, recreational or other common facilities or Common Area or Limited Common Area or any property now owned the Declarant or its Affiliates;

4.10.4.4. Discharge any liquid or material other than natural drainage in accordance with applicable permits into the stormwater management facilities;

4.10.4.4. Alter or obstruct any ponds, drainage swales, water courses, the stormwater management facilities; or

4.10.4.4. Interfere with any water control structures or apparatus, the stormwater management facilities. Nor shall any Person violate Rules and Regulations that may be established by the Master Association governing the use of the Common Area. The foregoing rights accruing to the Declarant in this Section 4.10.4 may be exercised by the Declarant so long as the Declarant or any affiliate of the Declarant owns any portion of the Property. Thereafter such rights may be exercised by the Master Association, unless sooner assigned by the Declarant to the Master Association.

4.11. **Maintenance of the Common Area and Limited Common Area.**

4.11.1. The Master Association shall be responsible for the maintenance and repair of the Common Area Limited Common Area and such other areas as are provided in the Governing Documents, in compliance with the Cary Creek Standard and the Governing Documents. There are hereby reserved to the Master Association easements over the Property as necessary to enable the Master Association to fulfill its rights and responsibilities under this Declaration. The Master Association may, in the discretion of the Board, assume the maintenance responsibility set out in any Neighborhood Declaration subsequently recorded which creates any Sub-Association with jurisdiction over any portion of the Property. In such event, all costs of such maintenance shall be assessed only against all Owners within that Neighborhood. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the standards of maintenance generally prevailing in Cary Creek. The provision of services in accordance

with this section shall not constitute discrimination within a class.

4.11.2. The Master Association may maintain other property which it does not own, including, without limitation, as specifically provided in this Declaration, publicly owned property, property owned by the City of Auburn or other Government Authorities and other property dedicated to public use, or if the Board determines that such maintenance is necessary or desirable to maintain the Cary Creek Standard or required by the City of Auburn or other government authority.

4.11.3. The Master Association may enter into contracts with third party service providers (including, without limitation, Affiliates of Declarant) for utilities and services to some or all of the Property including, but not limited to, water, electricity, telephone, high speed internet, multi-channel video, cable television, monitoring and/or voice communications systems and security services, fiber optic systems, and other systems for sending and receiving data and (or other electronic or digital signals).

4.11.4. The Master Association may subsequently assign or relinquish the portion of its obligation for maintenance, repair and replacement of the Common Area or otherwise to the extent assumed by The City of Auburn, or other Government Authorities, or if waived by the Declarant in writing, so long as the Declarant or any affiliate of the Declarant owns any property within the Property.

4.11.5 Any benefits related to a third party service provider for utilities and services shall enure to the Declarant.

4.12. **Maintenance by the Owner.** Subject to the terms and provisions of Section 4.13 below with respect to Attached Units, the responsibility of each Owner to keep his Parcel or Land Unit in compliance with the Cary Creek Standard, and the standards promulgated by the Design Review Board and the Governing Documents shall include, but not be limited to, the following:

4.12.1. To maintain, protect, repair and replace, at the Owner's cost and expense, all portions of the Owner's Land Unit (together with all Improvements, landscaping and equipment thereon as well as any Streetscape abutting thereto in accordance with Section above), except any portions to be maintained, repaired and replaced by the Master Association or any Sub-Association. Such maintenance, protection, repair and replacement shall be done without disturbing the rights of other Owners within the Property. Without limiting the generality of the foregoing, it is expressly understood, acknowledged and agreed to by each Owner, by virtue of acceptance of title to any Land Unit, that either the Declarant or the Master Association, or both, have installed, at their expense, certain trees lying within those certain Land Units abutting Streets and designated as such by the Declarant (collectively, the "Master Association Trees"), which shall be and remain the sole property of the Master Association for the benefit of all Owners. Each Owner of a Land Unit containing any of the Master Association Trees shall be responsible, at such Owner's cost and expense, to maintain, protect, repair and replace the Master Association Trees; provided, however, at any time hereunder, the Master Association shall have the right, but not the obligation, to conduct such maintenance, protection, repair and replacement of the Master Association Trees upon written notice to such applicable Owners whereupon the Master Association shall have the right to treat all expenses incurred thereby as a Common Expense hereunder. Each Owner of a Land Unit containing any of the Master Association Trees shall be expressly prohibited from altering, removing or using such trees without the express written permission by the Master Association in each instance. The Declarant hereby reserves unto itself and grants in favor of the Master Association an easement over the Land Units containing the Master Association Trees for purposes of exercising its rights hereunder and for purposes of inspecting and enforcing the obligations of such Owners as set forth herein.

4.12.2. Not to modify or change the appearance or design of any portion of the exterior of any structure or site features located on the Parcel or Land Unit without the prior written approval of the Design Review Board (and the Declarant, if so required in Article V), and additionally as may be required

by the Sub-Association for the Neighborhood which a Land Unit may be located.

4.12.3. To report promptly to the Master Association, or Sub-Association, if applicable, any defect or need for repairs, maintenance or replacements for which the Master Association or any Sub-Association is responsible.

4.13. **Maintenance by Owners of Attached Units.** Notice is hereby given to each Owner of an Attached Unit that unless otherwise designated by the Declarant to a Sub-Association, the Master Association shall provide maintenance and other services to Attached Units as set forth in this Declaration, as amended from time to time, and the cost of providing these services shall be assessed against each Attached Unit as a Service Area Assessment as set forth in EXHIBIT "H". Each Owner is advised to thoroughly review the applicable provisions in this Declaration to ascertain the extent of the Master Association's maintenance responsibilities. The Master Association's maintenance responsibilities do not include making exterior or interior inspections of any portion of an Attached Unit or any improvements thereon to determine whether any conditions requiring maintenance exist. It is each Owner's responsibility to make periodic inspections of exterior and interior portions of its Attached Unit and all improvements thereon to determine whether any maintenance is required by the Master Association and to report to the Master Association any conditions found to require maintenance. While the Master Association has agreed to provide certain maintenance services to Attached Units as set forth in this Declaration, the Master Association is not a guarantor of the condition of any Attached Unit or any improvements thereon or attached thereto. In the event that any damage or injury occurs to any Owner or occupant of an Attached Unit as a result of the failure of the Master Association to perform such maintenance, the Master Association's liability shall be limited to performing the maintenance otherwise required by this Declaration, and the Master Association shall not be responsible for consequential damages, personal injury or punitive damages of any kind. Builders may have provided Owners with warranties that extend for some period of time after completion of the improvements on each Attached Unit. In the event that repairs may be necessary during the warranty period, Owners are advised to first contact their Builders to determine whether the repairs are covered by any existing warranties.

The Master Association shall not, in any event, be responsible for any mold, mildew or other similar damage that may arise in any improvements on an Attached Unit as a result of any leaks, condensation or other condition, even if such condition is caused by a failure of the Master Association to conduct maintenance otherwise required by the terms of this Declaration.

4.14. **Declarant's Reserved Rights.** In the event the Master Association fails to properly perform its maintenance responsibilities, the Declarant or its designee (so long as the Declarant or any affiliate of the Declarant owns any portion of the Property) may, at the Declarant's sole option, give the Master Association notice and an opportunity to cure such failure which notice shall give no less than fifteen (15) days of mailing of written notice for the Master Association to cure such failure. If such cure by the Master Association is not completed within such fifteen (15) day period, the Declarant may cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Master Association for all reasonable costs incurred by the Declarant.

4.15. **Residential Land Unit.** Except as specifically allowed by the Development Order, the Agreement, and the applicable Master Plan, and approved by the Declarant in writing (so long as the Declarant or any affiliate of the Declarant owns any property in the Cary Creek PDD), and thereafter by the Master Association, a Residential Land Unit shall be for Residential use only and for no Commercial or Institutional use, except during the construction, development or sale of the Residential Land Unit. The conduct of business or business activities in a Residential Land Unit by an Owner shall not be deemed to violate this Section 4.14 if the conduct of business or business activities:

4.15.1. Is not apparent or detectable by sight, sound, or smell from outside the Residential Land

Unit;

4.15.2. Is not a primary use of the Residential Land Unit;

4.15.3. Does not involve regular visitation of the Residential Land Unit by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within Cary Creek or involve regular deliveries of parcels or other materials to the Residential Land Unit;

4.15.4. Is consistent with the Residential character of the Residential portions of Cary Creek and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within Cary Creek, as determined in the Board's sole discretion; and

4.15.5. Is pursuant to a valid occupational license per the City of Auburn.

As used in this Section 4.14, the term "Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. This Section 4.14 does not apply to the Declarant's activities, or to the activities of Persons Declarant approves with respect to its development and sale of property in Cary Creek. The operation of a brokerage or sales office from a Residential Land Unit during the construction, development, sale or rental of the Residential Land Unit, shall not be considered Commercial activity. Additionally, this Section 4.14 shall not apply to any Master Association activity related to its obligations under the Governing Documents or applicable law. Leasing a Residential Land Unit is not a "business" within the meaning of this Section 4.14.

4.16. **Commercial or Institutional Land Units.** Commercial Land Units and Institutional Land Units are those portions of the Property upon which improvements may be constructed and used for other than Residential purposes. No portion of the Commercial Land Units and Institutional Land Units may be used for Residential purposes, except as allowed by the Development Agreement, and the applicable Master Plan, and approved by the Declarant in writing (so long as the Declarant or any affiliate of the Declarant owns any property in the Cary Creek PDD), and thereafter by the Master Association.

4.17. **Use of Property by the Declarant.** Except as may be limited in this Declaration, the Declarant and its successors, nominees and assigns shall have the right to make such uses of the Property as the Declarant shall, from time to time in its discretion, determine, including, without limitation, such easements as may be required to exercise the rights contained in this Section 4.17 at its complete discretion until submitted by Plat to specific use. Notwithstanding anything to the contrary contained in this Declaration, and in recognition of the fact that the Declarant will have a continuing and substantial interest in the development and administration of the Property, the Declarant hereby reserves for itself and its successors, nominees and assigns, and the Master Association recognizes, agrees to and acknowledges that the Declarant and its successors, nominees and assigns shall have the right to use all Common Area and all other portions of the Property in conjunction with and as part of its program of sale, leasing, constructing and developing of and within the Cary Creek PDD. The Declarant's rights herein may be assigned to one or more registered real estate brokers. Subject to a listing or sales agreement, such rights shall include, but not be limited to the right to enter and transact business, maintain models and sales offices, place signs, employ sales personnel, show for purposes of sale or lease, Land Units and other portions of the Property, and use portions of the Property and other Improvements owned by the Declarant and the Common Area for the purposes set forth above. The Declarant shall also have the right to store construction materials, stone, or "fill dirt", and to assemble construction materials, stone, or "fill dirt" on any portion of the Common Area or on Property owned by Declarant. All such rights of the Declarant

may be exercised without any cost to the Declarant.

4.18. **Additional Provisions for the Preservation of the Values and Amenities of Cary Creek.** In order to preserve the values and amenities of Cary Creek, the following provisions shall be applicable to the Property.

4.18.1. **Mining or Drilling.** There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise undertaken within any portion of the Property. Excepted from the foregoing shall be activities of the Declarant, The City of Auburn, or Government Authorities, or any assignee of the Declarant, The City of Auburn, or Government Authorities, in mining operations for the purpose of obtaining "fill dirt", stone, or rock for placement on other portions of the Property, or for the removal and sale of excess "fill dirt", stone, or rock, in dredging the water areas, creating land areas from water areas or creating, excavating or maintaining the stormwater management facilities, or other facilities or easements, the installation of wells or pumps in compliance with applicable governmental requirements, or for sprinkler systems for any portions of the Property. Any proceeds resulting from the sale of "fill dirt", stone, or rock shall belong to the Declarant, unless otherwise agreed by the Declarant.

4.18.2. **Casualty Destruction to Improvements.** In the event an Improvement upon any Land Unit is damaged or destroyed by casualty, hazard or other loss, then, unless otherwise approved by Declarant within eighteen (18) months of time after such incident, the Owner thereof shall either commence to rebuild or repair the damaged Improvement and diligently continue such rebuilding or repairing activities to completion or, upon a determination by the Owner that the Improvement will not be repaired or replaced promptly, shall clear the damaged Improvement and grass over and landscape such Land Unit in a good, clean and sightly manner consistent with the Cary Creek Standard. A destroyed Improvement shall only be replaced with an Improvement of an identical size, type and elevation as that destroyed unless the prior written consent of the Declarant is obtained (unless the Declarant has otherwise delegated such approval right to the Design Review Board). If an Improvement which is part of a Neighborhood Common Area is damaged or destroyed, the Sub-Association administering same shall have the obligation to repair or replace such Improvement in the manner set forth herein. If an Improvement which is part of the Common Area is damaged or destroyed, the Master Association shall have the obligation to repair or replace such Improvement in the manner set forth herein, unless such obligation is otherwise specifically assumed by the City of Auburn or other Government Authorities.

4.18.3. **Common Area and Limited Common Area.** Nothing shall be stored, constructed within or removed from the Common Area other than by the Declarant (so long as the Declarant or any affiliate of the Declarant owns any portion of the Property), unless the Declarant otherwise approves in writing in its sole discretion, and thereafter only with the prior written approval of the Board.

4.18.4. **Insurance Rates.** Nothing shall be done or kept on the Common Area, other than by the Declarant (so long as the Declarant or any affiliate of the Declarant owns any portion of the Property), which shall increase the insurance rates of the Master Association or any Sub-Association without the prior written consent of the Board.

4.18.5. **Drainage Areas.**

4.18.5.1. No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the Drainage Areas without the prior written consent of the Declarant so long as the Declarant or any affiliate of the Declarant owns any property within the Cary Creek PDD, and the owners of the impacted portion of the Drainage Areas, which consent may be given or withheld in the sole and absolute discretion of all of the foregoing. After the Declarant no longer owns any property within Cary Creek PDD, the consent of the Master Association and the owners of the impacted

portion of the Drainage Areas (in their sole and absolute discretion) shall be required. Such consent shall be in addition to the obligation of an Owner to obtain required permits and approvals from the applicable Government Authorities.

4.18.5.2. An Owner shall in no way deny or prevent ingress and egress by the Declarant, the Master Association, The City of Auburn, appropriate Sub-Association, any owner of the Drainage Areas or applicable Government Authorities, to the Drainage Areas for maintenance, repair, replacement, construction, operation, use, and monitoring and modeling, or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Declarant, the Master Association, The City of Auburn, and any appropriate Government Authorities that may reasonably require such ingress and egress, and their agents, contractors, employees or assigns.

4.18.5.3. No Parcel or Land Unit shall be increased in size by filling in any Drainage Areas on which it abuts. No Owner shall fill, dike, rip-rap, block, divert or change the established Drainage Areas that have been or may be created, whether by easement or otherwise, without the prior written consent of the Declarant so long as the Declarant or any affiliate of the Declarant owns any property within Cary Creek PDD (and thereafter the Master Association), The City of Auburn, or any Owner of the Drainage Areas or applicable Government Authorities.

4.18.5.4. Any wall, fence, paving, planting, other improvement or refuse which is placed by an Owner within a Drainage Area or any drainage easement related thereto including, but not limited to, easements for maintenance, repair, replacement, construction, operation, use, landscape, ingress, egress and access, shall be removed, if required by the Declarant so long as the Declarant or any affiliate of the Declarant owns any property in Cary Creek PDD (and thereafter the Master Association), The City of Auburn or any Government Authorities, the cost of which shall be paid for by such Owner as a Specific Assessment as provided in Article VII.

4.18.6. **Maintenance of the Property.** In order to maintain the Cary Creek Standard, no weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any portion of the Property, and no refuse or unsightly objects shall be allowed to be placed or permitted to remain anywhere thereon. The foregoing provision shall not pertain to portions of the Property owned by the Declarant or its Affiliates, and shall not supersede other provisions in this Declaration pertaining to the Declarant or Declarant rights. All Improvements shall be maintained in their original condition as approved by the Design Review Board. All lawns, landscaping and sprinkler systems shall be kept in a good, clean, neat and attractive condition and repair.

4.18.7. **Underground Utility Lines.** All electric, telephone, gas and other utility lines must be installed underground, unless otherwise approved in writing by Declarant, or upon expiration of Declarant's Control Period, the Master Association.

4.18.8. **Lighting.** All exterior lighting of a Land Unit shall be accomplished in accordance with a lighting plan approved in writing by the Design Review Board.

4.18.9. **Compliance with Documents.** Each Owner including, without limitation, its family members, guests, invitees, employees, licensees, occupants, tenants and subtenants; and each tenant of all or any portion of a Land Unit and its family members, guests, invitees, employees, licensees, occupants and subtenants; shall abide by and be bound by this Declaration and the Governing Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within Cary Creek. Such Owner shall be liable to the Master Association for the cost of any maintenance, repair or replacement of any real or personal property rendered necessary by his act, neglect or carelessness, or by that of any other of the foregoing

parties (but only to the extent that such expense is not met by the proceeds of insurance carried by the Master Association provided such Owner shall be responsible for any deductible), which cost shall be paid for by the Owner as a Specific Assessment as provided in Article VII. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration and Governing Documents shall not in any way act to limit or divest the right to enforcement of these provisions against the Owner or such other Person.

4.18.10. **Failure to Maintain.** If an Owner or a Sub-Association has failed to maintain a Land Unit or a portion of the Neighborhood Common Area as aforesaid to the satisfaction of the Declarant, the Master Association or the Design Review Board, then the Declarant or the Master Association shall give such Owner or Sub-Association written notice of the defects (which written notice does not have to be given in the case of emergency, in which event, the Declarant or the Master Association may without any prior notice directly remedy the problem). Upon the Owner's or the Sub-Association's failure to make such improvements or corrections as may be necessary within fifteen (15) days of mailing of written notice, the Declarant or the Master Association may, in its sole and absolute discretion, elect to enter upon such property and to make such improvements or correction as may be necessary, the cost of which may be paid initially by the Master Association or the Declarant, as applicable. If the Owner or the Sub-Association fails to reimburse the Declarant or the Master Association for any payment advanced, plus administrative and legal costs and fees, and interest on all such amounts at the highest interest rate allowed by the laws of Alabama, within fifteen (15) days after requested to do so by the Declarant or the Master Association, the Master Association shall levy a Specific Assessment against the Land Unit or Neighborhood Common Area (and Land Units within the jurisdiction of Sub-Association) as provided in Article VII. Such entry by the Declarant or the Master Association or its agents shall not be deemed a trespass. The Declarant shall have the rights provided in this Section 4.17.6 so long as the Declarant or any affiliate of the Declarant owns any portion of the Property.

4.18.11. **Subdivision and Regulation of Land.**

4.18.11.1. No Land Unit shall be divided or subdivided (or its boundary lines changed) without the express written consent of the Declarant, which consent may be granted or denied by Declarant in the sole and absolute discretion of Declarant. If granted by the Declarant, such approval may be subject to such conditions and requirements as the Declarant may deem appropriate to be consistent with the Development Order, the PD Ordinance, the Cary Creek PDD and any other agreements which exist or may exist between the Declarant and the Owner of such Land Unit (all of the foregoing collectively the ("Development Agreements")). In accordance with the Development Agreements, the number and type of Residential Land Units, if any, the number of square feet of Commercial or Institutional Improvements, if any, and the number of hotel rooms, if any, allocated to a Land Unit, consistent with the Development Agreements, has been agreed to between the Declarant and the Owner of the Land Unit at the time of its acquisition of the Land Unit from the Declarant. Therefore, a purchase and sale agreement by which an Owner sells all or any portion of its Land Unit may not increase (1) the maximum number of each type of Residential Land Unit which may be developed on such Owner's original Land Unit, if the foregoing will have Residential Improvements constructed thereon, or (2) the maximum number of square feet of Commercial or Institutional Improvements or the maximum number of hotel rooms which may be developed on such Owner's original Land Unit, if the foregoing will have Commercial or Institutional Improvements constructed thereon. The number of each type of Residential Land Units, or the square footage of Commercial or Institutional Improvements, or the number of hotel rooms, shall not be increased by any Owner in excess of what it received upon acquiring its Land Unit, without the prior express written approval of the Declarant, which approval may be denied in the sole and absolute discretion of the Declarant.

4.18.11.2. No Land Unit may be submitted to the condominium or cooperative form of ownership without the express written consent of the Declarant, which consent may be granted or

denied by Declarant in the sole and absolute discretion of the Declarant. If granted by the Declarant, such approval may be subject to such conditions or requirements as the Declarant may deem appropriate to be consistent with the Development Agreements and this Declaration. If a Land Unit, or the Improvements thereon, is to be submitted to the condominium or cooperative form of ownership, all Governing Documents of the Condominium Association and the Condominium are subject to the prior written approval of the Declarant. Submitting a Land Unit to the condominium or cooperative form of ownership shall be construed as constituting a subdivision of any Land Unit.

4.18.11.3. No Owner shall inaugurate or implement any variation from, modification to or amendment of the Development Agreements or any other governmental plans, land development regulations, development orders or development permits applicable to the Property or to any portion thereof, without the prior written approval of the Declarant, which approval may be granted or withheld in the sole and absolute discretion of the Declarant.

4.18.11.4. The provisions of this Section 4.18.11 shall not apply to the Declarant. In addition, the Declarant may convert Land Units to Common Area and Common Area to Land Units.

4.18.11.5. The rights accruing to the Declarant in this Section 4.18.11 shall exist so long as the Declarant or any affiliate of the Declarant owns any property within the Cary Creek PDD.

4.19. **Imposition of Fines for Violations.** It is acknowledged and agreed among all Owners that a violation of any of the provisions of this Declaration or any other Governing Documents by an Owner, its family members, guests, invitees, employees, licensees, occupants, tenants and subtenants may impose irreparable harm to the other Owners (including the Declarant). All Owners agree that a fine not to exceed One Hundred and No/100 Dollars (\$100.00) per violation may be imposed by the Declarant or Master Association for each day a violation continues after notification by either the Declarant or the Master Association. The fine for a continuing violation shall not exceed Ten Thousand and No/100 Dollars (\$10,000.00), or such other amount as the Board shall determine, in its sole and absolute discretion. All fines collected shall be used for the benefit of the Master Association. Any fine levied shall be paid (15) days after mailing of notice of the fine unless such violation is cured within fourteen (14) days after the mailing of such notice. If such violation is not cured within said fourteen (14) day period or if such fine is not paid within said fifteen (15) day period, the amount of such fine shall accrue interest at the highest interest rate allowed by the laws of Alabama, and shall be treated as a Specific Assessment as provided in Article VII, to the extent allowed by law. The Declarant or the Master Association may also suspend, for a reasonable period of time, the rights of an Owner, its family members, guests, invitees, employees, licensees, occupants, tenants and subtenants to use the Common Areas while such fine remains unpaid, and while such violation causing the fine continues. Suspension of the right to use the Common Areas shall not impair the right of an Owner, its family members, guests, invitees, employees, licensees, occupants, tenants and subtenants to have vehicular and pedestrian ingress to and egress from its Land Unit, including without limitation, the right to park.

4.20. **Lease of Land Unit.**

4.20.1. **Leasing.** For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Residential Land Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity. The Residential Land Unit, if leased, may be leased only in its entirety (e.g., separate rooms within the same Residential Land Unit may not be separately leased), and subject to any additional restrictions as provided by any Sub-Association.

All leases shall be in writing and must require that tenants and all occupants of the leased Residential Land Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the

lease. The Board may establish the minimum length of the term of any lease of a Residential Land Unit which is not a Residential Rental Property which in no event shall be less than twelve (12) consecutive months.

Within ten (10) days of the lease being signed, an Owner shall notify the Board or the Master Association's managing agent of any lease and provide a copy of the lease, together with all backup documentation submitted by the tenant to the Owner and any additional information the Board may require to ensure compliance with the terms hereof. The Owner must give the tenant copies of the Governing Documents and tenant must formally acknowledge receipt of such documents in writing. The Board may adopt reasonable use restrictions and Rules and Regulations regulating leasing and subleasing of Residential Land Units. The Master Association may charge an administration fee equal to the lesser of (i) \$200.00 per lease submitted by an Owner pursuant to the terms hereof.

The restrictions on leasing in this Section shall not apply to Land Units owned by the Declarant, nor to Commercial or Institutional Land Units, to the Commercial portion of any Mixed-Use Land Unit or to Residential Rental Property.

