

This document is being recorded to correct the Declarant name, correct page numbers, and add the legal description to that certain document recorded in RLPY 2021, Page 100170.

**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR  
HENDERSON ESTATES**

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## CONTENTS

ARTICLE	SECTION	PAGE
I.	DEFINITIONS	2
II.	PROPERTY SUBJECT TO THIS DECLARATION	
1.	Property Hereby Subject to This Declaration	2
2.	Other Property	2
III.	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	
1.	Membership	2
2.	Voting	3
3.	Authority of Association	3
IV.	ASSESSMENTS	
1.	Purpose	3
2.	Type of Assessment	3
3.	Creation of Lien and Personal Obligation for Assessment	3
4.	Budget	4
5.	Special Assessments	4
6.	Lien for Assessments	5
7.	Effect of Nonpayment of Assessments	5
8.	Date of Commencement of Assessments	6
9.	Loans from Declarant	6
10.	Specific Assessment	6
11.	Association Assignment of Assessment Rights	6
12.	Association Grant of Power of Attorney	6
V.	MAINTENANCE/CONVEYANCE	
1.	Association's Responsibility	7
2.	Owner Responsibility	7
3.	Party Walls and Party Fences	8
4.	Conveyance of Common Property by Declarant	9
5.	Additional Improvements	9
VI.	USE RESTRICTIONS	
1.	General	9
2.	Residential Use	10
3.	Signs	10
4.	Vehicles and Garages	10
5.	Leasing	11
6.	Occupants Bound	11
7.	Animals and Pets	11

8.	Nuisance	11
9.	Unsightly Conditions	12
10	Architectural Standards	12
11.	Antennas	13
12.	Tree Removal	14
13.	Drainage	14
14.	Site Distance at Intersection	14
15.	Clotheslines, Garbage Cans	14
16.	Subdivision of Lot	15
17.	Guns	15
18.	Fencing	15
19.	Utility Lines	15
20.	Air Conditioning Units	15
21.	Artificial Vegetation	15
22.	Energy Conservation Equipment	16
23.	Swimming Pools	16
24.	Driveways	16
25.	Exteriors	16
26.	Window Coverings	16
27.	Chimneys	16
28.	Mailboxes	16
29.	Landscaping	16
30.	Screening of Air Conditioning Units	17
31.	Basketball Goals	17
32.	Swing Sets and Play Equipment	17
33.	Dwelling Restrictions	17
34.	Construction Improvements	18
35.	Approved Builder	18
<b>VII.</b>	<b>INSURANCE</b>	
1.	Insurance on Common Property	19
2.	Property Insured by Association: Damage	21
3.	Property Insured by Owners: Damage	21
4.	Insurance Deductible	22
<b>VIII.</b>	<b>CONDEMNATION</b>	22
<b>IX.</b>	<b>ANNEXATION OF ADDITIONAL PROPERTY</b>	
1.	Unilateral Annexation by Declarant	22
<b>X.</b>	<b>MORTGAGE PROVISIONS</b>	
1.	Notices of Action	23
2.	No Priority	24
3.	Notice to Association	24
4.	Amendment by Board	24

5.	Applicability of Article X	24
6.	Failure of Mortgagee to Respond	24
<b>XI.</b>	<b>EASEMENTS</b>	
1.	Easements for Enjoyment of Common Property	24
2.	Easements for Provision of Services to Community	26
<b>XII.</b>	<b>LIMITED COMMON AREA USE AGREEMENT</b>	
1.	Amenities	26
2.	Financing of Amenities	27
<b>XIII.</b>	<b>GENERAL PROVISIONS</b>	
1.	Enforcement	27
2.	Self-Help	27
3.	Durations	28
4.	Amendment	28
5.	Partition	29
6.	Gender and Grammar	29
7.	Severability	29
8.	Captions	29
9.	Indemnification	29
10.	Construction and Sale Period	30
11.	Books and Records	30
12.	Audit	31
13.	Notice of Sale	31
14.	Estoppel Certificate	31
15.	Agreements	31
16.	Implied Rights	31
17.	Deviations	31
18.	Use of Words "Henderson Estates"	32
19.	Architectural Control Committee	32
	<b>Exhibit "A"</b>	33
	<b>Exhibit "B"</b>	35
	<b>Exhibit "C"</b>	36

**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR  
HENDERSON ESTATES**

**THIS DECLARATION** is made on the date hereinafter set forth by Winter Homes Investment Properties, LLC (hereinafter called "Declarant").