4.20.2. **Occupants Bound.** Every Owner shall cause anyone leasing, occupying, or visiting his or her Land Unit to comply with the Governing Documents and shall be responsible for all violations and losses they cause to the Common Areas, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

4.21. **Owners' Acknowledgement and Notice to Purchasers.**

All Owners are given notice that use of their Land Units and use of the Common Area is limited by the Use Restrictions. EACH OWNER, BY ACCEPTING A DEED OR ACKNOWLEDGES AND AGREES THAT THE USE, ENJOYMENT, AND MARKETABILITY OF HIS OR HER PARCEL OR LAND UNIT CAN BE AFFECTED BY THE USE RESTRICTIONS AND RULES AND REGULATIONS, WHICH MAY CHANGE FROM TIME TO TIME. ALL PARCEL AND LAND UNIT PURCHASERS AND OWNERS ARE ON NOTICE THAT THE MASTER ASSOCIATION MAY HAVE ADOPTED CHANGES TO THE USE RESTRICTIONS AND RULES AND REGULATIONS, AND THAT SUCH CHANGES MAY NOT BE SET FORTH IN A RECORDED DOCUMENT. EACH NEIGHBORHOOD MAY BE SUBJECT TO ADDITIONAL USE RESTRICTIONS.

4.22. **Protection of Owners and Others.** Except as may be set forth in this Declaration (either initially or by Supplement) or in the Use Restrictions and Rules and Regulations, the Master Association's actions with respect to Use Restrictions and Rules and Regulations must comply with the following:

4.22.1. **Similar Treatment.** Similarly situated Owners must be treated similarly; however, the Use Restrictions and Rules and Regulations may vary by Neighborhood.

4.22.2. **Displays.** Owners' rights to display religious and holiday signs, symbols, and decorations on their Land Units of the kinds normally displayed in similar neighborhoods shall not be abridged, except that the Master Association may adopt time, place, and manner restrictions with respect to such displays. The Master Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria).

4.22.3. **Activities Within Dwelling Units.** The Master Association shall not interfere with activities carried on within a dwelling unit located on a Residential Land Unit, except it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Master Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling unit, or that are an unreasonable source of annoyance.

4.22.4. **Allocation of Burdens and Benefits.** The Master Association shall not reallocate financial burdens among the various Land Units or change Common Area use rights to the detriment of any Owner over that Owner's written objection. This does not prevent the Master Association from changing the Common Area available, from adopting generally applicable rules for using the Common Area, or from denying use privileges to anyone who is late in paying Assessments, who abuses the Common Area, or who violates the Governing Documents. This provision does not affect the right to levy Neighborhood Assessments or other Assessments, or to increase the amount of Assessments as provided in Article VII.

4.22.5. **Reasonable Right to Develop.** The Master Association may not impede the Declarant's right to develop Cary Creek.

The limitations in Subsections 4.21.1 through 4.21.5 shall only limit rule making authority exercised under Section 4.21 and shall not apply to Supplements to this Declaration.

4.23. **Rule Making Authority.**

4.23.1. **Changes by the Board.** Subject to the terms of this Declaration and the Board's duty to exercise business judgment and reasonableness on behalf of the Master Association and the Members, the Board may change (i.e., modify, cancel, limit, create exceptions to, or expand) the Use Restrictions and promulgate such Rules and Regulations as it shall determine. The Board shall send notice to all Owners of any proposed change to the Use Restrictions and any proposed Rules and Regulations at least five (5) Business Days before the Board meeting to consider same. The Neighborhood Voting Representatives shall have a reasonable opportunity to be heard at such Board meeting. The proposals shall be approved unless disapproved by Neighborhood Voting Representatives representing a majority of the Master Association's Class "A" votes present at the meeting, and by the Declarant until such time as the Declarant's Control Period expires. The Board is not obligated to call a meeting of the Neighborhood Voting Representatives to consider disapproval unless it receives a petition which meets the Bylaws' requirements for special meetings. If the Board receives such a petition before the effective date of the rule change, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

4.23.2. **Changes by Neighborhood Voting Representatives.** Alternatively, the Neighborhood Voting Representatives, representing a majority of the Class "A" votes in the Master Association present at a Master Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. Any such change shall require written approval of the Declarant until such time that Declarant's Control Period expires.

4.23.3. **Notification of Changes.** Before any Use Restriction change or Rules and Regulations become effective, the Board shall send a copy of the new or changed Use Restriction or Rules and Regulations to each Owner. The change does not become effective until thirty (30) days following distribution to Owners. The Master Association shall provide to any requesting Member or Mortgage holder a copy of the Use Restrictions and Rules and Regulations then in effect upon payment by the requesting party of a reasonable fee to the Master Association as it may promulgate to cover the cost and administrative expense to supply same.

4.23.4. **Effects of Changes.** No action taken under this Section 4.22 shall have the effect of modifying, repealing, or expanding the Design Review Manual or any provision of this Declaration other than the initial Use Restrictions and any promulgated Rules and Regulations.

ARTICLE V DESIGN REVIEW

5.1. **Intent.** Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Property, acknowledges that the Declarant, as owner of significant portions of the Cary Creek PDD, has a substantial interest in ensuring that the Improvements and landscaping within the Property enhance the Cary Creek PDD, and do not impair Declarant's ability to market, sell or lease the Property, Cary Creek PDD or any other property owned by Declarant and/or its Affiliates. It is the intent of this Article V that Cary Creek 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 and the Cary Creek Standard. Furthermore, it is also the intent of this Article V that all Improvements developed or constructed in Cary Creek shall be in conformance with all building, use and other restrictions imposed by this Declaration 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 V.

5.2. **Design Review by Declarant.** Declarant shall have exclusive authority to administer and enforce design controls for all Improvements in Cary Creek and to review and act upon all applications for seeking approval of Improvements within Cary Creek. Declarant's rights under this Article V 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.

5.3. **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 V. 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 Master Association or Neighborhood Voting Representatives.

5.4. **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 V, the Design Review Board shall notify Declarant of any action to be taken under this Article V. 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 V terminate, the Master 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.

5.5. **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 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 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 (collectively, the "Work") shall be commenced on such Owner's Land Unit, unless and until they have received written approval for such Work pursuant to this Article V either from the Declarant, or if applicable, the Design Review Board. All Submittals submitted by an Owner shall comply with:

5.5.1. **Development Guidelines.** Any site development guidelines which may be promulgated;

5.5.2. **CC&R.** All other recorded covenants, restrictions and easements applicable to the Property, including, but not limited to, the Governing Documents;

5.5.3. **City of Auburn.** All requirements of The City of Auburn;

5.5.4. **PDD.** All requirements of the applicable ordinances of the City of Auburn, including, without limitation, PDD, and All Development Agreements.

5.5.5. **Other.** All other applicable laws and permits.

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

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

5.6. **Design Review Manual.** The Declarant has prepared the 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 Owner in its selection of concepts, designs, materials and other specifications for construction within Cary Creek and shall in no way preclude the Declarant's or the Design Review Board's, as applicable, right to disapprove any Submittal for any reason.

5.7. **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 Master 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 six (6) months of their final approval. As used in this Section, construction is deemed to have commenced when the footers have been dug. If construction does not commence within such six-month period, unless otherwise provided in the Design Review Manual or approved in the Submittal, approval shall be deemed withdrawn and the Owner 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 Land Unit(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 Master 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 V, 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 Land Unit.

5.8. **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 V.

5.8.1. **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 V or with the Cary Creek Standard, then the Declarant or the Design Review Board, as applicable, shall notify the Owner and the Board in writing of such noncompliance. The notice shall specify the particulars of noncompliance, and shall demand that the Owner immediately bring such Work into compliance.

5.8.2. **Master 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 Master Association, as applicable, shall be entitled to seek legal action to force the Owner, 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 Master Association shall also have the right to enter upon the Land Unit 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 Land Unit which is detracting from the value or aesthetics of the Property, Cary Creek, and/or adjacent Land Units, or if under the circumstances it is more practical to remove incomplete Work, remove any such incomplete Work on the Parcel or Land Unit. The cost of any such corrections, modifications or removal shall remain the obligation of the Owner. If such costs are not promptly reimbursed to the Declarant or the Master Association, as applicable, the Master Association shall levy a Specific Assessment against the Land Unit as provided in Article VII for such costs, together with interest at the maximum rate allowed by law. In the event the Person who causes the construction of the Work to not be in compliance, or who owns the Work not in compliance, is a Sub-Association, the aforementioned Specific Assessment shall, be levied against all Owners under the jurisdiction of that Sub-Association. In addition the Master Association may levy such fines as it may deem appropriate, in its sole and absolute discretion for violation of the provisions of this Article V per day for each day a violation continues after notification by either the Declarant or the Master Association. In addition, in the event a violation of this Article V 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 Master Association, as applicable, for approvals required under this Article V 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.

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

5.8.4. **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 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 Master Association shall issue to the Owner a written "Certificate of Approval", executed by an officer of the Master Association.

Until such time as a Certificate of Approval is issued, the current Owner and all future Owners of the Land Unit 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 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.

5.8.5. **Alteration of Existing Work and Improvements.** Any Owner who makes exterior additions to, or changes or alterations to, any Work, or constructs any new work on the Land Unit after the initial construction and issuance of a Certificate of Approval as described in Section 5.8.4, 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 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 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 Master Association shall be entitled to issue a written notice of noncompliance setting forth that the Owner 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 any grantee of the Owner, 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 Land Unit. Once issued, the Notice of Noncompliance shall constitute constructive notice to all potential purchasers from the Owner that the Declarant or the Design Review Board, as applicable, has the right to force completion of the Alterations against the Owner, or any grantee of the Owner.

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 Master 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 Master Association with the corporate seal of the Master Association affixed. 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 from the requirement that future changes, modifications or alterations be submitted to and approved by the Declarant or the Design Review Board, as applicable.

5.8.6. **Subsequent "Certificate of Approval" Not Necessary Unless "Notice of Noncompliance" Issued.** Notwithstanding anything herein to the contrary, the provisions of Section 5.8.6 shall be applicable to initial construction of the Work on the Land Unit. After the initial construction and the recording of a "Certificate of Approval", it will not be necessary for an Owner to obtain a written "Certificate of Approval" for any Alterations unless a "Notice of Noncompliance" is issued in accordance with Section 5.8.5. Subsequent purchasers of Work must only determine that one (1) "Certificate of Approval" has been issued unless a "Notice of Noncompliance" is also issued.

5.9. **Non-liability for Actions.** Neither the Design Review Board nor the Declarant, nor the Master 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 Master 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 of any Parcel or Land Unit 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, 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 Master Association (nor any of their members, officers, directors, employees, and duly authorized representatives), any Member of the Master 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.

5.10. **Expenses.** The Owner of a Land Unit 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 Land Unit, whether foreseen or unforeseen, and neither the Declarant, the Design Review Board nor the Master Association (nor any of their members, officers, directors, employees, and duly authorized representatives) shall have any responsibility or liability therefor.

5.11. **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 V 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 V 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 V for any purpose except as to the particular Land Unit 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 Land Unit 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.

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

5.13. **Declarant's Exemption.** The Declarant shall be exempt from the provisions of this Article V. 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 V, which the Declarant may elect to make at any time on the Property.

5.14. **Enforcement.** Declarant and the Master Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article V 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 Master 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 V and the decisions of the reviewing entities under this Article V. The Declarant shall have the right, but not the obligation, to demand that the Master Association enforce the provisions of this Article V. In the event that the Master 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 Master 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 VI EASEMENTS

6.1. **Easements for Access and Maintenance.** In addition to specific dedicated easements and easements established by plats, the Declarant hereby reserves unto itself, its duly authorized agents, employees, representatives, successors, assigns and designees, and the Declarant hereby grants to the Master Association a perpetual, nonexclusive easement for, access, ingress, and egress upon, across, over, and under all of the Property to the extent necessary in the exercise of reasonable care for the purpose of (1) inspecting any construction, proposed construction, Work or Improvements, (2) undertaking or fulfilling any of its rights or obligations provided in the Governing Documents or under any applicable permits, (3) in the case of the Declarant, performing any obligations it may have under the Development Agreements, any permits or any other agreements with Government Authorities, (4) in the case of the Declarant, undertaking any development activities related to the Property, the Additional Property, Cary Creek PDD or such other real property in which Declarant may have an interest, (5) constructing, installing, replacing, repairing, maintaining and administering Streets, walkways, pathways, lakes, ponds, wetlands, Drainage Areas, Streetscape, street lights, signage, Common Areas and other similar improvements. This easement shall not entitle the holders to construct or install any of the foregoing systems or facilities, over, under or through any existing or planned building on a Land Unit, and any damage to a Land Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Land Unit. Notwithstanding the foregoing, nothing contained herein shall be interpreted to impose any obligation upon the Declarant or Master Association to construct, install, maintain, repair or replace any Work or Improvements which an Owner, Sub-Association or other Person is required to install, maintain, repair, replace or construct.

6.2. **Easement for Traffic Signs.** The Declarant hereby reserves unto itself, its duly authorized agents, employees, representatives, successors, assigns and designees, and the Declarant hereby grants to the Master Association and the City a perpetual, nonexclusive easement upon, across, over, and under that portion of each Land Unit lying within the building setback for purposes of access, ingress, and egress, construction, installation, maintenance, repair and replacement of directional and traffic signs as may be required the City.

6.3. **Easement for Maintenance, Emergency and Enforcement.**

6.3.1. **Perpetual Easement.** The Declarant hereby reserves for itself and the Master Association, their duly authorized agents, employees, representatives, successors, assigns and designees, a perpetual, nonexclusive easement to enter upon any Land Unit to perform maintenance responsibilities, to inspect for the purpose of ensuring compliance with the Governing Documents or any permits, licenses or other instruments that may be applicable to the Property or Land Unit from time to time, and to enforce any rights under the Governing Documents, provided, however they shall have no obligation to undertake any of the foregoing actions. The rights granted herein may be exercised by any officer, agent, employee or manager of the foregoing, and all policeman, fireman, ambulance personnel, and similar emergency personnel in the performance of their duties. This right of entry shall include the right to enter upon any Land Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Declarant or the Master Association, their duly authorized agents, employees, representatives, successors, assigns or designees, but shall not authorize entry into any portion of a Land Unit not generally open to the public, except in an emergency situation to avoid an imminent threat of personal injury or property damage. The Declarant and the Master Association, their duly authorized agents, employees, representatives, successors, assigns and designees, shall not have any liability for any damage or other liability resulting from the exercise of their rights under this Section 6.3 unless such damage or other liability arises from

the willful misconduct of such Person.

6.3.2. **Emergency Exception.** Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant.

6.3.3. **Right of Entry.** Subject to any required notice, the Master Association is hereby granted an easement and right to enter a Land Unit to abate a violation of the Governing Documents and/or to remove any structure, thing or condition, which violates the Governing Documents. Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Owner of such Land Unit as a Specific Assessment.

6.4. **Easements for Lake and Pond Maintenance and Flood Water.**

6.4.1. **Perpetual Easement.** The Declarant hereby reserves for itself and the Master Association, their duly authorized agents, employees, representatives, successors, assigns, and designees, and for the City, any Government Authorities, and The City of Auburn, the perpetual, nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, wetlands and the Drainage Areas located within the Common Area or the Property to (a) install, keep, maintain, repair and replace pumps in order to provide water for the irrigation of any of the Common Area; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; (c) remove trash and other debris therefrom and fulfill their respective maintenance responsibilities, if any, as provided in this Declaration; (d) construct, install, inspect, maintain (including, without limitation aquatic plant and similar environmental maintenance), repair and replace the Drainage Area and all appurtenant improvements and facilities; and (e) otherwise fulfill any monitoring, modeling, reporting or permit obligations related thereto. The Declarant and the Master Association, and their duly authorized agents, employees, representatives, successors, assigns and designees, any Government Authorities and The City of Auburn, shall have a perpetual, non-exclusive easement for ingress, egress and access over and across any of the Property abutting or containing any portion of any of the lakes, ponds, streams, wetlands or the Drainage Area to the extent reasonably necessary to exercise their rights under this Section 6.3.

6.4.2. **Right of Access.** The Declarant further hereby reserves for itself and the Master Association, and their duly authorized agents, employees, representatives, successors, assigns, and designees, and for the City, any Government Authorities, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Property (but not the buildings thereon) adjacent to or within thirty-five (35) feet of lake beds, ponds, streams, wetlands and the Drainage Areas in order to (a) temporarily flood and back water upon and maintain water over such portions of the Common Area and Property; (b) fill, drain, dredge, deepen, clean, fertilize, dye, alter in any manner and generally maintain the lakes, ponds, streams, wetlands and Drainage Area within the Common Area, the Property or the property owned by any Government Authorities, or The City of Auburn; (c) to maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, wetlands and Drainage Area; and (d) to enter upon and across such portions of the Common Area and the Property to the extent reasonably necessary for the purpose of exercising its rights under this Section 6.3. Except in the case of an emergency, all Persons entitled to exercise these easements shall provide prior written notice no less than ten (10) days before exercising such easements. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Master Association, any Government Authority, or The City of Auburn or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall or other natural occurrences.

6.5. **Easements for Stormwater Drainage, Retention and Stormwater Management Facilities.**

6.5.1. **Non-exclusive Easement.** Each portion of the Property is hereby subject to a non-

exclusive easement appurtenant to and for the benefit of each other portion of the Property for the purpose of stormwater drainage and runoff in accordance with the plan, as amended from time to time, established by the Declarant for the Property to implement the stormwater management facilities, which easement shall include, but shall not be limited to, the right to tie into the existing stormwater drainage facilities, the right to divert stormwater runoff from each Parcel and Land Unit into such stormwater drainage facilities at such points and in such manner as approved by Declarant, the City of Auburn and by any Government Authorities, and for the flow of stormwater runoff over the Property to such points and from such points through the stormwater drainage facilities into wetlands, ponds, other retention or detention facilities, or the Drainage Area within or outside the Property, as well as the right to enter each Parcel and Land Unit (exclusive of any improvements thereon) to perform such grading as may be necessary to implement, comply with or effectuate the intended stormwater management facilities. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate and quality of discharge, which the Declarant may hereafter reasonably impose or which may be imposed on the Property by the Declarant, and by any Government Authorities. The Declarant may convey all or any portion of the stormwater management facilities or the to the Master Association, The City of Auburn or any Government Authorities or Declarant's Affiliates as it may elect in its sole discretion. The Master Association (if the Master Association hereafter owns any portion thereof) shall convey all or any portion of the stormwater management facilities or, The City of Auburn or any Government Authorities if they or the Declarant should so require. It being understood that, subject to all applicable laws, rules, regulations, ordinances and agreements imposed by or made with, The City of Auburn or any Government Authorities, the Declarant, and any assigns of the Declarant, shall have the right to use the water, and control the level thereof, in all ponds and water courses in the stormwater management facilities for any purpose as determined by the Declarant, or such other Persons as the Declarant may designate, and shall have the right to charge the Master Association a reasonable fee for any such services provided to the Master Association benefitting the Property for irrigation purposes.

6.5.2. **Amendments to Stormwater Management Facilities.** Notwithstanding anything to the contrary contained in this Declaration, any proposed amendment to the Governing Documents that would affect the stormwater management facilities (including any environmental conservation areas and the water management portions of the Common Area) must be approved by the Declarant, and if required by the stormwater management plan for the Cary Creek PDD, must be submitted by the Declarant or the Master Association to the City of Auburn for a determination of whether the amendment necessitates a modification of the stormwater management facilities for the Cary Creek PDD. No Person shall alter the natural drainage on any Land Unit to increase materially the drainage of stormwater onto adjacent portions of Cary Creek PDD without the consent of the owners of the affected property, the City of Auburn, the applicable Government Authorities, the Master Association and the Declarant (so long as the Declarant or any affiliate of the Declarant owns any property within the Cary Creek PDD).

6.5.3. **Perpetual Nonexclusive Easement for Drainage Areas.** Declarant hereby reserves for itself and the Master Association, and their duly authorized agents, employees, representatives, successors, assigns, and designees, and for any Government Authorities or The City of Auburn, a perpetual nonexclusive easement for the use of Drainage Areas established throughout Cary Creek, and an easement for ingress, egress and access to enter any portion of the Property in order to construct, maintain and/or repair any Drainage Area and facilities thereon and appurtenances thereto. No structure, landscaping or other material shall be placed or permitted to remain in the Drainage Areas which may damage or interfere with, or which may obstruct or retard the flow of water through the Drainage Areas.

6.6. **Utility and Governmental Services Easements.**

6.6.1. **Non-exclusive Easement.** The Declarant reserves for itself a perpetual, nonexclusive easement over, under, upon, across and through the Property for ingress, egress and access and for the inspection, installation, service, repair, replacement and maintenance (including without limitation access

to read utility meters) of utilities and infrastructure to serve the Cary Creek PDD, including without limitation, power, street lights, electric transmission, multi-channel video, cable television, high speed internet, telephone, security, gas, water, sewer, garbage, drainage and other utilities and similar systems, and governmental services, including, without limitation, police and fire protection, and postal service, and walkways, pathways and trails, street lights and signage.

6.6.2. **Specific Easements.** The Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the Declarant's sole and absolute discretion (but not through a structure), to develop the Property, the Additional Property and the Cary Creek PDD. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed or conditioned; provided further, that the burdened property Owner agrees to join in, consent to and execute any such documents as may be requested by the Declarant to carry out the intent hereof.

6.6.3. **Minimal Interference.** All work associated with the exercise of the easements described in Sections 6.6.1 and 6.6.2 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Land Unit, nor shall it unreasonably interfere with the use of any Land Unit.

6.7. **Easement for the City of Auburn.** The Common Area and each and every Land Unit, is hereby burdened with perpetual, non-exclusive easements for the benefit of The City of Auburn, its agents and designees, to the extent necessary for ingress, egress, access to and installation, maintenance, repair and replacement of properties and facilities owned by The City of Auburn. However, this easement shall not include a right to enter any enclosed structure on a Land Unit or the Common Area, or to unreasonably interfere with the use of any Land Unit or the Common Area. Any damage to a Land Unit or the Common Area resulting from the exercise of this easement shall promptly be repaired by, and at the expense of the City of Auburn, unless otherwise agreed to, causing same.

6.8. **Private Utility Easements.** In addition to established easements, the Declarant reserves for itself, its duly authorized agents, employees, representatives, successors, assigns and designees perpetual, exclusive easements in or adjacent to the public and private Streets and any utility easements dedicated to the public or to any specific utility provider throughout Cary Creek on behalf of itself, and its duly authorized agents, employees, representatives, nominees, successors, assigns and designees, for installing, operating, maintaining, repairing and replacing the private utilities. The Declarant may grant or convey these easements to third parties without the consent of any Owner or the Master Association.

6.9. **Easements to Serve Additional Property.** The Declarant hereby reserves for itself and its duly authorized agents, employees, representatives, successors, successors-in-title, assigns, licensees, designees and Mortgagees, a perpetual, nonexclusive easement over the Common Area for the purpose of enjoyment, use, access, and development of any properties that may be adjacent to the Property from time to time, whether or not such properties are made subject to this Declaration. Declarant further agrees that if the easement is exercised for permanent access to such properties, and such properties or any portion thereof are not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Master Association to share the cost of maintenance of any private roadway and related infrastructure serving such properties.

6.10. **Easement for Encroachments.** There shall be perpetual, nonexclusive easements of encroachment, and for maintenance and use of any permitted encroachments among each Land Unit, and any adjacent Common Area, and among adjacent Land Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed or altered on a Land Unit or the

Common Area. A permitted encroachment is a structure or fixture that extends unintentionally from one Person's property onto another's 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.

6.11. **Rights to Stormwater Runoff, Effluent and Water Reclamation.** The Declarant reserves for itself and its designees all rights to ground water, surface water, stormwater runoff, reclaimed water and effluent located or produced within Cary Creek, and each Owner agrees, by acceptance of a deed to a Land Unit, that the Declarant retains such rights. Such rights shall include the reservation of an easement over Cary Creek for access and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, effluent and reclaimed water. This Section 6.11 shall not be amended without the Declarant's consent, and the rights created in this Section 6.11 shall survive any termination of this Declaration. In the event Declarant declines either temporarily or permanently to accept all reclaimed water and/or effluent, then the Master Association and Owners shall have the obligation to use reclaimed water and/or effluent in accordance with any requirements of the City or other applicable Government Authorities or utility providers.

6.12. **Easement For Use of Private Streets.** The Declarant hereby grants, and reserves unto itself, and in favor of (1) the City of Auburn, all Government Authorities (excluding any utility provider unless otherwise set forth in a separate instrument expressly granting such rights), (2) law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel, (3) school buses, (4) U.S. Postal Service delivery vehicles and personnel, (5) private delivery or courier services, and (6) personnel and their vehicles and equipment providing garbage collection service to Cary Creek, a perpetual, nonexclusive easement solely for access, ingress and egress, over, upon and through any private streets within the Common Area; provided such easement shall not authorize any Person to enter the private streets within the Common Area except while acting in its official capacity.

6.13. **Reservation of Easements.**

6.13.1. **Utilities.** The Declarant hereby reserves for itself, and its duly authorized agents, employees, representatives, successors, assigns and designees, a perpetual, nonexclusive easement on, over and under any portion of the Property which may be subsequently dedicated or otherwise conveyed to any Government Authorities for public right-of-way, for the purpose of (i) construction, installation, maintenance, repair and replacement of underground stormwater drainage facilities and pipes and above ground inlet structures to carry stormwater; (ii) construction, installation, maintenance, repair, replacement and operation of lines, pipes, conduits, equipment and related facilities to transport and/or deliver utilities and/or service to any portion of the Property, Cary Creek PDD or such other real property contiguous to the boundary of the Cary Creek PDD in which Declarant, or any affiliate or related entity of Declarant, may have an interest, or any other property now or hereafter owned by the Declarant; and (ii) the right, but not the obligation, to install, maintain, repair and replace landscaping in unpaved areas. For purposes hereof, "utilities" shall be deemed to include, without limitation, lines, pipes, conduits conveying electric, potable and reclaimed water, sewer, irrigation water, chilled water, telephone, cable, internet and other data, television and other telecommunication services and natural gas.

6.13.2. **ROW.** Upon the acceptance and recordation or its equivalent, by the appropriate Government Authorities for such publicly dedicated right-of-way, the Declarant and its duly authorized agents, employees, representatives, successors, assigns and designees, for the purpose of installing any utilities, shall automatically be deemed to have been granted a right of way utilization permit, or its equivalent, by the appropriate Government Authorities which will permit such persons and entities to continue to use, maintain, repair, replace, and relocate such utilities lying within such publicly dedicated right-of-way.

6.14. **Easement for Special Events.** The Declarant hereby reserves for itself, its successors, assigns and designees, a perpetual, non-exclusive easement over the Common Areas for the purpose of conducting parades, running, biking or other sporting events, educational, cultural, artistic, musical and entertainment activities, and other activities of general community interest, at such locations and times as the Declarant, during Declarant's Control Period, in its sole and absolute discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Land Unit, 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 Land Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement. The Master Association shall not take any action, which would interfere with or otherwise attempt to restrict the exercise of this easement.

6.15. **Assignments.** The granting of easements reserved by the Declarant may be assigned by the Declarant in whole or in part to the Master Association, any Government Authorities, any utility providers, The City of Auburn or any other designee of the Declarant by an instrument recorded in the public records of Lee County, Alabama.

ARTICLE VII ASSESSMENTS

7.1. **Responsibility.** The Master Association is entitled to levy Assessments against each Land Unit in the manner described herein. To the extent applicable, assessments attributable to Land Units under the jurisdiction of a Sub-Association shall be collected by that Sub-Association and remitted directly to the Master Association even though such Assessments are the responsibility of the Owners of those Land Units, unless the Master Association requires that such Assessments be remitted directly to it. Each Owner, by accepting a deed for any portion of the Property, is deemed to covenant and agree to pay the Assessments. The Master Association may from time to time establish administrative, interest and late charges, subject to the limitations of Alabama law, to be levied against a Land Unit in the event the Master Association does not receive Assessment payments in a timely manner.

7.2. **Determination of Base Assessments for Common Expenses.** At least forty-five (45) days before the beginning of each fiscal year, the Board shall prepare a budget for such fiscal year which shall estimate all of the Common Expenses to be incurred by the Master Association during the fiscal year. The budget shall reflect the sources and estimated amounts of funds to cover such Common Expenses, including any prior years' surplus, any non-assessment income unless designated for other uses by this Declaration or by agreement, and anticipated Assessment income. In determining the budget for any fiscal year, the Board may take into account Common Areas, Land Units and proposed Improvements that may be created by the addition of property to the Property in accordance with Article II during the fiscal year. In determining the Base Assessment, the Board may also take into account any Assessment income expected to be generated from property reasonably anticipated to become subject to Base Assessments during such fiscal year. The Board shall then establish the Base Assessment and levy such Base Assessment against all Land Units subject to Base Assessments under Section 7.3, in the manner provided in EXHIBIT "F". The budget shall not be subject to Owner or Member approval, and there shall be no obligation to call an Owners' or Members' meeting to consider the budget. Approval of the budget shall be solely the responsibility and right of the Board. The Master Association shall then promptly notify all Owners in writing of the amount, frequency, and due dates of the Base Assessment for each Land Unit and shall include a copy of the budget for such fiscal year simultaneously to each Owner, all at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. From time to time during the fiscal year, the Board may revise the budget for the fiscal year. Pursuant to the revised budget the Board may, upon written notice to the Owners, change the amount, frequency and/or due dates of the Base Assessments for each Land Unit.

7.3. **Payment of Base Assessments for Common Expenses.** Each Owner shall be required to and shall pay to the Master Association, an amount equal to the Base Assessment for Common Expenses, or installment thereof, for each Land Unit within the Property then owned by such Owner on or before the date each Base Assessment for Common Expenses, or installment thereof, is due. In the event any Base Assessment for Common Expenses is made payable in equal periodic payments as provided in the notice from the Master Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency as indicated in the notice, unless and/or until: (1) the notice specifically provides that the periodic payments will terminate upon the occurrence of a specified event or the payment of a specified amount; or (2) the Master Association notifies the Owner in writing of a change in the amount and/or frequency of the periodic payments. Notwithstanding the foregoing, in no event shall any Base Assessment for Common Expenses payable by any Owner be due less than ten (10) days from the date of the notification of such Base Assessment for Common Expenses.

7.3.1. **Collection by Sub-Associations.** Each Sub-Association shall include in its budget each year an amount sufficient to pay all Base Assessments for Common Expenses levied by the Master Association against each Land Unit which is subject to the jurisdiction of that Sub-Association, unless the

Master Association requires that such Base Assessments be remitted directly to it as provided in Section 7.1. Each Sub-Association shall have the duty to collect assessments it imposes which shall include the Base Assessments levied by the Master Association, unless the Master Association requires that such Base Assessments be remitted directly to it as provided in Section 7.1. The total Base Assessments for Common Expenses for Land Units under the jurisdiction of a Sub-Association shall be timely remitted to the Master Association. If a Sub-Association has not collected its Assessments from an Owner(s) under its jurisdiction, it shall notify the Master Association of the name and address of such Owner(s). The Master Association shall be entitled to rely upon the information given by a Sub-Association regarding delinquencies, and may impose a lien upon such delinquent Owner's Land Unit in accordance with this Declaration. However, the Master Association may, in its sole discretion, elect to collect Assessments and other charges directly from any Owner in accordance with Section 7.9 herein.

7.3.2. **Declarant Subsidy.** Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 7.4) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's sole and absolute discretion, and may be satisfied in the form of cash or by "in kind" contribution of services or materials, or by a combination of these, as further described in Section 7.4. Any such subsidy shall be disclosed as a line item in the budget. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Master Association and Declarant.

7.3.3. **Failure to Approve Budget.** If the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year.

7.4. **Base Assessments While the Declarant Appoints a Majority of the Board.** Notwithstanding anything contained in this Article VII to the contrary, during the Declarant's Control Period, the Declarant may satisfy its obligation to pay Base Assessments on Parcels or Land Units it owns either by paying Base Assessments in the same manner as any other Owner or by funding the budget deficit. The budget deficit is the amount by which the operating expenses incurred by the Master Association exceed the amount of the Base Assessments receivables and other income of the Master Association during the fiscal year. Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year. Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. The Master Association is specifically authorized, through its Board, to enter into subsidy contracts and contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities, provided, however, such a subsidy contract shall not be required with respect to Declarant.

7.5. **Budgeting and Allocating Service Area Expenses.** The Board is hereby authorized to levy Service Area Assessments against all Land Units in a Service Area to fund Service Area Expenses benefiting such Service Area, to the extent authorized by the Governing Documents, or if so directed by petition signed by a majority of the Owners within the Service Area and Declarant, or upon written request of the Neighborhood Voting Representative or Neighborhood Voting Representatives representing such Land Units in the Service Area. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Service Area Expenses for each Service Area on whose behalf Service Area Expenses are expected to be incurred during the upcoming year, including an administrative charge in such amount as the Board deems appropriate and a capital contribution to establish and maintain a reserve fund in accordance with a budget separately prepared as provided for in Section 7.7. The Service Area Assessments are for additional services or a higher level of services provided by the Master Association, and in such case, any additional costs shall be added to such budget.

7.5.1. **Notice of Assessment.** The Board shall cause a copy of the budget and notice of the

amount of the Service Area Assessment to be levied on each Land Unit in the Service Area for the following year to be delivered to each Owner in the Service Area at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. If 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. The Master Association shall include such assessment in its annual billing of Owners and shall be responsible for collecting all assessments. The Board may revise the budget for any Service Area and the amount of any Service Area Assessment from time to time during the year. Pursuant to the revised budget, the Board may, upon written notice to the Owners in the Service Area, change the amount, frequency and/or due dates of the Service Area Assessment for each Land Unit in the Service Area. At the election of the Master Association, the Master Association may notify the Sub-Association(s) having jurisdiction over all or a portion of the Service Area, of the amount of the Service Area Assessment and the Land Units against which it is assessed, and the Sub-Association(s) shall have the obligation to collect and remit same to the Master Association in the same manner as provided for Base Assessments in Section 7.3.1.

7.5.2. **Calculation of Assessment.** A Land Unit's share of any Service Area Assessment shall be calculated as set forth in EXHIBIT "F" or in an applicable Supplement to the Declaration or in the Neighborhood Declaration.

7.6. **Special Assessments.** In addition to other authorized assessments, the Board may levy Special Assessments from time to time to exercise its responsibilities as provided in this Declaration. A Special Assessment may be levied: (1) in the event that the Base Assessment for Common Expenses is insufficient to pay the Common Expenses for the fiscal year; or (2) in the event that the Master Association reserves are insufficient to cover necessary expenditures for capital improvements or replacement; or (3) to retire indebtedness incurred to improve the Common Area; or (4) any other purposes determined by a majority of the Board and a majority of the votes of the Neighborhood Voting Representatives present at a duly called meeting of the Master Association. When the Master Association levies a Special Assessment, each Sub-Association shall assist the Master Association in collecting such Special Assessment directly from each Owner. A Special Assessment may also be levied against all Land Units in a Service Area, if such Special Assessment is for Service Area Expenses. A Land Unit's share of any Special Assessment shall be calculated in the same manner as the Base Assessment, except that a Special Assessment levied for a Service Area Expense shall be calculated in the same manner as the Service Area Assessment.

7.7. **Budgeting for Reserves.** The Board shall annually prepare reserve budgets for both Common Area (including any other area for which the Master Association has or assumes maintenance or other responsibility) and Service Area purposes which take into account the number and nature of replaceable assets maintained as a Common Expense or Service Area Expense, respectively, the expected useful life of each asset, and the expected repair or replacement cost of each asset. The Board shall set the required capital contribution in an amount sufficient to meet the projected needs of the Master Association as shown on the budgets, with respect both to amount and timing by annual Base Assessments or Service Area Assessments, as appropriate, over the budget period. The Board shall have the right to proportionately refund the reserves in its sole discretion, but shall not be obligated to do such. So long as the Board exercises business judgment, in determining the amount of the reserve fund, the amount shall be considered adequate. The Board may enter into agreements with the Declarant, on negotiated terms, under which Declarant may obligate itself to provide reserve funds as needed on a "cash basis" in lieu of the Master Association funding reserves on an accrual basis.

7.8. **Specific Assessments.** The Board shall have the power to levy Specific Assessments against a particular Land Unit constituting less than all Land Units within the Property, as follows:

7.8.1. **Cover Costs of Benefits.** To cover the costs, including overhead and administrative

costs, of providing benefits, items, or services to a Land Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners, which Specific 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; and

7.8.2. **Cover Costs of Compliance.** To cover costs incurred in bringing a Land Unit into compliance with the terms of the Governing Documents, any applicable Supplement to the Declaration, any applicable Neighborhood Declaration, the Bylaws, Use Restrictions or Rules and Regulations, or costs incurred as a consequence of the conduct of the Owner or occupants of the Land Unit, their family members, agents, contractors, employees, licensees, invitees, or guests, provided the Board shall give the Owner of such Land Unit prior written notice and an opportunity for such Owner to file a written objection, which approval or denial of such shall be in the sole discretion of the Board, before levying a Specific Assessment under this Section 7.8.2.

7.8.3. **Cost of Sub-Association.** The Master Association may also levy a Specific Assessment against any Sub-Association to reimburse the Master Association for costs incurred by the Master Association in exercising its power pursuant to Section 3.5 due to failure of the Sub-Association to comply with any requirements set forth by the Master Association, or for costs incurred by the Master Association in bringing any real property under the Sub-Association's control or jurisdiction into compliance with the provisions of the Governing Documents, any applicable amendment or Supplement to the Declaration, the Neighborhood Declaration, the Articles, the Bylaws, and Rules and Regulations, provided the Board gives prior written notice to the Owner of such Land Unit and an opportunity for such Owner to file a written objection, which approval or denial of such shall be in the sole discretion of the Board, before levying any such assessment.

7.9. **Monetary Defaults and Collection of Assessments.**

7.9.1. **Interest.** If any Owner is in default in the payment of any Assessment for more than ten (10) days after same is due, or in the payment of any other monies owed to the Master Association for a period of more than ten (10) days after written demand by the Master Association, the Master Association may charge such Owner interest at the highest rate permitted by the laws of the State of Alabama, on the amount owed to the Master Association. Such interest shall accrue from the due date of the Assessment or the monies owed.

7.9.2. **Acceleration of Assessments.** If any Owner is in default in the payment of any Assessment or any other monies owed to the Master Association for more than ten (10) days after written demand by the Master Association, the Master Association shall have the right to accelerate and require such defaulting Owner to pay to the Master Association Assessments and any other monies owed to the Master Association for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments and any other monies owed to the Master Association. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the Assessments and/or all other monies owed to the Master Association.

7.9.3. **Collection.** In the event any Owner fails to pay any Assessment or other monies owed to the Master Association (and to the Master Association through a Sub-Association in cases where the Owner is subject to the jurisdiction of a Sub-Association) within ten (10) days after written demand, the Master Association may take any action deemed necessary in order to collect such Assessment or monies owed including, but not limited to: (1) retaining the services of a collection agency or attorney to collect such Assessments or monies owed, (2) initiating legal proceedings for the collection of such Assessments or monies owed, (3) recording a claim of lien as hereinafter provided, (4) enforcing and/or foreclosing its lien in the same fashion as mortgage liens are foreclosed, or (5) any other appropriate action. The Owner shall be liable to the Master Association for all costs and expenses incurred by the Master Association

incident to the collection of any Assessment or other monies owed to it, and the enforcement and/or foreclosure of any lien for same, including, but not limited to, reasonable attorneys' and paralegals' fees and costs, including, without limitation those incurred on appeal or in mediation, arbitration, administrative or bankruptcy proceedings, reasonable administrative fees of the Declarant and/or the Master Association, and all sums paid by the Master Association for taxes and on account of any mortgage, lien or encumbrance in order to preserve and protect the Master Association's lien. The Master Association shall have the right to bid in the foreclosure sale of any lien foreclosed by it for the payment of any Assessments or monies owed to it; and if the Master Association becomes the Owner of any Land Unit by reason of such foreclosure, it shall offer such Parcel or Land Unit for sale within a reasonable time and shall deduct from the proceeds of such sale all Assessments or monies due it. All payments received by the Master Association on account of any Assessments or monies owed to it by any Owner shall be first applied to payments and expenses incurred by the Master Association in the collection of same, then to interest on such amounts owed to it, then to any unpaid Assessments or monies owed to the Master Association in the inverse order that the same were due.

7.9.4. **Lien for Assessment and Monies Owed to Master Association.** The Master Association shall have a lien on all property owned by an Owner for any unpaid Assessments (including any Assessments which are accelerated pursuant to this Declaration) or other monies owed to the Master Association by such Owner, and for interest, reasonable attorneys' and paralegals' fees and costs (including, without limitation, attorneys' and paralegals' fees and costs incurred on appeal, or in mediation, arbitration, administrative or bankruptcy proceedings) incurred by the Master Association incident to the collection of the Assessments and other monies, or enforcement of the lien, for reasonable administrative fees incurred by the Declarant and/or the Master Association, and for all sums paid by the Master Association for taxes and on account of any mortgages, liens or encumbrances in order to preserve and protect the Master Association's lien. To give public notice of the unpaid Assessment or other monies owed, the Master Association may record a claim of lien in the public records of the County, stating the description of the Land Unit, and name of the Owner, the amount then due, and the due dates. The lien shall become effective upon its recordation and shall continue in effect until all sums secured by it (including sums which became due after the recording of the claim of lien and any amounts accelerated as provided in the Declaration) have been fully paid. The claim of lien must be signed and acknowledged by an officer or agent of the Master Association. Upon payment in full of all sums secured by the lien, the person making the payment shall be entitled to a satisfaction of the lien.

7.9.5. **Transfer of a Parcel or Land Unit after Assessment.** The Master Association's lien shall not be affected by the sale or transfer of any Land Unit. In the event of any such sale or transfer, the prior Owner shall be jointly and severally liable for all Assessments, interest, and other costs and expenses owed to the Master Association at the time of such sale or transfer, which are attributable to any Land Unit purchased by or transferred to such new Owner.

7.9.6. **Subordination of the Lien to Mortgages.** The lien of the Master Association for Assessments or other monies owed to it, shall be subordinate and inferior to the lien of any Mortgage in favor of an Institutional Mortgagee or any Mortgage held by a party making a good faith bonafide loan to the Owner of the Land Unit subject to the Mortgage, in each case provided such Mortgage is recorded prior to the recording of a claim of lien by the Master Association.

7.10. **Exempt and Partially Exempt Property.**

7.10.1. **Exempt Property.** The following portions of the Property are exempt from the payment of any Assessments, including, without limitation, Base Assessments, Special Assessments, Specific Assessments and Service Area Assessments:

7.10.1.1. Any property owned by or leased to the Master Association.

- 7.10.1.2. The Common Area.
- 7.10.1.3. Neighborhood Common Area.
- 7.10.1.4. Institutional Land Units used solely for a public purpose, unless otherwise agreed by the Owner of such Institutional Land Unit.
- 7.10.1.5. Any portion of the Property conveyed to, or dedicated to and accepted by, any Government Authorities or any utility provider (for the purpose of providing utilities).
- 7.10.1.6. Lands designated as public parks, lakes or which are used in the stormwater management facilities or the Drainage Area.
- 7.10.1.7. All portions of the Property designated for recreational use and owned by the Master Association, or Government Authorities.

In addition, each of the Declarant and the Master Association, shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, and Land Units owned by and used by Persons qualifying for tax exempt status under 501(c) of the Internal Revenue Code. The amount of such Assessments shall be computed as provided in EXHIBIT "F".

7.11. **Capitalization of Master Association.** Upon acquisition of record title to a Land Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Master Association in an amount equal to one-sixth of the annual Base Assessment for such Land Unit (assuming it is assessed for a Base Assessment in the same manner as other Land Units for the existing fiscal year of the Master Association) for that year. This amount shall be in addition to, not in lieu of, the Land Unit's annual Base Assessment and shall not be considered an advance payment of such Base Assessment. This amount shall be disbursed to the Master Association at closing for use in covering operating expenses and other expenses incurred by the Master Association pursuant to this Declaration and the Bylaws.

7.12. **Community Enhancement Fee.**

7.12.1. **Authority.** Except as provided in Section 7.12.4 and after transfer from Declarant or its Affiliates, upon each transfer of title to a Land Unit, the transferor shall pay to the Master Association at the closing of the transfer the Community Enhancement Fee, which payment obligation shall be a lien upon such Land Unit of equal dignity with the assessments levied by the Master Association pursuant to this Declaration. The fee shall be charged to the transferor of the Land Unit and shall be payable to the Master Association at the closing of the transfer. Except as otherwise exempt, each transferor shall notify the Master Association's secretary, or designee, at least seven (7) days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Master Association may reasonably require.

7.12.2. **Fee Limit.** The Master Association shall have the sole discretion to determine the amount of and method of calculating the Community Enhancement Fee. The fee may be based upon a sliding scale which varies in accordance with the "gross selling price" of a Land Unit or any other factor the Master Association deems appropriate. Until such time as it may be revised by the Master Association, the Community Enhancement Fee to be paid on the first transfer of a Land Unit shall be equal to 0.25% of the Land Unit's gross selling price. For purposes hereof, the "gross selling price" is the total for all consideration paid by the transferee for the Land Unit, excluding transfer taxes and recording fees imposed by the City, the County and/or the State of Alabama. Each subsequent transfer shall be subject to the Community Enhancement Fee, which shall equal 0.25% of the Land Unit's gross selling price, until such time as it may be revised by the Master Association. Notwithstanding the foregoing, and to the

extent applicable, no transferor shall be responsible for payment of any Community Enhancement Fee if prohibited by HUD, FHA, VA, Freddie Mac or Fannie Mae regulations in connection with a transferee's financing of such acquisition through any of the foregoing agencies.

7.12.3. **Purpose.** The Community Enhancement Fees shall be placed in a segregated account and used to provide funding for activities and such other purposes as determined by the committee or separate Alabama non-for-profit corporation designated by the Declarant or appointed by the Master Association to allocate such Community Enhancement Fees as it deems beneficial to the general good and welfare of Cary Creek. By way of example and not limitation, Community Enhancement Fees may be used by the committee or separate Alabama non-for-profit corporation designated by the Declarant or appointed by the Master Association for one or more of the following purposes:

7.12.3.1. Programs and activities at public schools for which residents of Cary Creek are zoned for attendance, which enhance the welfare, benefit, and lifestyle of residents within and outside of Cary Creek;

7.12.3.2. Preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Cary Creek;

7.12.3.3. Programs, services, and activities which serve to promote a sense of community within Cary Creek, such as recreational leagues, cultural programs, educational programs, health and nutrition programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

7.12.3.4. Social services, educational programs, community outreach programs, and other charitable causes.

7.12.4. **Exempt Transfers.** Notwithstanding the above, no Community Enhancement Fee shall be due upon any transfer of title to a Land Unit:

7.12.4.1. By or to the Declarant or its Affiliates;

7.12.4.2. By or to a Builder who purchases the Land Unit for purposes of constructing a residential dwelling unit thereon;

7.12.4.3. By a co-owner to any Person who was a co-owner immediately prior to such transfer;

7.12.4.4. To the Owner's estate, surviving spouse, or heirs at law upon the death of an owner;

7.12.4.5. To an entity wholly owned by a grantor or to a family trust created by the grantor for the benefit of a grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due; or

7.12.4.6. To an Institutional Mortgagee pursuant to a Mortgage or upon foreclosure of a Mortgage.

7.12.5 **Community Enhancement Association.** Notwithstanding anything to the contrary, at any time the Master Association may elect to form an Alabama not-for-profit corporation to sit in the

capacity of the Master Association and the committee appointed by the Master Association to allocate and expend the Community Enhancement Fee (the "Community Enhancement Association"). The board of directors of the Community Enhancement Association shall be initially be controlled by the Declarant and shall be turned over in the same manner as the Master Association; provided, however, at all times under the Declaration, the individuals serving on the board of directors for the Master Association shall not be the same individuals serving on the board of directors for the Community Enhancement Association.

**ARTICLE VIII
TAXES AND INSURANCE**

8.1. **Taxes.** The Master Association shall pay all real and personal property taxes and assessments for any property owned or maintained by the Master Association, as a Common Expense, unless otherwise agreed.

8.2. **Insurance.** The Master 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 equivalent coverages as are reasonably available:

8.2.1. **Hazard Insurance.** 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 Area, if any, and on other areas to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty, regardless of ownership. The Master Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Master Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements and walkways, which the Master Association is obligated to maintain. If such coverage is not generally available at reasonable costs, then "broad form" coverage may be substituted. All property insurance policies obtained by the Master Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements, under current building ordinances and codes, and a deductible in such reasonable amount as the Board may determine, unless the Board, using its best business judgment, determines otherwise. The Master Association shall also have the discretion to self-insure against any risk by maintaining a reasonable reserve. The Master Association may also obtain property insurance on the insurable improvements within any Service Area in such amounts and with such coverages as the Board, in its business judgment may determine.

8.2.2. **Liability Insurance.** Comprehensive General Liability Insurance protecting the Master Association and its Members from claims for bodily injury, death or property damage providing for coverage in such amounts and with such deductibles as determined by the Board, in its business judgment.

8.2.3. **Workers Compensation Insurance.** Workers compensation insurance and employer's liability insurance.

8.2.4. **Fidelity Bonds.** Blanket fidelity bonds for anyone who handles or is responsible for funds held or administered by the Master Association, in an amount determined in the Board's business judgment.

8.2.5. **Officers and Directors Insurance.** Officer and director liability insurance and liability insurance for the Board, officers, committee members and board members appointed by the Board, employees or agents of the Master Association, if available, and for Members of the Master Association, if available, as shall be determined by the Board to be required or beneficial for the protection of the members of the Board, the officers of the Master Association, the members of committees and boards appointed by the Board, the employees and agents of the Master Association, and the Members of the Master Association.

8.2.6. **Other Insurance.** Such other forms of insurance and coverages and in such amounts as the Board, in its business judgment, shall determine to be required or beneficial for the protection

or preservation of the Common Areas and any improvements now or hereafter located thereon or in the best interests of the Master Association or its Members.

8.2.7. **Service Area Insurance.** Any time a Service Area is created, unless otherwise provided in the Supplement to the Declaration creating such Service Area, if applicable, all Owners within such Service Area shall name the Master Association as an additional insured under any casualty policy of insurance which provides coverage for any property for which the Master Association is responsible. In addition, the Master Association may obtain additional insurance at the expense of the Owners within the Service Area if it feels the coverage otherwise maintained is insufficient.

8.2.8. **Insurance Premiums.** Premiums for all insurance on the Common Area shall be a Common Expense and shall be included in the Base Assessment, except that (i) premiums for property insurance obtained on behalf of a Service Area shall be charged to the Owners of Land Units within the benefited Service Area as a Service Area Assessment; and (ii) premiums for insurance on Limited Common Areas may be included in the Service Area Assessment of the Service Area(s) benefited unless the Board reasonably determines that other treatment of the premiums is more appropriate.

8.2.9. **Cancellation Notice.** To the extent possible, all insurance purchased by the Master Association must include a provision requiring as much advance written notice as is possible to the Master Association before the insurance can be canceled or the coverage reduced for any reason.

8.2.10. **Deductible.** Any deductible or exclusion under the insurance policies shall be reasonably determined by the Board and shall be a Common Expense (or, as applicable, a Service Area Expense), at such time as a claim is made against its insurance policy by the Master Association, unless a reserve fund has been established by the Master Association for same. However, if the Board reasonably determines, after notice and an opportunity to be heard that the loss is a result of the negligence or willful misconduct of one or more Owners, their family members, employees, agents, licensees, guests, invitees or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Land Unit(s).

8.3. **Policy Requirements.** All Master Association policies shall provide for a certificate of insurance to be furnished to the Master Association and, upon request, to each Owner. To the extent reasonably available at reasonable costs and terms, all Master Association insurance shall:

8.3.1. **Primary Business.** Be written with a company whose primary business is providing insurance coverage and which is authorized to conduct business in the State of Alabama and which satisfies the requirements of the FHLMC, the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

8.3.2. **Master Association Named.** Be written in the name of the Master Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Master Association and its Members (and such entity which owns such Common Area, if other than the Master Association) and mortgagees, (as a class), as their interests may appear. Policies on Limited Common Areas or Service Areas, secured by the Master Association shall be for the benefit of the Master Association and Owners of Land Units within the Service Area to which the Limited Common Area is assigned or the Service Area, respectively, and their mortgagees (as a class), as their interests, may appear;

8.3.3. **Contribution.** Not be brought into contribution with insurance purchased by Owners, occupants or their mortgagees; and

8.3.4. **Subrogation.** Provide a waiver of subrogation as to any claims against the Master Association's Board, officers, employees, manager and Members, the Owners and their family members, employees, agents, licensees, guests, invitees and lessees;

8.3.5. **Authority.** A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Institutional Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

8.4. **Damage and Destruction.**

8.4.1. **Immediacy of Claim.** Immediately after damage or destruction to all or part of the Property covered by insurance written in the name of the Master Association, the Board or its duly authorized agent shall file all insurance claims and obtain reliable and detailed estimates of the costs of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

8.4.2. **Repairs.** Any damage to or destruction of the Common Area shall be repaired or reconstructed within eighteen (18) months unless Neighborhood Voting Representatives representing at least seventy-five percent (75%) of the total Class "A" votes in the Master Association and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If the damage is to Limited Common Area or to an improvement, which is the subject of a Service Area Expense, any decisions not to restore the damaged improvements shall require the approval of at least seventy-five percent (75%) of the Owners of Land Units in the affected Service Area.

8.4.3. **Estimates.** If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Master 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 Mortgage holder shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

8.4.4. **Clean-up.** If determined in the manner described above that the damage or destruction 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 Master Association in a neat and attractive, landscaped condition consistent with the Cary Creek Standard.

8.4.5. **Excess Proceeds.** 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 Master Association or the Service Area, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Institutional Mortgagees and may be enforced by the Institutional Mortgagee of any affected Parcel or Land Unit.

8.4.6 **Insufficient Funds.** If insurance proceeds received, after application of any applicable deductible, are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of Neighborhood Voting Representatives, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

**ARTICLE IX
SECURITY PROVISION**

Monitoring Services. Each owner, tenant and occupant of a land unit, and their respective guests, family members and invitees, shall be responsible for their own personal safety and the security of their property in their land unit. The master association may, but shall not be obligated to, maintain or support certain activities within the property designed to monitor or restrict persons entering and/or leaving the property. Neither the Master Association, Declarant, Declarant's Affiliates, provider, nor any director, officer, member, committee member, employee, agent, Independent Contractor, representative, successor or assign of any of the foregoing, shall in any way be considered insurers, guarantors or warrantors of security or safety within the property, or the effectiveness of such devices or procedures, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of such measures undertaken. No representation or warranty is made that any systems or measures, including, without limitation, any mechanism or system for limiting access to the property, cannot be compromised or circumvented, nor that any such systems or procedures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each owner acknowledges, understands and covenants to inform its tenants, occupants of its parcel or land unit and their respective guests, family members, and invitees that the Master Association, Declarant, Declarant's Affiliates, provider and any director, officer, member, committee member, employee, agent, Independent Contractor, representative, successor or assign of any of the foregoing, are not insurers, guarantors or warrantors of security or safety, and that each person using the property assumes all risks for loss or damage to persons, to property, to parcels and land units and to the contents of land units resulting from acts of third parties.

**ARTICLE X
DECLARANT RIGHTS AND VETO POWER**

10.1. **Declarant's Rights.** The Declarant hereby reserves to itself, and the Owner of any Land Unit hereby agrees, by acceptance of a deed of conveyance thereto, that the Declarant shall have the following rights without limitation or qualification or the necessity of consent or approval by the Master Association, Members, Owners or any other Person until such time as the Declarant causes to be recorded in the public records of the County, a Certificate of Termination of Interest (as described in Section 10.3), unless earlier terminated as provided herein.

10.1.1. **Plat.** The Declarant shall have the right to plat, replat or withdraw any area from any platted area of the Property subject to this Declaration, provided that the Declarant or its Affiliates owns the property which is being platted, replatted or withdrawn from a plat. The Declarant shall also have the right to convert a Land Unit it or its Affiliates owns to Common Area

10.1.2. **Pesticides.** The Declarant shall have the right to dispense pesticides throughout the Property.

10.1.3. **Assignment.** The Declarant shall have the right to assign, transfer or convey in whole or in part, either temporarily or permanently, any easements granted in favor of the Declarant, as created in this Declaration or as recorded in the public records of the County.

10.1.4. **Amendments.** The Declarant shall have the right to approve all amendments to or modifications of this Declaration including but not limited to development agreements, plats, RC, rules and regulations, and all other Governing Documents until the expiration of the Declarant's Control Period.

10.1.5. **Inspection.** The Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, correct or maintain any structure, improvement, or condition which may exist on any portion of Cary Creek, including, without limitation, Land Units, if the Master Association, Sub-Associations or Owners fail to do so, including, wherever there shall have been built on any Land Unit any structure or improvement which is in violation of this Declaration, and the right to enter in and upon the portion of Cary Creek, including, without limitation, a Land Unit where such violation exists and summarily to abate or remove same at the sole expense of the Owner. This right of Declarant shall include, without limitation, a perpetual, nonexclusive easement of access throughout Cary Creek to the extent reasonably necessary to exercise such right. Except in the case of an emergency, entry onto a portion of Cary Creek shall only be after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without such Owner's consent. Nothing in this Section shall relieve an Owner of the responsibility for the maintenance and repair of his Land Unit.

10.1.6. **Easement.** The Declarant shall have the right to maintain an easement, for construction staging purposes, across any Parcel or Land Unit owned by the Declarant, or if owned by an Owner, then with such Owner's consent.

10.1.7. **Access.** The Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as Declarant deems appropriate in its sole discretion. The Master Association shall not take any action which impacts the ability of the Declarant, its successors, assigns and/or Affiliates, to carry out to completion its development plans and related construction activities for Cary Creek and, as such plans may be amended and updated from time to time. Each Person that acquires any interest in the Property acknowledges and agrees that the Cary Creek PDD is a master planned community, the development of which is likely to extend over many

years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property within or outside the Property in which such Person holds an interest, or (b) changes in the Cary Creek PDD, the Development Agreement or a Master Plan adopted by the City of Auburn as it relates to property within or outside the Property in which such Person holds an interest.

10.1.8. **Right of Entry.** The Declarant shall have the right to enter into, alter or amend any agreements between the Declarant and the County, any Government Authorities, The City of Auburn, any utility provider or other Person necessary to develop Cary Creek.

10.1.9. **Name "Cary Creek".** No Person shall use the name "Cary Creek" or "Cary Creek" or any derivative of "Cary Creek" in the name of any building or any business or enterprise, or in any printed or promotional material, or in logo or depiction, without the Declarant's prior written consent, which consent may be granted or withheld in the Declarant's sole and absolute discretion. However, Owners may use the name "Cary Creek" in printed or promotional material where such term is used solely to specify that the particular property is located within Cary Creek.

10.1.10. **Retain Control.** Anything contained herein to the contrary notwithstanding, the Declarant shall have the right to retain control of the Master Association in accordance with the Governing Documents, or until such earlier time as is determined by the Declarant in the Declarant's sole and absolute discretion. In the event the Declarant shall enter into any contracts or other agreements for the benefit of the Members, Owners or the Master Association, the Declarant may, at its option, assign its obligations under the agreements to the Master Association, and in such event, the Master Association shall be required to accept such obligations.

10.1.11. **Transfer.** Any or all of the rights and obligations of the Declarant set forth in this Declaration, Articles of Incorporation, the Bylaws, the Use Restrictions, the Rules and Regulations and the Design Review Manual may be transferred in whole or in part to other Persons. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of the County. The foregoing shall not preclude the Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise. The Master Association or the Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agents, employees or designees, as it may determine.

10.1.12. **Construction in Common Area.** The Declarant and its designees, successors and assigns may construct, use, maintain and carry on upon portions of the Common Area and other property they own (whether or not part of the Property), such facilities and activities as, in the sole opinion of the Declarant, may be required, convenient, or incidental to the construction, marketing or sale of Land Units. The Declarant and its designees, successors and assigns shall have easements over the Common Area for access to and for construction, use, maintenance and carrying on of such facilities and activities. The facilities and activities provided herein include, but are not limited to, business offices, construction field offices, signs, flags (whether hung from flag poles or attached to a structure), model units, sales offices, holding or sponsoring events, promotional social functions and parties, sponsored special events for charitable, philanthropic, political or marketing purposes, such other events as may be deemed appropriate by the Declarant, and exterior lighting features or displays. The Declarant and its designees, successors and assigns, shall have easements for access to and use of such facilities and for such activities. In addition, if reasonably required, convenient, or incidental to the foregoing, including, but not limited to, construction, marketing or sales activities, the Declarant and its employees, agents, designees, successors and assigns may park vehicles in designated parking areas, on the Streets and in or on such other areas as they may determine. The Declarant and its designees, successors and assigns shall also have the right to lease Parcels and Land Units owned by said party, and the right to provide overnight accommodations to

prospective purchasers. The Declarant and its designees, successors and assigns, during the course of development of Cary Creek, may use portions of the Common Area for temporary storage and for facilitating construction on adjacent property. Upon cessation of such use, the user of such Common Area shall restore it to its condition prior to such use. If the Declarant's use under this section results in additional costs to the Master Association, the Declarant shall reimburse the Master Association for such costs. The Declarant shall not be obligated to pay any use fees, rent or similar charges for its use of Common Area pursuant to this Section. The Declarant and its employees, agents, designees, successors and assigns 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.

10.1.13. **Use of Common Area.** The rights of the Declarant and its employees, agents, designees, successors, and assigns to use the Common Area provided for herein shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration. No Person shall record any additional covenants, conditions, restrictions and easements or similar instrument affecting any portion of the Property without the Declarant's review and written consent. The right of Declarant to review and consent in writing to the foregoing, shall include, without limitation, any Neighborhood Declaration, any amendments thereto and any Governing Documents related to any Sub-Association. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

10.1.14. **Excess Land Units.** If an Owner of a Land Unit shall develop such Land Unit so that the number and type of Land Units or residential dwelling units contained therein is less than the number and type of Land Units or residential dwelling units allocated by the Declarant to that particular original Land Unit as part of the entitlements for such original Land Unit upon conveyance by the Declarant, the excess Land Units or residential dwelling units not used by the Owner (with respect to the original Land Unit conveyed by the Declarant with such entitlements) shall inure to the benefit of Declarant's remaining property in the Cary Creek PDD unless otherwise agreed.

10.1.15. **Modification of Agreements.** The Declarant reserves the right to modify the Development Agreement (with respect to the Property and other lands included in the Development Agreement and the PDD, from time to time in its sole and absolute discretion and at its option. The Declarant shall not be required to follow any predetermined order of improvement

10.1.16. **Amendments to Section 10.1.** This Section 10.1 may not be amended without the written consent of the Declarant so long as the Declarant or an affiliate has any rights hereunder. The rights contained in this Article X shall terminate upon the earlier of (a) seventy-five (75) years from the date this Declaration is recorded, (b) upon recording by the Declarant of a written statement, or (c) upon expiration of Declarant's Control Period as stated herein.

10.2. **Certificate of Termination of Interest.** Notwithstanding anything in this Declaration, the Articles of Incorporation or the Bylaws to the contrary, the Declarant may, in its sole and absolute discretion, and at any time hereafter, elect to give up and terminate any of the rights reserved to the Declarant in this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, the Design Review Manual or any Governing Documents. Such election shall be evidenced by the execution by the Declarant and the recording in the public records of the County of an instrument entitled Certificate of Termination of Interest specifying which rights reserved to the Declarant are being terminated. Unless terminated in a like manner, all other rights reserved to the Declarant in the Declaration shall remain in full force and effect in accordance with their terms.

ARTICLE XI ENFORCEMENT

11.1. **Nonmonetary Defaults.** In the event of a violation by any Member, Owner or Sub-Association (other than the nonpayment of any Assessments or other monies) of any of the provisions of this Declaration, the Governing Documents, or any permits, licenses or other instruments that may be applicable to the Property from time to time, the Master Association shall notify the Member, Owner or Sub-Association of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within fifteen (15) days after the receipt of such written notice, or if the violation is not capable of being cured within such fifteen (15) day period, if the Member, Owner or Sub-Association fails to commence within such fifteen (15) day period and diligently proceed to completely cure as soon as reasonably possible, the Master Association may, at its option, may:

11.1.1. **Specific Performance.** Commence an action to enforce the performance on the part of the Member, Owner or Sub-Association, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

11.1.2. **Damages.** Commence an action to recover damages or any other legal remedy; and/or

11.1.3. **Corrective Action.** Take any and all action reasonably necessary to correct such violation, which action may include, but is not limited to, removing any building or Improvement for which approval has not been obtained, or performing any maintenance required to be performed by this Declaration, or requiring any Member, Owner, or Sub-Association, at its own expense, to perform the foregoing; and/or

11.1.4. **Sanctions and Fines.** Impose sanctions for violations of the Governing Documents in accordance with procedures adopted by the Master Association, including reasonable monetary fines which shall constitute a lien upon the violator's Land Unit, to the extent allowed by law, and suspension of the right to vote and to use any Common Areas including, without limitation, any Recreational Facilities within the Common Areas; provided, however, nothing herein shall authorize the limitation of ingress or egress to or from a Land Unit, nor authorize the limitation of use of the Drainage Areas for purposes of surface water management, if not in violation of the terms of such use and applicable permits. In addition, in accordance with the procedures adopted by the Master Association, the Master Association may exercise self-help to cure violations, may suspend any services it provides to the Land Unit of any Owner or Member who is more than ten (10) days delinquent in paying any Assessment or other charges due to the Master Association, and may take such other actions as it deems to be appropriate; and/or

11.1.5. **Expenses.** Charge all expenses incurred by the Master Association in connection with the correction of any violation, or the commencement of any action against any Member, Owner, or Sub-Association, including administrative fees and costs and reasonable attorneys' and paralegals' fees and costs (including, without limitation, attorneys' and paralegals' fees and costs incurred on appeal, or in mediation, arbitration, administrative or bankruptcy proceedings) which shall be a Specific Assessment assessed against the Land Unit and payable by the Member, Owner or Sub-Association, as applicable, and shall be due upon written demand by the Master Association and collectible as any other Specific Assessment under this Article XI or Article VII; and/or

11.2. **Lessees, Occupants and Guests to Comply with Declaration and Governing Document.** All Owners are subject to the terms and conditions of the Governing Documents. All family members, employees, licensees, invitees, lessees, occupants and guests of an Owner shall be subject to the terms and conditions of the Governing Documents, as though such family members, employees, licensees, invitees, lessees, occupants or guests were Owners. Each Owner agrees to cause the Owner's family members,

employees, licensees, invitees, lessees, occupants and guests, or the lessee's family members, employees, licensees, invitees, occupants and guests, or other persons occupying or visiting a Land Unit to comply with the Governing Documents and is responsible and liable for all violations and losses caused by such lessees, family members, employees, licensees, invitees, occupants and guests, notwithstanding the fact that such lessees, family members, employees, licensees, invitees, occupants and guests of the Land Unit are also fully liable for any violation of the Governing Documents. In the event that the Owner's lessees, family members, employees, licensees, invitees, occupants and guests, or the lessee's family members, employees, licensees, invitees, occupants and guests, or other persons occupying or visiting a Land Unit, violates a provision of the Governing Documents, the Master Association shall have the same rights against such parties as are provided herein against an Owner.

11.3. **No Waiver.** Neither the failure of the Master Association or the Declarant to object to an Owner's or other party's failure to comply with this Declaration or any other Governing Documents (including any promulgated Rules and Regulations) nor the failure of the Master Association or the Declarant to enforce any right, provision, covenant or condition which may be granted by this Declaration or the Governing Documents shall in no event be deemed or constitute a waiver by the Declarant or the Master Association, or any other Person having an interest therein, of that Owner's or other party's requirement and obligation to abide by this Declaration or any other Governing Documents or the right of the Master Association or the Declarant to enforce such right, provision, covenant or condition in the future. The failure of the Declarant or the Master Association to insist upon the strict performance of any provision of this Declaration, to object to an Owner's or other party's failure to comply with this Declaration or any other Governing Documents, or to enforce any right, provision, covenant or condition which may be granted by this Declaration or the Governing Documents shall not be deemed to be a waiver of such provision unless the Declarant or the Master Association, whichever is applicable per the terms of this Declaration, has executed a written waiver of the provision as to the rights of such party. Any such written waiver of any provision of this Declaration by the Declarant or the Master Association may be canceled or withdrawn at any time by the party giving the waiver.

11.4. **Rights Cumulative.** All rights, remedies and privileges granted to the Master Association pursuant to any terms, provisions, covenants or conditions of this Declaration or the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Master Association thus exercising the same from exercising such additional rights, remedies or privileges as may be granted to the Master Association or as it might have by law or in equity.

11.5. **Enforcement By or Against Other Persons.** In addition to the foregoing, this Declaration may be enforced by the Declarant or the Master Association by any procedure at law or in equity against any Person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the Person against whom enforcement is sought, provided such proceeding results in a finding that such Person was in violation of this Declaration. In addition to the foregoing, any Sub-Association or Owner shall have the right to bring an action to enforce this Declaration against any Person violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein.

11.6. **Estoppel Certificate as to Default.** Upon request by any Member, Owner, or an Institutional Mortgagee holding a Mortgage encumbering any Land Unit, the Master Association shall execute and deliver a written estoppel certificate as to whether or not such Member or Owner, and any applicable Sub-Association having jurisdiction over the Owner's Parcel or Land Unit, is in default with respect to compliance with the terms and provisions of this Declaration (the "Estoppel Certificate").

11.7. **Declarant Rights.** So long as the Declarant or any affiliate of the Declarant owns a portion of the Property, the Declarant shall have the same rights to enforce the terms of this Declaration (including the Governing Documents), permits, licenses or other instruments that may be applicable to the Property from time to time as are granted to the Master Association in this Article XI.

ARTICLE XII PARTY WALLS AND PARTY ROOFS

12.1. **General Rules of Law to Apply.** To the extent not inconsistent with the provisions of this Article XII, the general rules of law regarding Party Walls, Party Roofs, and liability for property and personal damage due to negligence or willful acts or omissions shall apply thereto. In the event any portion of any structure or facility as originally constructed including, without limitation, any Party Wall or Party Roofs, shall protrude over an adjoining Land Unit, it shall be deemed that such Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the protruding structure, facility, projection, Party Wall or Party Roof. The provisions of this Section 12.1 shall be perpetual in duration and shall not be subject to amendment by this Declaration.

12.2. **Party Wall.**

12.2.1. **Generally.** The cost of reasonable repair and/or maintenance of Party Walls (other than painting of exterior Party Walls, if any) shall be shared equally by the Owners of the Attached Units sharing such improvements without prejudice, subject however, to the right of any Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

12.2.2. **Alterations.** The Owner of a Attached Unit sharing a Party Wall with an adjoining Attached Unit, or other structure comprising part of a Attached Unit, shall not cut windows or other openings in the Party Wall, nor make any alterations, additions or structural changes in the Party Wall without the joint agreement of all of the Owners sharing the Party Wall, written approval of the Design Review Board, and approval from all Government Authorities having jurisdiction.

12.2.3. **Weatherproofing.** Notwithstanding any other provisions of this Declaration, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of fixing (or, if necessary, replacing) the Party Wall and any damage caused by such act and the furnishing of the necessary protection against such elements.

12.2.4. **Easements.** The Master Association and each Owner sharing a Party Wall shall have all easement rights reasonably necessary to perform the obligations contained herein over the Land Units sharing the Party Wall.

12.3. **Party Roofs.**

12.3.1. **Generally.** Unless otherwise designated, the Master Association shall repair and maintain Party Roofs, the cost of which shall be shared equally by the Owners of the Attached Units sharing such Party Roof without prejudice and will be billed to such Owners as a Special Assessment, subject, however, to the right of any Owner to call for a larger contribution from the other(s) under any rule of law regarding liability for negligent or willful acts or omissions.

12.3.2. **Alterations.** Subject to applicable building codes, the Owner of a Attached Unit sharing a Party Roof with an adjoining Attached Unit shall not make any alterations, additions or structural changes in the Party Roof without the written consent of the Design Review Board.

12.3.3. **Emergency Repairs.** Notwithstanding the Master Association's responsibility to maintain and repair Party Roofs, the Owners shall be responsible for temporary repairs to Party Roofs necessary to prevent injury, loss of life, imminent collapse of a roof or structure, or other damages to a structure ("Emergency Repair"). Emergency Repairs shall include repairs necessary to make a Land Unit safe and/or to prevent further damage or danger and are not intended to be permanently incorporated into

the structure. For illustrative purposes only, items or damage that constitute Emergency Repairs may include, without limitation, temporary roof repairs to avoid water or other damage. The cost of Emergency Repairs shall be shared equally by the Owners of Attached Units sharing such improvements without prejudice, subject, however to the right of an Owner to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding the foregoing, the Master Association shall have the right, but not the obligation, to advance monies for the repair, replacement and/or maintenance of Party Wall(s) and charge the responsible Owner(s) a Special Assessment for such Owner's pro rata share of the costs.

12.3.4. **Easements.** Each Owner sharing a Party Roof and the Master Association shall have all easement rights reasonably necessary to perform the obligations contained in this Declaration over the Attached Units sharing the Party Roof.

ARTICLE XIII INDEMNIFICATION

13.1. **Indemnification of Officers, Members of the Board, or Agents.** The Master Association shall indemnify and hold harmless any Person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a member of the Board, committee member, employee, officer or agent of the Master Association, against all expenses, including attorneys' and paralegals' fees and costs (including, without limitation, attorneys' and paralegals' fees and costs incurred on appeal, or in mediation, arbitration, administrative or bankruptcy proceedings), judgments, fines, damages and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding; if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Master Association; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; or if such Person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Master Association, to the extent, that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. Such Person shall not be liable for any mistake of judgment, negligent or otherwise, nor with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Master Association, and the Master Association shall indemnify and hold harmless such Person from any liability and expenses as provided in the preceding sentence.

13.1.1. **Right of Indemnification.** To the extent that a member of the Board, committee member, officer, employee or agent of the Master Association is entitled to indemnification by the Master Association in accordance with this Article XIII, he shall be indemnified against expenses and attorneys' and paralegals' fees (including, without limitation, attorneys' and paralegals' fees and costs incurred on appeal, or in mediation, arbitration, administrative or bankruptcy proceedings), actually and reasonably incurred by him in connection therewith.

13.1.2. **Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Master Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Board, committee member, officer, employee or agent of the Master Association to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified and held harmless by the Master Association as authorized in this Article.

13.1.3. **Not Exclusive.** The indemnification provided by this Article XIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Alabama, any Bylaw, agreement, vote of Neighborhood Voting Representatives or otherwise. As to an action taken in an official capacity while holding office, the indemnification provided by this Article XIII shall continue as to a Person who has ceased to be a member of the Board, committee member, officer, employee or agent of the Master Association and shall inure to the benefit of the heirs, executors and administrators of such a Person.

13.1.4. **Insurance Purchase Power.** The Master Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a member of the Board, committee member, officer, employee or agent of the Master Association, or is or was serving at the request of the Master Association as a member of the Board, committee member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, arising out of his status as such, whether or not the Master

Association would have the power to indemnify him against such liability under the provisions of this Article XIII.

13.1.5. **Indemnification.** Each Owner shall indemnify and hold harmless the Master Association, the Board, committee members, officers, employees and agents of the Master Association from any loss, damages, and expenses including attorneys' and paralegals' fees and costs (including, without limitation those incurred on appeal, or in mediation, arbitration, administrative and bankruptcy proceedings) which they may incur as a result of the failure of such Owner; any occupant of such Owner's Parcel or Land Unit; or any contractor, employee or agent of such Owner acting within the scope of his contract, agency, or employment, to comply with the Governing Documents.

**ARTICLE XIV
MISCELLANEOUS PROVISIONS**

14.1. **Assignment of Rights and Duties to Master Association.** The Declarant may at any time assign, transfer and delegate to the Master Association all or any portion of the Declarant's rights, title, interest, duties or obligations created by this Declaration, or the Governing Documents. It is understood that the Master Association has been formed as a master property owners association in order to effectuate the intent of the Declarant for the proper development, operation and management of Cary Creek. Wherever herein the Declarant or the Master Association, or both, are given the right, the duty or the obligation to approve, enforce, waive, collect, sue, demand, give notice or take any other action or grant any relief or perform any task, such action may be taken by either the Declarant or the Master Association until such time as the Declarant has recorded a Certificate of Termination of Interest as to such right, duty or obligation, or Declarant's Control Period has expired. Thereafter, any such right, duty or obligation of the Declarant shall be administered solely by the Master Association, unless otherwise assigned or transferred by the Declarant.

14.2. **Treated Effluent.** Intentionally Deleted.

14.3. **Covenants to Run with the Title to the Land.** This Declaration, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property, and shall remain in full force and effect until terminated in accordance with the provisions set out herein.

14.4. **Term of this Declaration.** All of the foregoing covenants, conditions, easements, reservations, restrictions, terms and provisions of the Declaration shall run with the land and continue and remain in full force and effect at all times as against all Owners, their successors, heirs or assigns, regardless of how the Owners acquire title, for a period of seventy-five (75) years from the date of this Declaration, unless within such time, one hundred percent (100%) of the Neighborhood Voting Representatives of the Master Association execute a written instrument declaring a termination of this Declaration. After such seventy-five (75) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years each, until a majority of the votes of all Neighborhood Voting Representatives of the Master Association execute a written instrument declaring a termination of this Declaration. Any termination of this Declaration shall be effective on the date the instrument of termination is recorded in the public records of the County; provided, however, that any such instrument, in order to be effective, must be approved in writing and signed by the Declarant during such time as the Declarant or its Affiliates owns any portion of the Property. Notwithstanding the above, so long as Alabama law recognizes the rule against perpetuities, if any of the provisions of this Declaration are 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 Declarant.

14.5. **Amendments of this Declaration.** Until the expiration of the Declarant's Control Period, or until such earlier date as the Declarant records a Certificate of Termination of Interest of its right to unilaterally amend the Declaration, the Declarant may amend this Declaration by the recordation of a Supplement in the public records of the County executed by the Declarant only in order to impose additional covenants, conditions, restrictions, easements, reservations and other provisions on the Property or portions thereof. This Declaration may also be amended at any time upon the approval of Neighborhood Voting Representatives representing at least two thirds (2/3) of the votes of the Members as evidenced by the recordation of a Supplement executed by the President and Secretary of the Master Association; provided, however, that during the Declarant's Control Period, provided no Certificate of Termination of Interest of its rights to unilaterally amend the Declaration has been recorded by the Declarant in the public records of the County, no amendment shall be effective without the Declarant's express written joinder and consent

to said Supplement. No amendment to or termination of this Declaration shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement. Any such Supplement to the Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property which is the subject of such Supplement to the Declaration in order to reflect the different character and intended use of such property. The community contemplated by this Declaration, including any portion of the Additional Property or other real property which may be submitted to the Declaration, includes or will include a variety of development types, values and uses, and may thereby necessitate differing covenants, conditions, restrictions, easements, reservations and other provisions as may be desirable to reflect such things as the different character, the various housing or community style characteristics, commercial uses, mixed-uses, or development approaches being implemented, all of which may be significantly at variance with other portions of the Property.

14.6. **Dedication to Public.** The Common Area may not, and in some cases, shall not, be owned by the Master Association. The Declarant shall have the sole and absolute right at any time, without necessity of approval by the Master Association, to dedicate to the City of Auburn or to other appropriate Government Authorities, all or any part of the Common Area as well as any other portion of the Property deemed appropriate by the Declarant. Said dedication will not relieve the Master Association from the obligation to maintain the Improvements located therein, where said Improvements will not be maintained at the expense of the general public, the City of Auburn or the applicable Government Authorities, or in the event the Declarant or the Master Association elects for the Master Association to establish as a Common Expense, a higher level of maintenance than that budgeted by the City of Auburn or other appropriate Government Authorities for such dedicated property, such dedication shall not relieve the Master Association from the Master Association's election to establish as a Common Expense, a higher level of maintenance. The Declarant may convey to the Master Association such portions of the Property as the Declarant may elect, in its sole and absolute discretion, and the Master Association shall be obligated to accept same.

14.7. **Governing Law.** The construction, validity and enforcement of this Declaration shall be determined according to the laws of the State of Alabama and ordinances of the City of Auburn. The venue of any action or suit brought in connection with this Declaration shall be in Lee County, Alabama. Any action or suit brought by or against Owners who constitute all of the members of a specific Sub-Association may be brought or defended by such Owners in the name of said Sub-Association, and any process, notice of motion or hearing, or other application to any court or judge thereof that is served upon such Sub-Association in connection therewith shall be binding upon such Owners for all purposes without the necessity of individual service.

14.8. **Invalidation.** The invalidation of any provision or provisions of this Declaration by lawful court order shall not affect or modify the validity of such provision or provisions to other instances or the validity of the other provisions of this Declaration, which other provisions shall remain in full force and effect.

14.9. **Usage.** Whenever used herein, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

14.10. **Conflict.** This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation, Bylaws, the Rules and Regulations and the Design Review Manual of the Master Association and Sub-Association Documents, and the Articles of Incorporation shall take precedence over the Bylaws of the Master Association, the Rules and Regulations and the Design Review Manual, and any Sub-Association Documents. The Bylaws of the Master Association shall take precedence over the Rules and Regulations and the Design Review Manual and any Sub-Association Documents. The Rules and Regulations shall take precedence over the Design Review Manual and any Sub-Association Documents.

14.11. **Notice.** Any notice required to be sent to any Member, Owner or Neighborhood Voting Representative under the provisions of this Declaration shall be deemed to have been properly sent when mailed, prepaid, to the last known address of the person who appears as Member, Owner or Neighborhood Voting Representative on the records of the Master Association at the time of such mailing.

ARTICLE XV RIGHTS OF MORTGAGEES

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

15.1 **Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Master Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Land Unit 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 Land Unit 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 Land Unit 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 relating to such Land Unit 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.

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

15.3 **Notice to Master Association.** Upon request, each Owner shall be obligated to furnish to the Master Association the name and address of the holder of any Mortgage encumbering such Owner's Land Unit.

15.4 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Declarant or Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

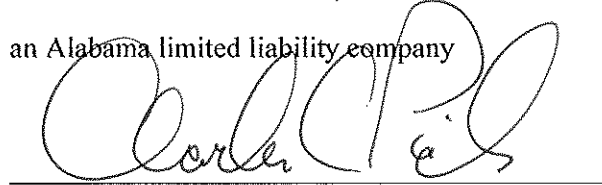
15.5 **Construction of Article XV.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or laws of Alabama for any of the acts set out in this Article.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

Signed, sealed, and delivered
in the presence of:

CARY LAND COMPANY, LLC
an Alabama limited liability company



By: Charles C. Pick

Its: Manager

STATE OF ALABAMA

COUNTY OF LEE

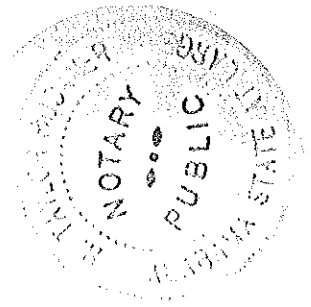
The foregoing instrument was acknowledged before me this 3rd day of April, 2015, by Charles C. Pick, as Manager of the Cary Land Company, LLC, an Alabama Limited Liability Company, on behalf of the company.



Notary Public

MY COMMISSION EXPIRES

My Commission Expires: **DECEMBER 4, 2016**



CONSENT OF LENDER

MidSouth Bank, an Alabama Banking Association ("Lender"), beneficiary under a Mortgage to Secure Debt dated July 30, 2014, and recorded on August 4, 2014 in the Office of the Judge of Probate of Lee County, Alabama in Mortgages Book 4072, at Page 221 (as amended from time to time, the "Mortgage"), for itself and its successor's and assigns, approves the foregoing 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 (the "Master Declaration"). Lender agrees and acknowledges that, upon recordation of the Master Declaration, the restrictive covenants contained in the Master Declaration will run with the land 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 Lender under the Mortgage will not render void or otherwise impair the validity of the Master Declaration.

Executed this 3rd day April, 2015.

Signed, sealed and delivered in the presence of:

MidSouth Bank, an Alabama
Banking Association

Witness

STATE OF ALABAMA
COUNTY OF LEE

By: Jim Pitt, III
Its: Lee County President

I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Jim Pitt, III**, as **Lee County President of MidSouth Bank** 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/she, with full authority executed the same voluntarily on the day the same bears date as an act of said banking institution.

Given under my hand and seal this the 3rd day of April, 2015.

[Signature]
Notary Public

My Commission Expires:

**MY COMMISSION EXPIRES
DECEMBER 4, 2016**

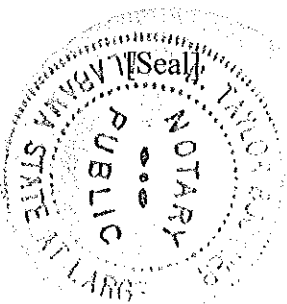


EXHIBIT "A"
PROPERTY

- 1.) The Legacy Phase 1, A Condominium Division of Lot 1 Legacy Subdivision as recorded in that condominium plat of record in Condo Plat Book 4, at Page 98 in the Office of the Judge of Probate of Lee County, Alabama.
- 2.) Lot 2, Lot 3, and Lot 4, Legacy Subdivision as recorded in the map or plat of record in Plat Book 36, at Page 171 & 172 in the Office of the Judge of Probate of Lee County, Alabama.
- 3.) Lot 6-A3-C, PICK ESTATES SUBDIVISION NORTH, Corrective Plat of Phase 1, Lots 1, 2, 3, 4, 5, and 6, Revision to Lot 6-A3 according to and as shown by that certain map or plat thereof recorded in Plat Book 36, at Page 74 in the Office of the Judge of Probate of Lee County, Alabama.
- 4.) Lots 6-A2-1 and 6-A2-2, PICK ESTATES SUBDIVISION NORTH, Corrective Plat of Phase 1, Lots 1, 2, 3, 4, 5, and 6, Revision to Lot 6, Redivision to Lot 6-A, Redivision of Lot 6-A2, 6-A4 & 6-A3-A according to and as shown by that certain map or plat thereof recorded in Plat Book 36, at Page 159, in the Office of the Judge of Probate of Lee County, Alabama.
- 5.) Lot 6-A1, PICK ESTATES SUBDIVISION NORTH, Corrective Plat of Phase 1, Lots 1, 2, 3, 4, 5, and 6, Revision to Lot 6, Redivision of Lot 6-A according to and as shown by that certain map or plat thereof recorded in Plat Book 34, at Page 156, in the Office of the Judge of Probate of Lee County, Alabama.
- 6.) Lot 6-A4, PICK ESTATES SUBDIVISION NORTH, Corrective Plat of Phase 1, Lots 1, 2, 3, 4, 5, and 6, Revision to Lot 6, Redivision of Lot 6-A according to and as shown by that certain map or plat thereof recorded in Plat Book 34, at Page 156, in the Office of the Judge of Probate of Lee County, Alabama.

Also shown as:

Lot 6-A4, PICK ESTATES SUBDIVISION NORTH, Corrective Plat of Phase 1, Lots 1, 2, 3, 4, 5, and 6, Revision to Lot 6, Redivision to Lot 6-A, Redivision of Lot 6-A2, 6-A4 & 6-A3-A according to and as shown by that certain map or plat thereof recorded in Plat Book 36, at Page 159, in the Office of the Judge of Probate of Lee County, Alabama.

- 7.) Lot 4 of the Pick Estates Subdivision North Corrective Plat of Phase 1, Lots 1,2,3,4,5, and 6, as shown on that certain map or plat filed for record in Plat Book 33, at Pages 121 and 122, in the Office of the Judge of Probate of Lee County, Alabama.
- 8.) Parcel 3, Pick Estates Subdivision North, as shown on the map or plat thereof recorded in Plat Book 27, at Page 150, in the Office of the Judge of Probate of Lee County, Alabama.
- 9.) Lot 7, PICK ESTATES SUBDIVISION NORTH, First Revision according to and as shown by that certain map or plat thereof recorded in Plat Book 33, at Pages 50-52, in the Office of the Judge of Probate of Lee County, Alabama.

Lot 7, as defined above, is a portion of what was formerly known as Parcel 1, Pick Estates Subdivision North, as shown on the map or plat thereof recorded in Plat Book 27, at Page 150, in the Office of the Judge of Probate of Lee County, Alabama.

EXHIBIT "B"
ADDITIONAL PROPERTY

MAY BE ADDED AT DISCRETION OF DECLARANT AS SET FORTH HEREIN

EXHIBIT "C"
ARTICLES OF INCORPORATION

ARTICLES OF INCORPORATION
OF
THE CARY CREEK MASTER OWNERS ASSOCIATION, INC.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, desiring to form a non-profit corporation for the purposes hereinafter set forth, pursuant to the provisions of the Alabama Nonprofit Corporation Act, Code of Alabama (1975), Sections 10-3A-1, et seq., do hereby make and subscribe their names to these Articles of Incorporation and certifies as follows:

ARTICLE I
NAME

2455 602
DEEDS Book & Page

The name of the corporation shall be "The Cary Creek Master Owners Association, Inc." (the "Association").

ARTICLE II
PURPOSES

Book/Pg: 1307/343
Term/Cashier: SCAN2 / JB
Tran: 14242,211061,230603
Recorded: 02-13-2015 09:17:49
REC Recording Fee
Total Fees: \$ 55.00

55.00

The purposes of the Association shall be to provide for the efficient preservation of appearance, value, and amenities of the Cary Creek Development (the "Development"), and to carry out all of the duties and responsibilities of a master association as are required by the laws of Alabama and under the Master Declaration, of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. (the "Master Declaration") as recorded or to be recorded in the Office of the Judge of Probate of Lee County, Alabama. Capitalized terms that are not otherwise defined herein shall have the meaning given to such term in the Master Declaration.

ARTICLE III
POWERS

The Association shall have all powers of a master association as are provided under the laws of Alabama and in the Master Declaration, and all such powers as may be necessary or desirable to discharge the duties of a master association under the laws of Alabama and the Master Declaration, including, but not limited to, the power to enter into and perform any contract and to perform any and all acts which may be necessary or convenient to the operation, management, maintenance, and administration of the Development.

Not in limitation of the foregoing powers, but in addition thereto, the Association shall have the following powers:

2455 603

(1) To enforce the covenants, conditions, restrictions, and easements contained in the Master Declaration, and to make and establish the Design Guidelines as may be promulgated by the Declarant or the Design Review Board, and enforce reasonable Rules and Regulations governing the administration and management of the Association, and any other property subject to the Master Declaration.

(2) To establish a budget for the operations of the Association; to designate those expenses which shall constitute the Common Expenses included in the Base Assessments of the Association; to make, levy, and collect Assessments and Fees against all Members and all Sub-Associations (which may include multi-family property associations, residential property owners' associations, commercial property owners' associations, retail property owners' associations, owners' associations, and condominium property owners' associations) as may be established from time to time in connection with the Development, and any other owners or associations to which are subject to the Master Declaration; to provide the funds to pay for Common Expenses of the Association as provided for in the Master Declaration; and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

(3) To maintain, repair, replace, and operate those portions of the property subject to the Master Declaration that the Association has the duty or right to maintain, repair, replace, and operate under the Master Declaration.

(4) To have access to any property subject to the Master Declaration from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement therein or accessible therefrom, or, to have immediate access at any time as may be necessary for making emergency repairs necessary to prevent damage to any other property, when such action is required by the Association.

(5) To contract for the management of any duties set forth in the Master Declaration and to delegate such agent(s) all or some of the powers, duties, and responsibilities of the Association.

(6) To employ personnel to perform the services required for proper operation of the Association.

(7) To purchase and maintain all forms of insurance for the protection of the Association, its Officers, its Designees, and its Members.

(8) To reconstruct the property along Cary Creek Parkway and Shoppes Way, located in Auburn, Lee County, Alabama, and any other property subject to the Master Declaration after casualty or other loss.

(9) To make additional improvements on and to any property subject to the Master Declaration.

(10) To approve or disapprove the transfer, mortgage, and ownership of property to the extent such power is granted to it under the Master Declaration.

(11) To retain legal counsel at the expense of the Association and to enforce by legal action the provisions of the Master Declaration, Design Guidelines, and the Rules and Regulations of the Association.

(12) To acquire, by purchase or otherwise, property, and to hold, lease, mortgage, and convey the same.

(13) To lease or license the use of property in a manner not inconsistent with the rights of any Owners or Sub-Associations holding title to property subject to the Master Declaration.

(14) To pay taxes and assessments which are liens against any part of property subject to the Master Declaration and the appurtenances thereto, and to assess the same against the Members, Owners, or Sub-Associations subject to liens for such purposes.

(15) To pay the cost of all power, water, and other utility services rendered to the property subject to the Master Declaration and not billed to the individual Owners, Members, or Sub-Associations.

(16) To adopt and establish Bylaws for the operation of the Association.

(17) To enforce the covenants and restrictions contained in the Master Declaration, and to make, establish, and enforce reasonable Rules and Regulations governing the administration, management, and use the property subject to the Master Declaration.

(18) To purchase, lease, or otherwise lawfully acquire and hold all materials, fixtures, machinery, office supplies, furniture and equipment, and other apparatus, of whatever nature, if the same shall be necessary or incident to the business aforesaid.

(19) To purchase, acquire, hold, improve, sell, convey, assign, release, mortgage, encumber, lease, hire and deal in real and personal property of every nature, including stocks

and securities of other corporations and to lend money and take securities for the payment of all sums due to the corporation to sell, assign, and/or release such securities.

(20) To borrow money for any of the purposes of the Association and to issue notes and other obligations thereof, with or without security, and to pledge or mortgage the whole, or any part of its property, real or personal; and to draw, make, accept, endorse, discount, guarantee, execute and issue promissory notes and similar types of obligations or instruments.

(21) To establish lines of credit with banking houses or elsewhere, for the purposes hereinbefore and set forth, and to incur indebtedness, and to raise, borrow and secure the payment of money in any lawful manner for any purposes in or about its business or affairs without limit as to amount.

(22) To do any and all things herein set forth and in addition, such other acts and things as are necessary or convenient to attainment of the purpose of this Association, or any of them, to the same extent as natural persons might or could do in any part of the world, insofar as such acts are permitted to be done by a non-profit corporation organized under the laws of the State of Alabama.

The foregoing clauses may be construed as objects and powers and it is hereby expressly provided that the foregoing enumeration or specific powers shall not be held to limit or restrict in any manner the powers of the Association. In addition to the objects aforesaid, the Association shall have the power to conduct and carry on any business or activity not prohibited by law, nor required by law to be specifically stated in these Articles.

ARTICLE IV ASSOCIATION FUNDS AND PROPERTY

The Association shall pay no dividend, and shall distribute no part of its income to its Members, Directors, or Officers. Nevertheless, the Association may pay compensation in a reasonable amount to its Members, Directors and Officers for services rendered, and it may confer benefits on its Members in conformity with the Master Declaration and the purposes of the Association. On termination, the Association may make distributions to its Members as permitted by law, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income. All funds and property acquired by the Association and all proceeds therefrom shall be held and used for the benefit of the Members of the Association in accordance with the provisions of the Master Declaration, these Articles, and the Bylaws.

ARTICLE V
MEMBERS

The Members of the Association shall consist of all Owners of Property located in the Development and as further set forth in the Master Declaration, and no other person or entity shall be entitled to membership. Membership in the Association shall be otherwise appurtenant to, and may not be separated from, the Development.

The share of a Member in the funds, expenses, assessments, and assets of the Association cannot be assigned, pledged, or transferred in any manner, except as an appurtenance to his/her/its membership.

Each Member shall be entitled to a weighted vote which has been or will be set forth and defined in the Master Declaration. No Member shall be entitled to vote at any meeting of the Association until it has presented evidence of membership to the Board of Directors. The vote of each Member may only be cast by such Member or by a proxy given by such member to its duly authorized representative. Each Member shall be entitled to only one (1) vote per member at any meeting of the Association and such vote shall be binding on such Member who is not present at such meeting unless written notice to the contrary has been received by the Board of Directors prior to any such vote being cast.

ARTICLE VI
BOARD OF DIRECTORS

The number of Directors shall be fixed by the Bylaws, but shall not be less than three (3) nor more than five (5). The number of Directors constituting the initial Board of Directors is three (3), and the names and addresses of the persons who are to serve as the initial Directors are:

<u>NAME</u>	<u>ADDRESS</u>
Charles C. Pick	300 Opelika Road P.O. Box 2523 Auburn, Alabama 36831
Christina C. Pick	300 Opelika Road P.O. Box 2523 Auburn, Alabama 36831
Elizabeth P. Clark	3802 Chesapeake Avenue Hampton, Virginia 23669

The Directors shall be elected or appointed in such a manner and at such times as may be prescribed in the Bylaws. Except as may otherwise be provided for in the Bylaws, each Director shall be a person designated by the Declarant or a person entitled to cast a vote in the Association.

Directors may be designated or elected and removed, and vacancies on the Board of Directors shall be filled as provided in the Bylaws.

All of the duties and powers of the Association existing under the laws of Alabama, the Master Declaration, these Articles, the Bylaws, and any Rules and Regulations as adopted, shall be exercised exclusively by the Board of Directors, its agents, officers, contractors, or employees, subject only to approval by the Members when such approval is specifically required by the laws of Alabama, the Master Declaration, these Articles, or the Bylaws.

ARTICLE VII
OFFICERS

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DEEDS Book & Page

The Officers of the corporation shall consist of a President, Secretary, Treasurer and such other officers as the Board may determine. More than one office may be held by one person. Each said Officer shall be elected or appointed at such time and in such manner and for such terms as may be prescribed by the Bylaws. The initial Officers of the Corporation who will serve until election or appointment of their successors in accordance with the Bylaws, with their respective addresses, are as follows:

<u>OFFICER</u>	<u>NAME</u>	<u>ADDRESS</u>
President	Charles C. Pick	300 Opelika Road P.O. Box 2523 Auburn, Alabama 36831
Secretary/Treasurer	Christina C. Pick	300 Opelika Road P.O. Box 2523 Auburn, Alabama 36831

ARTICLE VIII
EXECUTION OF INSTRUMENTS

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DEEDS Book & Page

All instruments for the Association shall be signed, executed and/or acknowledged by the President, Vice President, or such other officer or officers as the Board of Directors shall designate.

ARTICLE IX
INDEMNIFICATION

Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, or any settlement thereof, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE X
TERM

The term of the Association shall be perpetual; provided, however, that the Association shall be terminated in accordance with the Master Declaration.

ARTICLE XI
REGISTERED AGENT

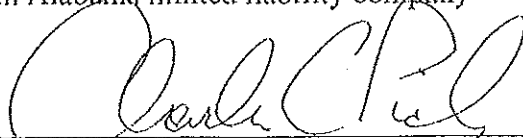
The registered office of said Association shall be 550 Shelton Mill Road, Auburn, AL 36830, and the registered agent at such address is Charles C. Pick. The mailing address of the Association shall be P.O. Box 2523, Auburn, AL 36831 .

IN WITNESS WHEREOF, the undersigned incorporator has subscribed its name to these Articles of Incorporation on this the 12th day of February, 2015.

INCORPORATOR:

Cary Land Company, LLC
An Alabama limited liability company

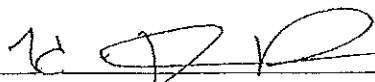
2455 609
DEEDS Book & Page


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, acknowledge before me on this day that, being informed of the contents of this instrument, he, with full power and authority executed the same on the day the same bears date on behalf of the company.

Given under my hand and seal of office, this the 12th day of February, 2015.


Notary Public

My Commission expires:

MY COMMISSION EXPIRES
DECEMBER 4, 2016

THIS INSTRUMENT PREPARED BY:
DAVIS, BINGHAM & HUDSON, P.C.
324 EAST MAGNOLIA AVE.
AUBURN, ALABAMA 36830
334-821-1908

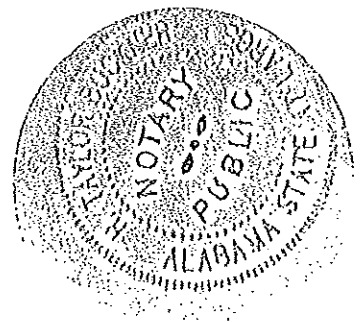


EXHIBIT "D"
BYLAWS OF THE MASTER ASSOCIATION

**BYLAWS OF
THE CARY CREEK MASTER OWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

These are the Bylaws of The Cary Creek Master Owners Association, Inc., hereinafter called the "Association," a non-profit corporation under the laws of the State of Alabama, and formed for the purpose of managing and operating a certain property located in Auburn, Lee County, Alabama, known as The Cary Creek Development, hereinafter referred to as the "Development." The principal office of the Association shall be located at 550 Shelton Mill Road, Auburn, Alabama 36830 and a mailing address of P.O. Box 2523, Auburn, Alabama 36831.

**ARTICLE II
PURPOSES**

The purposes of the Association shall be to provide for the efficient preservation of appearance, value, and amenities of the Cary Creek Development (the "Development"), which shall consist of all the Owners of Property within the Development, and any and all Sub-Associations (including multi-family property associations, residential property owners' associations, commercial property owners' associations and condominium property owners' associations) as may be established from time to time in connection with the Development, and to carry out any and all of the duties and responsibilities of a master association as are required under said statute and under the Master Declaration of Covenants, Conditions, Restrictions, and Easements for the Cary Creek Master Owners Association, Inc. ("Master Declaration") as recorded or to be recorded in the Office of the Judge of Probate of Lee County, Alabama. Capitalized terms that are not otherwise defined herein shall have the meaning given to such term in the Master Declaration.

**ARTICLE III
DEFINITIONS**

(a) "Master Declaration" shall mean the Master Declaration of Covenants, Conditions, Restrictions, and Easements for the Cary Creek Master Owners Association, Inc. that are or shall be filed in the Office of the Judge of Probate, Lee County, Alabama, as the same may be amended from time to time in accordance with the terms thereof.

(b) Other terms used herein shall have the meaning given to them in the Master Declaration and are hereby incorporated by reference and made a part hereof.

ARTICLE IV
MEETINGS

SECTION 1. PLACE OF MEETINGS: The Members shall hold meetings at such place as the Board of Directors shall authorize.

SECTION 2. FIRST ORGANIZATIONAL MEETING: The first meeting of the Members shall be held not later than one hundred-eighty (180) days after the filing of the Master Declaration.

SECTION 3. ANNUAL MEETING: Thereafter, the annual meeting of the Members shall be held at such place as the Board of Directors shall authorize, at a date and time selected by the Board of Directors. At such annual meetings, the Members shall elect the Board of Directors of the Association (as set forth herein) and subject to the Declarant's rights with respect thereto as set forth in the Master Declaration, and may transact such other business as may properly come before the meeting.

SECTION 4. SPECIAL MEETINGS: After the first annual meeting, special meetings of the Members may be called by the President, Secretary, or by a majority of the Board of Directors, or must be called by such officers upon receipt of a written request from Members who in the aggregate consist of at least twenty (20%) percent of the Association's membership. Such written request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

SECTION 5. NOTICE OF MEETINGS:

A. Notice of meetings of the Members shall be in writing. Notice of the meetings and special meetings, other than the annual meetings, shall indicate and state that it is being issued by or at the direction of the person or persons calling the meeting. Such notice shall be either mailed or delivered not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. Notice of all meetings at which disposition is to be made of assets, granting of rights or easements in the subject property must also be given to the holders of the first mortgages on Members' properties and other necessary parties.

B. Any action that may be taken at a meeting may also be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by the number of Members required to take such action at a meeting, and is filed with the Secretary of the Association.

C. The minutes of all meetings of Members shall be kept in a book available for inspection by the Members or their authorized representatives.

SECTION 6. WAIVER OF NOTICE: Notice of meetings need not be given to any Member who signs a waiver of notice either in person or by proxy, whether before or after the meeting; said notice shall be given to the Board of Directors. The attendance of any Member at a meeting, in person or proxy, without protesting prior to the conclusion of the meeting for the lack of proper notice of such meeting shall constitute a waiver of notice of the meeting.

SECTION 7. QUORUM OF MEMBERS:

A. A quorum at Members' meetings shall consist of persons representing Members which in the aggregate consist of more than fifty (50%) percent of the Members, whether or not such Member is eligible to cast a vote at the meeting. The subsequent joinder of a Member in the action taken at a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize the meeting, it cannot be broken by the subsequent withdrawal of a Member or Members.

B. In the absence of a quorum, a majority of the Members present, in person or by proxy, may adjourn the meeting to a time and date not less than ten (10) days nor more than sixty (60) days from the meeting date, but no other business may be transacted. Notice of the adjourned meeting shall be given as in the case of an original meeting.

SECTION 8. VOTING:

A. Each Member shall have a weighted vote, based on that Member's assessed land unit which shall be set forth in the Master Declaration, and the Member shall be entitled to vote at all meetings of Members of the Association. The vote of a Member shall not be divisible. Each vote shall be cast by the person named in the certificate of membership or by his/her/its proxy when filed with the Secretary of the Association.

B. If the Member is a corporation, partnership, trust, or other legal entity, the person entitled to cast the vote for Member must be designated by a certificate of appointment signed by a duly authorized representative of the entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate. A certificate may be revoked by the Member.

C. No Member who has failed to pay his/her/its Assessments or charges shall be eligible to vote at any meeting of the Association.

SECTION 9. PROXIES: A vote may be cast in person or by proxy. To be valid, proxies must be duly signed, dated, and acknowledged by the Member and must be filed with the Secretary before the meeting is called to order. A proxy is valid only for the particular meeting designated therein. A proxy may be revoked by the Member by appearance in person at the meeting and there and then filing with the Secretary at that time notice of the revocation.

SECTION 10. WRITTEN CONSENT OF MEMBERS: APPROVAL OR DISAPPROVAL: Any action that may be taken by a vote may be taken without a meeting on written consent duly acknowledged setting forth the action so taken, or to be taken, of the Members holding in interest the majority of share entitled to vote thereon in accordance with Section 8 hereof. Approval or disapproval of a Member on any matter, whether or not the subject of a meeting, shall be by the Member or its authorized representative on the books of the Association at the time of the execution of the instrument, if no meeting is being held, or by the Member on the record date, if such record date has been fixed and a meeting is to be held.

SECTION 11. ORDER OF BUSINESS: The order at the annual meeting of the Members of the Association shall be:

- a. Call to order.
- b. Calling the roll, certifying of proxies and establishing of quorum.
- c. Reading of minutes from prior meeting.
- d. Reports of the Board of Directors and/or Officers of the Association.
- e. Reports of the management agency.
- 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.

SECTION 12. 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.

SECTION 13. *Roberts Rules of Order* (latest edition) shall govern the conduct of proceedings except where the Master Declaration or the laws of the State of Alabama require a different method of procedure.

ARTICLE V
MANAGEMENT

SECTION 1. BOARD OF DIRECTORS: The Association shall be managed by a Board of Directors, each of whom shall be over the age of twenty-five (25) years. Except for Directors appointed by the Declarant, each Director shall be a Member. If a Member is a corporation or partnership, then an officer or partner of such Member may be a Director. 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.

SECTION 2. NUMBER AND TERM OF OFFICE: The Board of Directors shall consist of not less than three (3) persons and no more than five (5) persons. The Board of Directors shall be elected to serve for staggered terms.

SECTION 3. NOMINATION AND ELECTION:

A. The initial members of the Board of Directors shall be as set forth in the Articles of Incorporation.

B. Following termination of Declarant's Control Period as set forth in the Master Declaration, a nominating committee may be appointed by the Board of Directors to select candidates for election to the Board of Directors. If such committee is established, at least one (1) month preceding each annual meeting of the Association, the nominating committee shall meet with each and after considering the qualifications of persons, shall select a person or persons to be elected members of the Board of Directors at the forthcoming annual meeting of the Association. Any member of the nominating committee shall be eligible for any nomination by said committee at such election. Such committee shall report its nominees by notice sent by mail to the Members at least ten (10) days prior to the date of the annual meeting. The names of the nominees shall be either typed or printed upon a ballot as candidates for the Board.

C. Any member or members of forty percent (40%) of the membership of the Association, may nominate candidates to the Board of Directors by presenting such nominations in writing signed by them to the chairman of the nominating committee or the Secretary of the Association and thereupon the names of such candidates shall also be typed or printed on the official ballot. Such petition shall be presented not less than five (5) days before the annual meeting.

D. Voting may be verbal, by show of hands or by written ballot. Before written balloting for an officer or Director, the President of the Association shall appoint inspector(s) of

election who shall collect, receive, canvass and report the votes cast at such election. The inspectors shall not be candidates.

E. The candidates receiving a majority of the votes cast for the office shall be declared elected. Each Member shall be entitled to cast one weighted vote for each vacancy. There shall be no cumulative voting.

F. No Member who has failed to pay his/her/its Assessments or charges shall be eligible for election as an officer or as a member of the Board of Directors.

G. Members of the Board of Directors and the officers of the Association shall be installed immediately following their election or appointment or at such later time as the Board of Directors may determine.

H. Directors to be elected to fill any vacancies due to death, resignation or removal shall serve for the remaining unexpired term of the director they replace. Directors are elected otherwise to serve for three (3) year terms.

I. Directors appointed by the Members are elected otherwise to serve for a three year term or until the next annual meeting, and until his/her/its successor shall be elected and qualified, or until he/she/it resigns or is removed in any manner provided elsewhere herein.

J. Directors appointed by the Declarant shall hold office until he or she resigns, is removed by the Declarant, or his or her term expires.

K. If the number of directors shall have been increased, they shall be elected at an annual or special meeting called for that purpose in the manner prescribed herein.

SECTION 4. REMOVAL AND RESIGNATIONS:

A. Except as otherwise provided herein, a Director may be removed by a two thirds (2/3) vote at a special meeting of the Members called for that purpose. The vacancy in the Board of Directors so created shall be filled by the Members at the same meeting.

B. Directors may not be removed unless notice of the request for their removal and their resignation has been given to them and a special meeting has been called for that purpose.

C. A Director may resign at any time by giving written notice to the Board, the President, or the Secretary. Unless otherwise specified in the letter of resignation, the

resignation shall take effect immediately upon receipt thereof by the Board or by the officers designated to receive the same and acceptance of the resignation shall not be necessary to make it effective. A resignation will not relieve the director resigning from his liability by reason of malfeasance or negligence while in office.

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

SECTION 5. QUORUM: A quorum shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Directors approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. If at any meeting there is less than a quorum present, the majority of those present may recess the meeting from time to time until a quorum is present. At a recessed meeting any business which could have been transacted at the meeting originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining the presence of a quorum.

SECTION 6. ACTION OF THE BOARD: A quorum being present, a vote of the majority of those present shall constitute the action of the Board, except as to those matters where the law and Master Declaration require a different majority. Any action permitted or required to be taken at a meeting of the Directors may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the Directors, and filed with the minutes of the proceedings of the Board.

SECTION 7. VACANCIES IN THE BOARD: Vacancies in the board may be filled until the date of the next annual meeting of the Members by the remaining members of the Board, and any Director so elected shall hold office for a term equal to the unexpired term of the Director whom he or she succeeds. Any vacancy in the position of a Director appointed by the Declarant shall be filled by the Declarant.

SECTION 8. TIME AND PLACE OF BOARD MEETINGS:

A. The Board of Directors shall meet regularly at such times and places as the Board may designate. It may hold its meetings at such other places as it may determine. The annual meeting of the Board may be held immediately following the annual meetings of its Members or at such other place and time as may be determined by the newly elected Board of Directors.

B. A special meeting of the Board of Directors may be called by the President or Vice-President on two (2) days' notice given either in writing, in person, by telephone, or by facsimile to each Director. Such special meeting must be called on the demand or request of two (2) members of the Board.

SECTION 9. NOTICE OF MEETINGS AND WAIVERS: Regular meetings once established may thereafter be held without notice at the time and at the place agreed upon by the Board. If the time or the place of a regular meeting should be changed by circumstances beyond the control of the Board, notice of the change shall be given in the same manner as for a special meeting.

Notice of a meeting need not be given to any Director who submits a waiver of notice, whether such waiver be before or after the meeting. Attendance by any Director at a meeting shall constitute waiver of notice of that meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called.

SECTION 10. MINUTES OF MEETINGS: The minutes of all meetings of the Board of Directors shall be kept in a minute book available for inspection by Members, or their authorized representatives, or by Directors at any reasonable time.

SECTION 11. PRESIDING OFFICER: The President or a Chairman selected and chosen by the Board shall preside at all meetings of the Board of Directors and of the Association.

SECTION 12. COMPENSATION: A Director shall not receive any compensation for any service he may render to the Association as a Director; provided, however, that any Director may be reimbursed for actual out-of-pocket expenses incurred by him or her in the performance of his or her duties.

SECTION 13. POWERS AND DUTIES OF THE BOARD: The Board shall have the power and may exercise all of the powers granted to it under the Association's documents, except for such powers and duties reserved thereby to the Declarant. The powers and duties of the Board of Directors shall include, but shall not be limited to the following:

A. To elect and remove officers of the Association as hereinafter provided.

B. To make, levy, and assess common charges against the Members for the purpose set forth in the Master Declaration and to use the same in the exercise of its power and duties.

C. To provide for the maintenance, repair, replacement, and operation of the Property subject to the Master Declaration, either directly or through an agent, and in case of casualty to reconstruct and reestablish the property and to make improvements therein.

D. To contract for the management of the property; to enforce by legal means all of the provisions of the Master Declaration, these Bylaws, the rules and regulations of the Development, and the resolutions and decisions rendered in pursuance of the Bylaws.

E. To prevent loss or damage to the Development by paying taxes, insurance, landscape, maintenance, power bills, signage, Assessments or water bills or other liens against any part of the property subject to the Master Declaration, and to assess the same against the Members subject to such liens.

F. To temporarily close or restrict the use of the certain areas of the Development when required for a special use.

G. To make or amend rules and regulations respecting the use and operation of the Development but not inconsistent with the Master Declaration.

H. To maintain bank accounts on behalf of the Association and to designate signatories required therefore.

I. To borrow money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Development.

J. To pay the cost of all power, water or other utility services rendered to the Development which are not separately billed to the Members, Sub-Associations or individual property owners.

K. To estimate the amount of the annual budget and to make and collect Assessments against Members or Sub-Associations (if applicable) to defray the costs, expenses, and losses of the Development.

L. To enforce the provisions of the Association Documents by legal action if necessary and to employ legal, accounting, maintenance, or other personnel for the reasonable compensation to perform the service required for the proper administration of the Development.

M. To sell, lease, mortgage, or otherwise deal with property acquired by the Association.

N. To 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.

O. To do any and all things which prudent operation of the Development would require.

SECTION 14. COMMITTEES: The Board of Directors may designate one or more committees to facilitate management of the affairs and business of the Association. Any such committee shall consist of at least three (3) members, at least one (1) of whom shall be a Director and shall have such obligations and authority as provided in the resolution designating such a committee. Any such committee shall keep regular minutes of its proceedings and shall report the same to the Board of Directors.

SECTION 15. MANAGING AGENT: The Board of Directors shall be authorized to employ the services of a manager or managing agent, who may either be a Director, Officer, or employee of the Association, or an independent person or firm qualified to manage the Development Property and affairs of the Development under the supervision of the Board. The compensation paid to any such manager or managing agent shall be in the amount established from time to time by the Board.

ARTICLE VI OFFICERS

SECTION 1. At the annual meeting of the Board of Directors of the Association there shall be elected a President, Secretary, Treasurer and, if desired, one or more Vice-Presidents. Any two or more offices may be held by the same person, except the offices of President and Secretary. These officers shall all serve for a term of one (1) year, until his successor shall have been appointed or elected and qualified, provided that any officer may succeed himself. Said officers may be members of the Board of Directors.

SECTION 2. PRESIDENT: The President shall be the Chief Executive Officer of the Association and he/she shall have all of the powers and duties usually vested in a president of an Association, including, but not limited to, the power to appoint committees as he/she may, with the consent of the Board of Directors, deem appropriate; to preside over all meetings of the members and of the Board; to sign as President all deeds, contracts, and other instruments that have been duly approved by the Board; to call meetings of the Board whenever he/she deems it necessary in accordance with the rules; and to have the general supervision, direction, and control of the affairs of the Association. He/she shall exercise such other powers and duties as shall be prescribed by the Board. He/she shall see that all orders and resolutions of the Board

shall be carried into effect. He/she may delegate some of his/her duties to the Vice-President elected.

SECTION 3. VICE-PRESIDENT: Any Vice-President shall perform all duties that are usually vested in the office of vice-president of a master association. He/she shall serve as chairman of the respective committees which the Board of Directors shall deem appropriate, and shall perform the duties and exercise the powers of the President, in the absence or disability of the President.

SECTION 4. SECRETARY: The Secretary shall have all the powers and duties that are usually vested in the secretary of a master association, and shall keep a record of all actions of the Board and all meetings of the Members. He/she shall attend to the giving of all notices to the Members, and/or Directors and/or managers and shall supervise the service thereof. He/she shall have custody of the seal of the Association and shall affix the same to such instruments as may require a seal when duly signed. He/she shall prepare and have available at each meeting of the Members a certified list in alphabetical order of the names of the Members and of their weighted interest in the membership of the Association, and certify which of them are entitled to vote. He/she shall sign as Secretary all deeds, contracts, and other instruments which have been duly approved by the Board, if said instruments require a second Association signature. He/she shall perform all other duties incident to the office of Secretary of the Association as may be required by the President or the Board of Directors.

SECTION 5. TREASURER: The Treasurer shall keep the financial records of the Association and shall keep books of accounts and shall have custody of all the funds of the Association. He/she shall keep the Assessment roll and the accounts of the Members. He/she shall perform all other duties incident to a Treasurer of the Association as prescribed by the Board. He/she shall deposit all monies and other valuables in the name of and to the credit of the Association in such depositories as shall be designated by the Board. He/she shall disburse the funds of the Association as may be ordered and authorized by the Board and shall preserve proper vouchers for such disbursements, provided, however, the Board may require one (1) or more signatures in disbursing funds, and provided further that an authorized signatory need not be a member of the Board. He/she shall render an annual report at the annual meeting of the Members. The Treasurer and the President shall, as prescribed by the Board, report on the operation of the Condominium Property and the payment of Common Expenses and the determination and collection of the common charges. The authority to collect and disburse funds on behalf of the Association may be assigned to an agent or employee hired by the Board to discharge such duties.

SECTION 6. COMPENSATION: An Officer shall not receive any compensation for any service he/she may render to the Association as an Officer; provided, however, that any

Officer may be reimbursed for actual out-of-pocket expenses incurred by him/her in the performance of his/her duties.

SECTION 7. SPECIAL APPOINTMENTS: The Board may appoint such other Officers as the affairs of the Association may require, each of whom shall hold office for such a period, have such authority, and perform such duties as the Board may from time to time determine.

SECTION 8. RESIGNATION AND REMOVAL: Any Officer may be removed from office either with or without cause by the vote of a majority of the Directors present at any meeting. Any Officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt 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.

SECTION 9. VACANCIES: A vacancy in any office shall be filled by a majority vote of the Directors at any meeting. An Officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Officer he succeeds.

SECTION 10. All employees as such of the Association may be removed by the Board. The officers may be removed in the same manner as a director can be removed as provided in Section 4 of Article V herein.

ARTICLE VII **FISCAL MANAGEMENT**

SECTION 1. The provisions for fiscal management of the Development as set forth in the Master Declaration shall be supplemented as follows:

A. 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 Member. Such account shall designate the name and address of the member, the amount of each Assessment against the member, the dates and amounts in which the Assessments come due, the amounts paid upon the account and the balance due on the Assessments.

B. The Board of Directors 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. Common Expense budget:
 - a. Maintenance and operation of landscaping, signage, entrance to Cary Creek Parkway, Shoppes Way, and Cary Creek Development Entrance Water Feature.
 - b. Utility services for power and water for the Development.
 - 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 Member and the manner of payment.

SECTION 2. Copies of the budget and Assessments shall be transmitted to each Member within thirty (30) days of approval by the Board. If the budget is subsequently amended before the Assessments are made, a copy of the amended budget shall be furnished to each member concerned.

SECTION 3. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board of Directors. 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 of Directors.

SECTION 4. 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 ninety (90) days after the end of the year for which the report is made.

SECTION 5. Bonds may be required by the Board of Directors 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.

SECTION 6. ASSESSMENTS: On or before the first day of each quarter of the fiscal year for which the Assessments are made, each Member shall pay one-quarter (1/4) of his/her/its share of the Common Expenses for such year as shown by the annual budget. The Assessments of the Common Expenses shall be as set forth in the Master Declaration, but the

yearly Assessment for each Member shall be in proportion to his/her/its respective membership interest in the Association.

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

SECTION 7. FAILURE TO MAKE TIMELY PAYMENT OF ASSESSMENT INSTALLMENTS: If a Member shall be in default in the payment of any installment of a quarterly Assessment for more than sixty (60) days, the Board may accelerate all remaining quarterly installments due for the balance of the term covered by the annual budget, as well as any late fees as set forth in the Master Declaration, and the same shall thereupon become immediately due and payable. In addition, late payment or non-payment of such Assessment may result in other penalties as may be determined by the Board of Directors, including but not limited to, loss of services provided by the Association for the benefit of such Member and other privileges afforded to Members of the Association.

SECTION 8. SPECIAL ASSESSMENTS: The Board of Directors can cause to be sent to each Member statements for all Special Assessments, being those Assessments as provided for in Section 7.6 of the Master Declaration, that are necessary to meet the requirements of the Association and the Development Property, for which the Members are liable to the Association.

SECTION 9. SUPPLEMENTAL ASSESSMENTS: If during the course of any fiscal year, it shall appear to the Board that the quarterly Assessments, as determined in the annual budget, are insufficient or inadequate to cover the estimated Common Expenses 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/her/its proportionate share of the supplemental budget.

SECTION 10. ANNUAL STATEMENT: Within ninety (90) 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.

SECTION 11. 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 Member 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 VIII
AMENDMENTS TO THE BYLAWS

SECTION 1. Upon expiration of the Declarant's Control Period, Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Members who in the aggregate consist of at least thirty percent (30%) of the membership of the Association. The proposed amendment must be reduced to writing and must be accompanied by the opinion of legal counsel as to whether the amendment is permitted under the Master Declaration and Association Documents, and whether the consents from the holders of the first mortgages or other necessary parties are required. It shall be included in the notice of any meeting the action which is to be taken thereon.

SECTION 2. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the Members, who in the aggregate consist of at least thirty (30%) percent of the membership of the Association, and approved by the Members at a meeting called for this purpose. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Such approvals must be by two thirds (2/3) of the votes entitled to vote thereon.

SECTION 3. No amendment may be adopted that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted to the Declarant or any Institutional Mortgagee without the consent of the Declarant or the Institutional Mortgagee, as the case may be. No amendment that is in conflict with the Articles or the Master Declaration shall be adopted.

SECTION 4. Any amendment shall become effective when recorded in the Office of the Judge of Probate of Lee County, Alabama.

ARTICLE IX
FISCAL YEAR

The fiscal year shall begin on the 1st day of January in each year, or as the Board of Directors shall establish.

ARTICLE X
EXECUTION OF INSTRUMENTS

All instruments of the Association shall be signed, executed and/or acknowledged under seal by the President or such other officer or officers as the Board of Directors shall designate.

ARTICLE XI
RULES AND REGULATIONS

The restrictions of the Development shall be as set forth in Article IV of the Master Declaration, or as adopted and amended from time to time by the Declarant. They are intended to govern the details of the operation and the use of the Development and the restrictions and requirements for the use and maintenance of the Development Property. They are designed to prevent unreasonable use of the Development Property by other Members.

Upon the expiration of Declarant's Control Period, the Rules and Regulations may be amended from time to time by the Board of Directors; however, a majority of the members may overrule the Board with respect to any such rules and regulations or modifications thereof or any amendments or addition thereto. Copies of such rules and regulations, or any amendments, additions, or modifications, shall be delivered to each Member not less than ten (10) days prior to the effective date thereof. No rule or regulation that is in conflict with the Association Documents shall be adopted.

ARTICLE XII
MISCELLANEOUS

SECTION 1. CONSTRUCTION: Wherever the context so permits, the singular shall include the plural, the plural shall include the singular and the use of gender shall be deemed to include all genders.

SECTION 2. CAPTIONS: The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision hereof.

SECTION 3. CONFLICTS: In the event of any conflict between the provisions of these Bylaws and the Master Declaration, the Master Declaration shall govern.

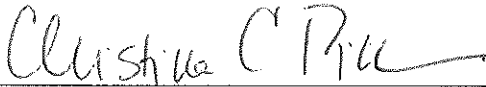
IN WITNESS WHEREOF, the undersigned have subscribed their names to the Bylaws of The Cary Creek Master Owners Association, Inc., on this the 3rd day of April, 2015.

The Cary Creek Master Owners Association, Inc.



By: Charles C. Pick, President

ATTEST:



By: Christina C. Pick, Secretary

EXHIBIT "E"
USE RESTRICTIONS AS MAY BE PROMULGATED FROM TIME TO TIME
BY THE DECLARANT OR THE MASTER ASSOCIATION

Use restrictions may be created, added, removed and/or amended from time to time by the Declarant or the Master Association, or as further stated by any Governing Documents of any Sub-Association as may be created from time to time. In addition to this Master Declaration, such Property that shall also be subject to any additional Sub-Association Governing Documents shall be subject to any and all restrictions of such Sub-Association so long as such restrictions do not conflict with the provisions of this Master Declaration.

EXHIBIT "F"
ASSESSMENT AND VOTING FORMULA

1. **Residential Assessment.** Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all single-family Residential Land Units, also including, but not limited to, platted townhomes, duplexes, triplexes, and big homes that serve as residential units, and Condominium Residential Land Units subject to this Declaration shall be allocated one "Assessment Unit." Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all Residential Property (e.g. each individual unit comprising of any apartment) subject to this Declaration shall be deemed one Residential Land Unit and allocated one Assessment Unit. Assessments shall commence on a Residential Land Unit as provided in the Declaration or in a Supplement to the Declaration. Unless otherwise provided in the Declaration or in a Supplement to the Declaration, the Residential portion of a Mixed-Use Land Unit subject to this Declaration shall be allocated one Assessment Unit. The Commercial portion of a Mixed-Use Land Unit shall be allocated Assessment Units so provided in Paragraph 2 below.

2. **Commercial Assessment.** Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all Commercial Land Units, Institutional Land Units, and the Commercial Portion of any Mixed-Use Land Units shall be allocated one (1) Assessment Unit for each 2,500 gross square feet, or fraction thereof, of Improvements located thereon or the maximum gross square feet entitled to be located thereon if such Land Unit is unimproved. For example, a Commercial Land Unit with 3,000 gross square feet of Improvements located thereon shall be allocated two Assessment Units. Any Improvements on a Commercial Land Unit, Institutional Land Unit, or on the Commercial portion of a Mixed-Use Land Unit owned by or leased to the Master Association shall be exempt from Assessments. If a portion of an Improvement on a Commercial Land Unit or on the Commercial portion of a Mixed-Use Land Unit is owned by or leased to the Master Association, only that portion of the Improvement shall be exempt from Assessments. The Residential portion of a Mixed-Use Land Unit shall all be allocated Assessment Units as provided in Paragraph 1 above.

3. To determine a Land Unit's share of an Assessment, the total number of Assessment Units allocated to all Land Units which are subject to such Assessment shall be divided into the total amount of such Assessment to determine the "Assessment per Assessment Unit". Then, for any individual Land Unit, such Land Unit's share of such Assessment shall be equal to the number of Assessment Units allocated to such Land Unit multiplied by the Assessment per Assessment Unit.

4. For purposes of this EXHIBIT "F", an Improvement shall only include the primary buildings, and shall specifically exclude any ancillary structures and other physical improvements and shall further exclude roads, paved areas, swimming pools, golf courses and other similar "outdoor" facilities. For purposes hereof, "gross square feet" shall be calculated as the floor area measured to the exterior face of walls, including access halls and excluding areas for vehicular storage and mechanical service equipment.

VOTING FORMULA (RESIDENTIAL AND COMMERCIAL UNITS)

A Land Unit shall have the number of votes equivalent to the number of Assessment Units or portions thereof allocated to the Land Unit, which vote shall be exercised by the Neighborhood Voting Representative as provided in the Declaration, unless such vote must be specifically exercised by the Owner as provided in the Declaration. .

EXHIBIT G

Intentionally Deleted

EXHIBIT "H"
PROVISIONS AFFECTING ATTACHED UNITS

This EXHIBIT "H" is incorporated in and made a part of the foregoing Declaration. This EXHIBIT "H" contains provisions specific to Attached Units (as hereinafter defined), which provisions are in addition to, and not in lieu of, those provisions in this Declaration applicable to all Property Units, including Attached Units. In the event of a conflict between a provision contained in this EXHIBIT "H" and a provision contained elsewhere in this Declaration, with respect to Attached Units only, the provision contained in this Exhibit "H" shall control.

1. DEFINITIONS.

(a) **"Attached Unit"** shall mean a townhome, duplex, big home or other Residential Land Unit which shares one or more party walls with an adjacent Residential Land Unit. A fence or wall which runs perpendicular to the side wall of a Residential Land Unit constructed on a Attached Unit Common Boundary, which connects such Residential Land Unit to an adjacent Residential Land Unit which is not constructed on the Attached Unit Common Boundary, and which merely is present for aesthetic purposes, does not render such Residential Land Units "Attached Units" for purposes of this definition.

(b) **"Attached Unit Building Deductible"** shall mean the amount of the deductible applicable to and payable for a particular Multi-Unit Building under the Association Multi-Unit Insurance due to an insured casualty or loss.

(c) **"Attached Unit Common Boundary"** is that portion of the side lot line forming the common boundary line between any two (2) adjoining Attached Units.

(d) **"Attached Unit Easement Area"** shall mean that area which lies between the Attached Unit Common Boundary and a line parallel to and ten feet (10') from such Attached Unit Common Boundary.

(e) **"Attached Unit Privacy Fence"** shall mean any fence or wall, and its supporting structure, and any gate therein, running either: (i) along the rear property line of an Attached Unit, generally parallel to any alley adjacent thereto; or (ii) along and generally parallel to the side property line of an Attached Unit that constitutes the end Unit in a Multi-Unit Building (an "End Attached Unit"); provided, however, that such fence or wall need not be contiguous to such rear or side property line; and provided further that if a fence or wall is on the Attached Unit Common Boundary of two (2) Attached Units which form the End Attached Units of different Multi-Unit Buildings and is not accessible from the adjacent street, or alley, such fence or wall shall not constitute an "Attached Unit Privacy Fence"; or (iii) between two (2) Multi-Unit Buildings and perpendicular to the side walls thereof. The definition of "Attached Unit Privacy Fence" shall not include any fence or wall that is built along an Attached Unit Common Boundary of two (2) any fence or wall built on a detached Unit.

(f) **"Attached Unit Privacy Landscaping"** shall mean any hedge or similar landscaping installed in lieu of an Attached Unit Privacy Fence where an Attached Unit Privacy Fence would otherwise be installed, to enclose the side and/or rear yard of any Attached Unit.

(g) **"Attached Unit Private Zone"** shall mean the portion of any side or rear yard of any Attached Unit that is enclosed by an Attached Unit Privacy Fence, Attached Unit Privacy Landscaping, or the home and other improvements of an Attached Unit. Notwithstanding the foregoing, in the absence of either an Attached Unit Privacy Fence or Attached Unit Privacy Landscaping on an Attached Unit, the area behind the dwelling on the Attached Unit shall be deemed to be an Attached Unit Private Zone.

(h) **"Attached Unit - Shared Elements"** shall mean the party walls and all other improvements

serving multiple Attached Units, which may include, at the Master Association's discretion, improvements for which the costs of repair may not be practically or reasonably allocated to a specific Attached Unit(s) (i.e., roofing).

(i) **"Attached Unit-Unit Damage Allocation"** shall mean the total repair costs allocated to a particular Attached Unit due to a casualty to a Multi-Unit Building, which shall be the lesser of (a) the Attached Unit-Unit Deductible, or (b) the actual cost of repairing the damage sustained to the improvements on such Attached Unit including the costs to repair any Attached Unit Shared Elements (subject to the provisions of Section 4(w)(3) below).

(j) **"Attached Unit - Unit Deductible"** shall mean the deductible applicable to each individual Attached Unit, which shall be determined by dividing the Attached Unit Building Deductible by the approximate average number of Attached Units in Multi-Unit Buildings within a Service Area, as determined by the Board from time to time. By way of example only, if the Board determines the average number of Attached Units in Multi-Unit Buildings within a particular Service Area is five (5), and if the Attached Unit Building Deductible for an affected Multi-Unit Building is \$2,500, and such affected Multi-Unit Building contains three (3) Attached Units, then the Attached Unit Building Deductible of \$2,500 shall be divided by five (5), and each affected Owner shall pay \$500 as its Attached Unit-Unit Deductible, notwithstanding that there are only three (3) Attached Units in the affected Multi-Unit Building.

(k) **"Attached Unit-Unit Deductible Reserve"** shall mean those funds which may be collected as part of a Service Area Assessment as a Service Area Expense for the purpose of funding deductibles, as described in Section 4(w) below, for future casualties or losses covered by the Association Multi-Unit Insurance.

(l) **"Multi-Unit Building"** shall mean a building containing two (2) or more Attached Units.

2. **SERVICE AREAS.**

The Owners in the Attached Unit Service Areas shall bear the costs incurred by the Master Association to operate, maintain, repair and replace all Exclusive Common Area situated therein and all costs incurred by the Master Association to provide the services specified below, including, but not limited to, the cost of water and electricity used in connection with the Master Association's irrigation of landscaping, the cost of any insurance provided by the Master Association on the Multi-Unit Buildings, and all other services or benefits provided by the Master Association to the Attached Unit Service Areas (except for repair or replacement the need for which is caused by the conduct of an Owner, in which case the costs therefor shall be assessed against such Owner and its Property Unit as a Specific Assessment pursuant to Section 7.8 of this Declaration).

3. **MAINTENANCE RESPONSIBILITIES AND PROVISION OF SERVICES.**

(a) **Association Maintenance Responsibilities and Provision of Services.** As a Service Area expense included in each respective Attached Unit Service Area budget, the Master Association shall be responsible for performing, or causing to be performed, on behalf of the Owners of the Attached Units, the following, subject to the provisions of Section 4.13 of this Declaration:

(1) maintenance, repair and replacement of such areas within the Attached Unit Service Areas as are conveyed to the Master Association as Exclusive Common Areas for the benefit of the Attached Unit Service Areas (which may include, without limitation, streets, streetlights, sidewalks, and entry features therein); provided, no portion of the Attached Unit Service Areas shall be dedicated or conveyed to the Master Association as Exclusive Common Area until all improvements to be made thereto are completed, as determined in the reasonable judgment of Declarant, and have been inspected by the Master

Association's designee and determined to be free of material defects in materials or workmanship;

(2) maintenance, including, mowing, fertilizing, watering, insect control, pruning, and replacement as necessary, of all lawns and landscaping installed as part of the initial construction of the Attached Units and any replacements thereof in the front yard of any Attached Unit and in those portions of the rear and side yard of any Attached Unit on the street or alley side of any Attached Unit Privacy Fence or Attached Unit Privacy Landscaping, together with the portion of any Attached Unit Privacy Landscaping visible and accessible from the adjacent street or alley. Such work shall not be provided to any landscaping within any Attached Unit Private Zone, which shall be maintained by the Attached Unit Owner; and

(3) maintenance, including, mowing, fertilizing, watering, insect control, pruning and replacement as necessary, of all lawns and landscaping on all property adjacent to the Attached Units for which the Owners of the Attached Units would otherwise be responsible pursuant to this Declaration; and

(4) maintenance of the following exterior portions of the improvements constructed by the original builder on each Attached Unit:

(i) painting of all exterior portions of the dwellings (including the exterior doors, shutters, and fascia thereof), carports, garages, garage doors, and any Attached Unit Privacy Fence;

(ii) caulking of the exterior portions of all windows and doors;

(iii) repair and/or replacement, as necessary, of the shingles or cement tiles on the roofs of any dwelling and garage, including any exterior porch, patio or deck roof originally constructed with the dwelling;

(iv) pressure cleaning of lead walks, exterior front steps, and the exterior walls of all dwellings and garages and the floor of any covered porch, patio or deck (but not any uncovered patio, porch or deck in the Attached Unit Private Zone);

(v) repair and replacement, if necessary, of any Attached Unit Privacy Fence;

(vi) maintenance and replacement, as necessary, of the irrigation system (including, without limitation, any sprinklers, pumps, wells, water lines and time clocks, wherever located) serving those portions of the Attached Units and Common Area adjacent to the Attached Units for which the Master Association is responsible pursuant to this Declaration, which areas may be irrigated through a master system and controllers Association shall have no responsibility for any sprinklers or irrigation lines or equipment installed within any Attached Unit Private Zone (other than to supply irrigation water to the perimeter of such Attached Unit Private Zone from pipes outside of such Attached Unit Private Zone) or for any sprinklers or irrigation lines or equipment installed by the Owner or occupant of any Attached Unit;

(vii) termite and other wood-destroying insect treatment of all exterior structural walls and foundations of the dwellings and garages. The Master Association shall cause the repair or replacement of such portions of the dwellings and garages caused by termite and other wood-destroying insect infestation; provided, however, the cost of such repair or replacement shall be the responsibility of the Owner(s) of the affected Attached Unit(s) and not the entire Service Area, and shall be levied as a Specific Assessment against such affected Attached Unit(s), to the extent not covered under a bond or warranty or similar type of protection;

(viii) repair or replacement of any damaged garage door and exterior door hardware (but not garage door openers), and any other broken exterior door and door hardware on any dwelling; provided, however, the cost of such repair/replacement shall be the responsibility of the Owner of the affected

Attached Unit and not the entire Service Area; and repair or replacement of any portion of the home, garage and other improvements, which are damaged or destroyed by any casualty or other event that results in the Master Association being paid insurance proceeds on any insurance policy the Master Association obtains to insure casualty or damage to portions of the home and other improvements, up to the limits of such insurance proceeds (the balance of such cost being the responsibility of the Attached Unit Owner);

(ix) repair and/or replacement, as necessary, of exterior shutters; and

(x) repair and/or replacement, as necessary, of rain gutters installed as part of the initial construction of the improvements on an Attached Unit or installed subsequently by the Master Association. Notwithstanding the foregoing, the Master Association shall not be responsible for damage or erosion caused by water flow from any gutter or downspout or any other source.

(5) Notwithstanding the foregoing, in no event shall the Master Association be responsible to maintain any landscaping or improvements added by an Owner to an Attached Unit (and no landscaping or improvements may be added without the prior consent of the Declarant, during the Declarant's Control Period, and thereafter by the Design Review Board).

(b) Commencement of Maintenance Responsibilities. Notwithstanding the provisions of Section 3(a) of this EXHIBIT "H":

(1) The Master Association's responsibilities pursuant to Section 3(a) of this EXHIBIT "H", except for repairs or replacements in the event of a fire or other casualty covered by insurance maintained by the Master Association and then only to the extent of available insurance proceeds, shall not commence until a subdivision plat subdividing the Attached Units into separate residential lots has been approved by the City of Auburn and recorded in the Public Records and, as to each item which is to be the Master Association's maintenance responsibility hereunder, the construction or installation of such item is complete, the Master Association has been notified in writing and given at least ten (10) Business Days from the date of receipt of such notice to inspect the item to verify that it is complete and free from material defects, and the Master Association has either indicated its acceptance of maintenance responsibility for such item in writing or failed to notify the responsible Builder in writing within such ten (10) day period of its rejection of such item and the reasons for such rejection, in which case it shall be deemed to have accepted the item. If the Master Association notifies the Builder/Owner of its rejection of any item within such ten (10) day period, the item shall be deemed incomplete and the process shall be repeated until the item is accepted or deemed accepted. The Master Association shall not reject an item unless it determines, in good faith, that there are material defects in the construction or installation of the item or that it has not been completed in all material respects in accordance with the plans approved by Declarant or the Master Association, if Declarant elected not to review such plans. The Master Association shall be entitled to commence collection of all or portions of the Service Area Assessments for all Attached Units in a Multi-Unit Building as soon as the Master Association commences expending amounts which benefit the Attached Units in such Service Area, notwithstanding the fact that the Master Association may not yet have assumed maintenance responsibilities for the Attached Units within such Multi- Family Building.

(2) The Master Association's responsibilities with respect to a particular Attached Unit shall not commence, and notwithstanding anything to the contrary in any contract or agreement between the Builder and any third party for purchase of the Attached Unit, no Attached Unit shall be conveyed, without the prior written consent of the Master Association, to a person other than a Builder purchasing for the purpose of constructing a dwelling thereon for resale, until: (i) completion of construction of a dwelling and all related improvements thereon; (ii) issuance of a certificate of occupancy for such dwelling and related improvements by the City of Auburn; (iii) written notice has been provided to the

Master Association giving the Master Association at least ten (10) Business Days from the date of receipt of such notice to inspect the improvements to verify that those elements which are to be the Master Association's responsibility to maintain hereunder are complete and free from material defects; and (iv) the Master Association has either indicated its acceptance of maintenance responsibility for such Attached Unit in writing or failed to notify the responsible Builder in writing within such ten (10) day period of its rejection of such Attached Unit and the reasons for such rejection, in which case it shall be deemed to have accepted the improvements on the Attached Unit. If the Master Association notifies the Owner or its Builder of its rejection of the improvements to any Attached Unit within such ten (10) day period, the improvements shall be deemed incomplete and the process shall be repeated until the Attached Unit is accepted or deemed accepted. The Master Association shall not reject any Attached Unit unless it determines, in good faith, that there are material defects in the construction or installation of the elements which are to be the Master Association's maintenance responsibility or that such elements have not been completed in all material respects in accordance with the plans approved by the Master Association, if Declarant has elected not to exercise its rights to approve such plans.

(c) Any dispute between the Master Association and any Builder relating to the status of completion or acceptance shall be subject to the dispute resolution procedures set forth in this Declaration.

(d) In conducting inspections hereunder, the Master Association is acting solely to protect its own interests, and such right of inspection shall not create any duty on the part of Declarant or the Master Association to any Builder, purchaser or subsequent Owner of any of the Attached Units nor shall any such Builder, purchaser or Owner have any right to rely upon the Master Association's inspection for any purpose.

(e) Except as set forth above, maintenance of all portions of the Attached Units, including driveways serving the dwellings on the Attached Units and any landscaping or improvements installed by the Owners or occupants of any Attached Unit, shall be the responsibility of the respective Owners, as provided in this Declaration.

(f) The Master Association shall not be responsible for any maintenance or repairs to any window, anything contained within any dwelling or garage, or any improvement or modification added or made to any improvement after the conveyance of the Attached Unit to the first Owner following completion of construction of the dwelling thereon by the Builder.

(g) All maintenance on Attached Units shall be performed in a manner and on a schedule consistent with the Cary Creek Standard.

4. INSURANCE ON ATTACHED UNITS.

(a) The Master Association may, but shall not be obligated to, maintain property insurance (the "Association Multi-Unit Insurance") on each Multi-Unit Building within the Property that is subject to the jurisdiction of the Master Association from time to time and which contains Attached Units and which is a part of a Service Area. It is the intent that the Association Multi-Unit Insurance shall cover those portions of such Multi-Unit Buildings which would typically be required, under Alabama law, to be insured by a condominium association if the Multi-Unit Building was a condominium. Specifically, the Association Multi-Unit Insurance shall include, but not necessarily be limited to, all fixtures, installations or additions comprising that portion of the Multi-Unit Building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the Attached Units as initially installed (collectively, the "Attached Unit Insured Property") in an amount not less than 100% of the full insurable replacement value thereof. Such policies may contain reasonable deductible provisions as determined by the Board of the Master Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time

are customarily covered with respect to buildings and improvements similar to the Multi-Unit Buildings in construction, location and use. Notwithstanding the foregoing, the Association Multi- Unit Insurance shall not include, and shall specifically exclude, all furniture, furnishings, fixtures, countertops, water filters, floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Attached Unit Owners or tenants of Attached Unit Owners, and all electrical fixtures, appliances, cabinets and other improvements not typically insured by a condominium association. The Master Association shall not be responsible for providing insurance coverage for casualties or damages resulting from floods. The foregoing must be separately insured by each Attached Unit Owner on a unit owner's policy (for example, a typical condominium unit owner's policy a/k/a H0-6). All Owners, Mortgagees, occupants of Attached Units and other affected parties are hereby advised that over time, due to the age of the Attached Unit Insured Property and nature of their construction, it may not be economically feasible or otherwise possible to insure the Attached Unit Insured Property for their full replacement value as a result of the aforesaid factors or the applicability of changes in zoning or building codes. Neither the Master Association, nor any officer or director thereof, shall be liable to any party whatsoever in the event of a casualty loss to any Attached Unit Insured Property which exceeds the coverage afforded by reasonably available insurance. In the event the Board, in their sole discretion, elects to discontinue maintaining the Association Multi-Unit Insurance, or the type of coverage provided for in this Section 4 is not available or is cost-prohibitive, then the Master Association shall give each Owner of an Attached Unit insured under the Association Multi-Unit Insurance sixty (60) days' written notice that the Association Multi-Unit Insurance shall be canceled or shall not be renewed. On or before the 60th day after the aforesaid notice is given, each such Owner shall obtain and maintain, at its sole cost and expense, a homeowner's insurance policy covering all of the items set forth herein to be covered by the Association Multi-Unit Insurance, such policy to be effective on or before the cancellation or expiration date of the Association Multi-Unit Insurance. If the Master Association discontinues providing the Association Multi-Unit Insurance as aforesaid, then the Board, in its sole discretion, shall determine a reasonable method of redistributing or reallocating the Attached Unit-Unit Deductible Reserve and Service Area Assessments collected for the Association Multi-Unit Insurance premiums, including, but not limited to, distributing all or any portion of such funds to the Owners in the applicable Service Area, reallocating all or any portion of such funds to other reserve accounts in such Service Area, or a combination of the two, or applying such funds elsewhere in the budget so as to temporarily reduce the Service Area Assessments for such Service Area.

(b) In the event of a casualty loss, the Master Association shall be entitled to file a claim on the Association Multi-Unit Insurance policy for the cost of any repair or reconstruction to the Attached Unit Insured Property which is the Master Association's responsibility, and the deductible therefor shall be paid in accordance with the provisions of Section 4(w) below. Repair and reconstruction of any damaged Multi-Unit Building for which a claim is paid shall be performed using materials of like kind and quality as that of the initial improvements, subject to their availability and the then-current building codes and other laws governing construction. Each Owner of an affected Attached Unit shall be responsible for repair/replacement of all portions of the improvements constructed on its Attached Unit not covered by the Association Multi-Unit Insurance.

(c) Each Attached Unit Owner shall be responsible for ascertaining the extent and limits of the Association Multi-Unit Insurance and for obtaining separate insurance to cover all other property of such Attached Unit Owner, and to cover their personal liability, living expenses, and any other risks and matters not otherwise insured in accordance herewith. The Master Association shall not be liable for any gaps in insurance coverage between the Association Multi-Unit Insurance and insurance obtained by the Attached Unit Owner.

(d) The insurance policies described herein shall be purchased by the Master Association and shall be issued by an insurance company authorized to do business in Alabama, or a surplus lines carrier

reasonably acceptable to the Board of the Master Association.

(e) The named insured shall be the Master Association, individually, and as agent for Owners of the Attached Units covered by the policy, without naming them. The Attached Unit Owners shall be deemed additional insureds.

(f) All policies shall provide that payments for losses made by the insurer shall be paid to the Attached Unit Insurance Trustee (if appointed), as hereinafter defined, and all policies and endorsements thereto shall be deposited with the Attached Unit Insurance Trustee (if appointed).

(g) One copy of each Association Multi-Unit Insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Master Association upon request to each Mortgagee holding a lien on an Attached Unit covered by the policy.

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

(i) Each Association Multi-Unit Insurance Policy shall, if required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation ("FNMA/FHLMC"), have the following endorsements, if applicable and if available: (i) agreed amount, (ii) inflation guard, and (iii) machinery and equipment breakdown coverage (providing at least \$50,000 coverage for each accident at each location).

(j) Each Association Multi-Unit Insurance Policy shall provide that such policy may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board may (or if required by FNMA/FHLMC, shall) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Attached Unit Insured Property, without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section 4.

(k) Premiums for each Association Multi-Unit Insurance Policy purchased by the Master Association pursuant to this Section 4 for the benefit of Owners of Attached Units shall be paid by the Owners in their respective Service Area as part of their Service Area Assessment.

(l) All Association Multi-Unit Insurance policies obtained by or on behalf of the Attached Unit Owners in each Service Area containing Multi-Unit Buildings shall be for the benefit of the Master Association, such Attached Unit Owners and their Mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to a trustee (if appointed) as provided below, and which, if so appointed, shall be a bank or trust company in Alabama with trust powers, with its principal place of business in the State of Alabama (the "Attached Unit Insurance Trustee"). The Attached Unit Insurance Trustee (if appointed) shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Attached Unit Insurance Trustee (if appointed) shall be to receive such

proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Attached Unit Owners affected by such casualty and their respective Mortgagees in the following shares, but shares need not be set forth on the records of the Attached Unit Insurance Trustee:

(1) Proceeds on account of damage to Multi-Unit Buildings shall be held for the benefit of Owners of Attached Units in such Multi-Unit Buildings in proportion to the cost of repairing the damage suffered by each such affected Owner to the extent such costs of repairs for an Attached Unit exceeds the applicable Attached Unit-Unit Deductible, which cost and allocation shall be determined in the sole discretion of the Master Association.

(2) No Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Attached Unit Owner and Mortgagee pursuant to the provisions of the Declaration as amended hereby. _____

(m) Proceeds of insurance policies received by the Attached Unit Insurance Trustee (if appointed) shall be distributed to or for the benefit of the affected Attached Unit Owners in the following manner:

(1) All expenses of the Attached Unit Insurance Trustee (if appointed) shall be first paid or provision shall be made therefor.

(2) If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the affected Attached Unit Owners thereof, remittances to Attached Unit Owners and their Mortgagees being payable jointly to them.

(3) If it is determined in the manner elsewhere provided in this Section 4 that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated equally among the affected Attached Unit Owners, but only after being distributed first to all Mortgagees on all mortgages and liens on such Owners' Attached Units in the order of priority of such mortgages and liens sufficient to pay off their mortgages, and then, after being utilized to demolish and remove any uninhabitable portions of the Multi-Unit Building and restoring the land in a manner reasonably determined by the Association (hereinafter the "Attached Unit Demolition and Cleanup Expenses"), the balance, if any, to the affected Attached Unit Owners.

(4) In making distributions to Attached Unit Owners and their Mortgagees, the Attached Unit Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Attached Unit Owners and their Mortgagees and their respective shares of the distribution.

(n) The Master Association is hereby irrevocably appointed as agent and attorney-in-fact for each Attached Unit Owner and for each owner of a mortgage or other lien upon an Attached Unit to adjust all claims arising under insurance policies purchased by the Master Association and to execute and deliver releases upon the payment of claims.

(o) Unless the Master Association elects otherwise, the insurance purchased by the Master Association shall not cover claims against an Owner due to accidents occurring within or on such Owner's Attached Unit, nor casualty or theft loss to the contents of an Owner's Attached Unit. It shall be the obligation of the individual Attached Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all risks not covered by insurance carried by the Master Association.

(p) Certain provisions in this Section 4 are for the benefit of Mortgagees of Attached Units and may

be enforced by such Mortgagees.

(q) The Board of the Master Association shall have the option in its discretion of appointing an Attached Unit Insurance Trustee hereunder. If the Master Association fails or elects not to appoint such Attached Unit Insurance Trustee, the Master Association shall perform directly all obligations imposed upon such Trustee by the Declaration as amended hereby. Fees and expenses of any Attached Unit Insurance Trustee are Service Area Expenses.

(r) Subject to the immediately following paragraph, in the event of damage to or destruction of the Attached Unit Insured Property as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration of the Attached Unit Insured Property and the Attached Unit Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

(s) If seventy-five percent (75%) or more of the insured value of the Attached Unit Insured Property of any Multi-Unit Building is substantially damaged or destroyed following such loss (or such higher percentage, if required by the terms of the Association Multi-Unit Insurance policy in order for the extent of the damage or destruction to be deemed a constructive total loss under the terms of the Association Multi-Unit Insurance policy, so as to obligate such insurer to pay the full amount covered by such insurance policy), and if Attached Unit Owners owning an equivalent percentage (or more) (or such lesser or greater amount as may be required by applicable law) of the Attached Units in such building consent not to proceed with the repair or restoration thereof, the Attached Unit Insured Property will not be repaired, in which event the net proceeds of insurance resulting from such damage or destruction, after disbursements for Attached Unit Demolition and Cleanup Expenses, shall be divided among all the Attached Unit Owners in proportion to the damage suffered by each such affected Attached Unit Owner, as determined in the sole discretion of the Master Association; provided, however, that no payment shall be made to an Attached Unit Owner until there has first been paid off out of his or her share of such fund, all mortgages and liens on his or her Attached Unit in the order of priority of such mortgages and liens.

(t) Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Attached Unit Insurance Trustee (if appointed) notifies the Board and Attached Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Attached Unit Insurance Trustee (if appointed) notifies the Board of Directors and the Attached Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Attached Unit Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

(u) Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Attached Unit Insured Property and then-applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Declarant (during the Declarant's Control Period and, thereafter, by the Design Review Board, and in accordance with then-applicable building and other codes, and by the Owners of not less than 80% of the applicable Attached Units (and their respective Mortgagees) as to which the plans are to be altered.

(v) If the proceeds of the Association Multi-Unit Insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Master Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Specific Assessments shall be made against the affected Attached Unit Owners in sufficient amounts to provide funds for the payment of such costs.

(w) Deductibles for fire, casualty or other losses covered by the Association Multi-Unit Insurance (or the cost of repairs not exceeding the deductibles) shall be payable as follows:

(1) Each affected Attached Unit Owner shall be responsible for payment of its Attached Unit-Unit Damage Allocation.

(2) In the event that the sum of the Attached Unit-Unit Damage Allocations with respect to a claim for a Multi-Unit Building is less than the lesser of (a) the actual cost to repair the damage to such Multi-Unit Building, or (b) the Attached Unit Building Deductible, the difference shall be paid from the Attached Unit-Unit Deductible Reserve of the Service Area containing such Multi-Unit Building to the extent such funds are available. If there are not adequate funds available in the Attached Unit-Unit Deductible Reserve of such Service Area, the shortfall shall be collected through a Special Assessment, which shall be equally levied against all Attached Units in such Service Area.

(3) The Board of the Master Association may determine a reasonable method for allocating amongst the affected Attached Units in a Service Area the costs of repairing damages to Attached Unit Shared Elements, which method may include, but not be limited to, dividing such costs equally amongst the affected Attached Units in such Service Area.

(4) The Board of the Master Association may establish an Attached Unit-Unit Deductible Reserve for each Service Area which is to be funded through Service Area Assessments. The amount set aside for the Attached Unit-Unit Deductible Reserve in each Service Area shall be at the sole discretion of the Association.

5. EASEMENTS AFFECTING ATTACHED UNITS.

(a) Grant of Easement. A perpetual non-exclusive easement on, over and across the Attached Unit Easement Area of the adjoining Attached Unit is hereby granted to each Attached Unit which shares an Attached Unit Common Boundary for access, ingress, egress and use by the Owner and occupants of the Dominant Estate and their respective representatives, contractors and agents as reasonably necessary to perform maintenance and make bona fide repairs to any fence or wall located on the Attached Unit Common Boundary; provided (unless otherwise warranted by then-existing circumstances or otherwise agreed to by the adjoining Owner) such entry shall occur between 7:00 a.m. and dusk only and shall be limited to a reasonable number of days in each calendar year.

(b) Limitations on Exercise. Nothing shall be done or permitted within any Attached Unit Easement Area which would constitute a threat or hazard to the health and safety of the individuals occupying the dwelling on the Attached Unit encumbered by such easement.

(c) Non-Exclusive Uses. The uses permitted within each Attached Unit Easement Area by virtue of this Section 5 shall be non-exclusive and subject to any utility, access and drainage easements, as well as any easements granted elsewhere in this Declaration, as it may be amended from time to time.

(d) Construction and Repair Work Guidelines. Declarant, or upon its delegation, the Design Review Board, is specifically authorized to promulgate ad hoc rules and guidelines pertaining to any particular construction or repair work likely to require the exercise of the easement described above so that the respective best interests of the adjoining Owners are, to the extent reasonably possible, harmonized and preserved.

STATE OF ALABAMA
COUNTY OF LEE

2469 379
Recorded in the Above
DEEDS Book & Page
09-29-2015 03:25:32 PM
Bill English - Probate Judge
Lee County, AL
REC Recording Fee
Total Fees: \$ 32.00

32.00

**FIRST AMENDMENT TO THE MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR THE CARY CREEK MASTER OWNERS ASSOCIATION, INC.**

This First Amendment to the Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. (hereinafter referred to as "Declaration"), made this the 25th day of September, 2015, by CARY LAND COMPANY, LLC, an Alabama limited liability company (hereinafter referred to as "Declarant").

WHEREAS, by original instrument recorded in the Judge of Probate Office of Lee County, Alabama, in Book 2455, at Page 515, CARY LAND COMPANY, LLC, an Alabama limited liability company, as the Declarant, did impose certain covenants, conditions and restrictions on real property located in Lee County, Alabama known as the Cary Creek Development; and

WHEREAS, Declarant reserved specific amendment rights pursuant to Section 10.1 and Section 14.5 of the original Declaration; and

WHEREAS, Declarant now desires to amend Exhibit "F" regarding Assessments and Voting in its entirety; and

WHEREAS, this First Amendment is fully enforceable, inseparable, and bound to the Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. as recorded in the Judge of Probate Office of Lee County, Alabama, in Book 2455, at Page 515.

NOW, THEREFORE, in consideration of the premises and under the authority reserved to it, the undersigned Declarant does hereby amend the Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. in the following respect:

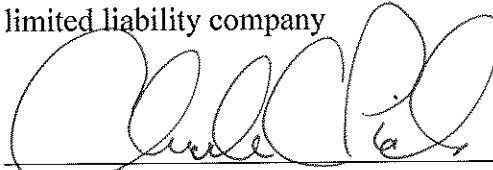
1. Declarant hereby alters, amends and replaces, in its entirety, Exhibit "F" filed and recorded on April 6, 2015 in the Judge of Probate Office of Lee County, Alabama, in Book 2455, at Page 515, with the following attached Exhibit "F". The attached Exhibit "F" herewith shall be substituted in its entirety as if it had been recorded in the original Declaration.

All other provisions as set forth in the Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. as recorded in the Judge of Probate Office of Lee County, Alabama, in Book 2455, at Page 515, shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this First Amendment to the Master Declaration of Covenants, Conditions, Restrictions and Easements for The Cary Creek Master Owners Association, Inc. to be duly executed on this the 25th day of September, 2015.

DECLARANT:

CARY LAND COMPANY, LLC, an Alabama
limited liability company

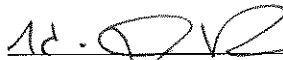


By: Charles C. Pick, Manager

STATE OF ALABAMA
COUNTY OF LEE

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

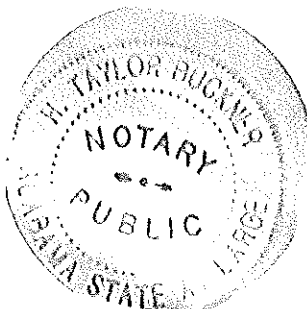
Given under my hand and official seal this the 25th day of September, 2015.



Notary Public


My Commission Expires:

MY COMMISSION EXPIRES
DECEMBER 4, 2016



ACKNOWLEDGMENT, CONSENT & RATIFICATION OF LIENHOLDER

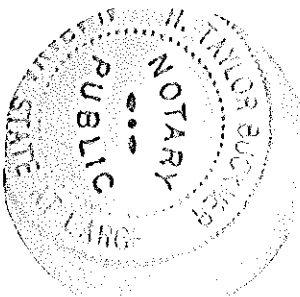
MidSouth Bank, an Alabama
Banking Association


By: Jim Pitt, III
Its: Lee County President

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Jim Pitt, III**, as **Lee County President of MidSouth Bank** 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 banking institution.

Given under my hand and seal this the 25th day of September, 2015.



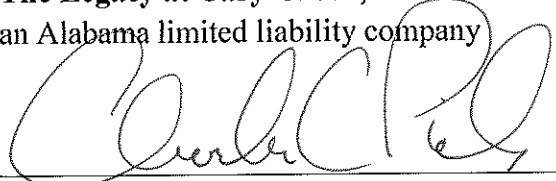

Notary Public

My Commission Expires: _____

**MY COMMISSION EXPIRES
DECEMBER 4, 2016**

ACKNOWLEDGMENT, CONSENT & RATIFICATION OF OWNER/MEMBER

The Legacy at Cary Creek, LLC
an Alabama limited liability company



By: Charles C. Pick

Its: Manager

STATE OF ALABAMA
COUNTY OF LEE

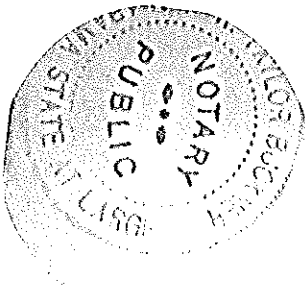
I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Charles C. Pick, as Manager of The Legacy at Cary Creek, LLC**, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, 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 25th day of September, 2015.



Notary Public

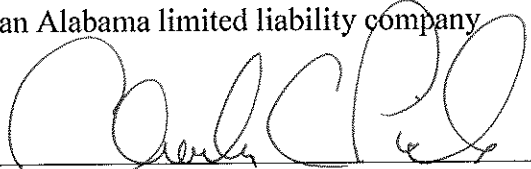
My Commission Expires: **MY COMMISSION EXPIRES**
DECEMBER 4, 2016



ACKNOWLEDGMENT, CONSENT & RATIFICATION OF OWNER/MEMBER

Pick-Clark Holdings, LLC

an Alabama limited liability company



By: Charles C. Pick

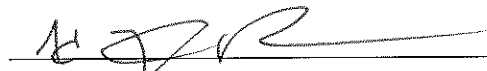
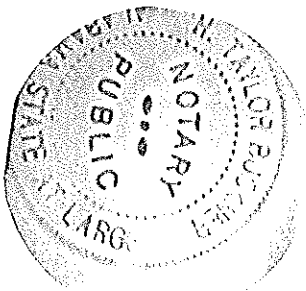
Its: Manager

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 Pick-Clark Holdings, 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, 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 25th day of September, 2015.

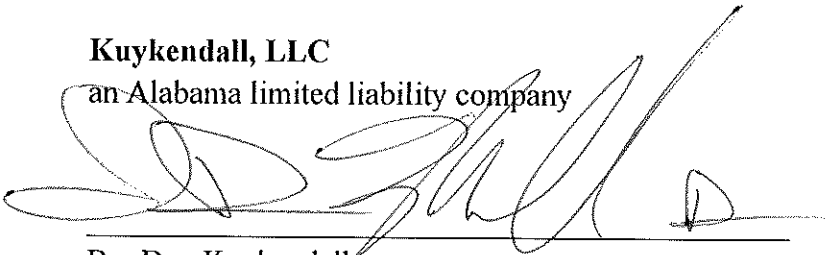


Notary Public

My Commission Expires: ~~MY COMMISSION EXPIRES~~
DECEMBER 4, 2016

ACKNOWLEDGMENT, CONSENT & RATIFICATION OF OWNER/MEMBER

Kuykendall, LLC
an Alabama limited liability company



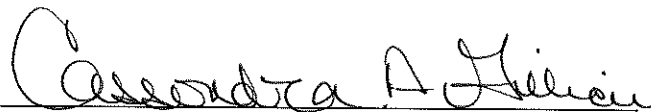
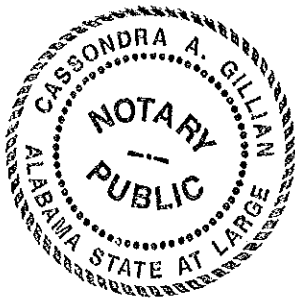
By: Dan Kuykendall

Its: Member

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, a Notary Public, in and for said State at Large, hereby certify that **Dan Kuykendall, as Member of Kuykendall, 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, 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 25th day of September, 2015.



Notary Public

My Commission Expires: 12-16-15

THIS DOCUMENT PREPARED BY:
DAVIS, BINGHAM & HUDSON, P.C.
ATTORNEYS AT LAW
324 EAST MAGNOLIA AVENUE
AUBURN, ALABAMA 36830
(334) 821-1908

EXHIBIT "F"

ASSESSMENT AND VOTING FORMULA

The Base Assessments and Special Assessments (collectively the "Assessments") of the Master Association, as defined herein, shall be divided equally so that Residential shall be allocated one-half (1/2) of the Master Association Assessments and Commercial shall be allocated one-half (1/2) of the Master Association Assessments. The Master Association Assessments shall then be allocated as follows:

1. **Residential Assessment.** Residential shall allocate its one-half (1/2) of the Master Association Assessments proportionately amongst the Residential Sub-Associations in the Development. Each Residential Sub-Association's proportionate share shall be equal to its total number of platted Land Units located in its Residential Sub-Association divided by the total number of platted Land Units in all Residential Sub-Associations in the Development.

Each Residential Sub-Association shall then allocate its proportionate share of the Master Association Assessments amongst its Members in accordance with each Member's Ownership Interest as defined and set forth in such Residential Sub-Association's governing documents. The Master Association Assessments shall be collected as set forth in this Declaration.

Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all single-family Residential Land Units, also including, but not limited to, platted townhomes, duplexes, triplexes, and big homes that serve as residential units, and Condominium Residential Land Units subject to this Declaration shall be deemed Residential. Assessments shall commence on a Residential Land Unit as provided in the Declaration or in a Supplement to the Declaration. Unless otherwise provided in the Declaration or in a Supplement to the Declaration, the Residential portion of a Mixed-Use Land Unit subject to this Declaration shall be allocated its Master Association Assessments as set forth herein. The Commercial portion of a Mixed-Use Land Unit shall be allocated its Master Associations Assessments so provided in Paragraph 2 below.

2. **Commercial Assessment.** Commercial shall allocate its one-half (1/2) of the Master Association Assessments proportionately amongst the Commercial Sub-Associations in the Development. Each Commercial Sub-Association's proportionate share shall be equal to its total gross square feet of Improvements located in its Commercial Sub-Association divided by the total gross square feet of Improvements located in all Commercial Sub-Associations in the Development.

Each Commercial Sub-Association shall then allocate its proportionate share of the Master Association Assessments amongst its Members in accordance with each Member's Ownership Interest as defined and set forth in such Commercial Sub-Association's governing

documents. The Master Association Assessments shall be collected as set forth in this Declaration.

Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all Commercial Land Units (which shall also include multi-family residential improvements for lease/rent), Institutional Land Units, and the Commercial Portion of any Mixed-Use Land Units shall be allocated is proportionate share of the Master Association Assessments as set forth herein. Assessments shall commence on a Commercial Land Unit as provided in the Declaration or in a Supplement to the Declaration. Any Improvements on a Commercial Land Unit, Institutional Land Unit, or on the Commercial portion of a Mixed-Use Land Unit owned by or leased to the Master Association shall be exempt from Assessments. If a portion of an Improvement on a Commercial Land Unit or on the Commercial portion of a Mixed-Use Land Unit is owned by or leased to the Master Association, only that portion of the Improvement shall be exempt from Assessments.

3. For purposes of this EXHIBIT "F", an Improvement shall only include the primary buildings, and shall specifically exclude any ancillary structures and other physical improvements and shall further exclude roads, paved areas, swimming pools, golf courses and other similar "outdoor" facilities. For purposes hereof, "gross square feet" shall be calculated as the floor area measured to the exterior face of walls, including access halls and excluding areas for vehicular storage and mechanical service equipment.

VOTING FORMULA FOR RESIDENTIAL AND COMMERCIAL LAND UNITS

1. **Residential Voting.** Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all single-family platted Residential Land Units, also including, but not limited to, platted townhomes, duplexes, triplexes, and big homes that serve as residential units, and platted Condominium Residential Land Units subject to this Declaration shall each be allocated one (1) vote in the Master Association. Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all Residential Land Units (however, excluding multi-family residential improvements for lease/rent which shall be deemed Commercial as provided for below) subject to this Declaration shall each be deemed one Residential Land Unit and allocated one (1) vote in the Master Association, which vote shall be exercised by the Neighborhood Voting Representative as provided in the Declaration, unless such vote must be specifically exercised by the Owner as provided in the Declaration.

2. **Commercial Voting.** Unless otherwise provided in the Declaration or in a Supplement to the Declaration, all platted Commercial Land Units (this shall specifically include multi-family residential improvements for lease/rent such as apartments), Institutional Land Units, and the Commercial Portion of any Mixed-Use Land Units, and platted Condominium Commercial Land Units subject to this Declaration shall each be allocated one (1) vote in the Master Association for each 2,500 gross square feet, or fraction thereof, of Improvements located thereon or

approved. One (1) vote shall be allocated to each platted Commercial Land Unit, Institutional Land Unit, the Commercial Portion of any Mixed-Use Land Units, and platted Condominium Commercial Land Units subject to this Declaration that do not contain any approved Improvements. For example, a Commercial Land Unit with 3,000 gross square feet of approved Improvements located thereon shall be allocated two (2) votes in the Master Association. Any Improvements on a Commercial Land Unit, Institutional Land Unit, or on the Commercial portion of a Mixed-Use Land Unit owned by or leased to the Master Association shall be exempt from voting. If a portion of an Improvement on a Commercial Land Unit or on the Commercial portion of a Mixed-Use Land Unit is owned by or leased to the Master Association, only that portion of the Improvement shall be exempt from voting.

For purposes of this EXHIBIT "F", an Improvement shall only include the primary buildings, and shall specifically exclude any ancillary structures and other physical improvements and shall further exclude roads, paved areas, swimming pools, golf courses and other similar "outdoor" facilities. For purposes hereof, "gross square feet" shall be calculated as the floor area measured to the exterior face of walls, including access halls and excluding areas for vehicular storage and mechanical service equipment.