**BACKGROUND  
STATEMENT**

Declarant is the owner of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1, to all of the terms and provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration. The Henderson Estates has been designed to mix limited commercial and residential uses in a manner which provides for a interaction of the community and thus a greater overall enjoyment and well being.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto,

their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

## **ARTICLE I**

### **Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall have the definition meaning set forth in Exhibit "A", attached hereto and by reference made a part hereof.

## **ARTICLE II**

### **Property Subject to This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

**Section 2. Other Property.** Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article IX.

## **ARTICLE III**

### **Association Membership and Voting Rights**

**Section 1. Membership.** Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast, nor office held for each Lot owned.

**Section 2. Voting.** Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

**Section 3. Authority of the Association.** THE ASSOCIATION SHALL HAVE NO AUTHORITY TO ENFORCE THE COVENANTS AND RESTRICTIONS, NOR SHALL THE ASSOCIATION HAVE ANY POWER OF AUTHORITY TO PERFORM ANY ACTS REQUIRED OR ALLOWED UNDER THE DECLARATION OF COVENANTS AND RESTRICTIONS UNTIL THE RIGHTS OF THE DECLARANT ARE TERMINATED UNDER THE PROVISIONS OF THIS DECLARATION OF COVENANTS AND RESTRICTIONS AND/OR THE DECLARANT AUTHORIZES THE ASSOCIATION SUCH AUTHORITY. THE FIRST ANNUAL MEETING OF THE HOMEOWNERS ASSOCIATION SHALL BE CALLED BY THE DECLARANT AFTER ALL LOTS IN ALL PHASES ARE SOLD UNLESS THE DECLARANT, IN ITS SOLE DISCRETION, DEEMS OTHERWISE.

## ARTICLE IV

### Assessments

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Type of Assessments.** Each Owner of any Residence or Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 10; (c) Specific assessments against any particular Residence which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws and (d) Individual Parcel Assessments. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Residences in the Community.

**Section 3. Creation of Lien and Personal Obligation for Assessments.** All assessments, together with late charges, interest at a rate equal to the lesser of fifteen (15%)

percent or the maximum lawful rate, costs, and reasonable attorney's fees actually incurred shall be a charge on the Lot and shall be a continuing lien upon the Residence against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Lot at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

Notwithstanding the foregoing, the Declarant and any lots or property owned by Declarant, or their assigns, shall be exempt from the payment of any assessments due hereunder until title to the subject vacant lot has been sold, conveyed and transferred to a third party. The Declarant may, but shall in no way be required, loan money to the Association and/or advance funds to pay for insurance premiums, taxes, maintenance, and other expenses of the Association. The Association shall account for such loans/advances on an annual basis. In that event, the Association's officers shall execute a note in favor of Declarant with interest to accrue at Wall Street Journal Prime Rate and the principal and interest shall be payable over a 3-year period commencing once all Lots have been conveyed by the Declarant.

**Section 4. Budget.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve.

The Board Shall cause the assessments, based upon the Budget, to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional real property to this Declaration as provided in Article IX hereof) and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Lot which is more than one hundred twenty (120%) percent of the General Assessment for the immediately preceding fiscal year. In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year. The initial general assessment shall be \$500.00 (Five Hundred and no/100 dollars) per year and shall be due January first.

**Section 6. Special Assessments.** In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special

assessments allocable to each Residence does not exceed the amount of the current General Assessment in anyone (1) fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Residence to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 7. Lien for Assessments.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Limestone County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be delinquent. Any assessment delinquent shall incur a late charge of five and no/100 (\$5.00) dollars, per day, or in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Residence. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be

taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

**Section 9. Date of Commencement of Assessments.** The assessments provided for herein shall commence as to each Lot subject to this Declaration at the conveyance of each Lot by Declarant to an Owner; on a prorated basis. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. Notwithstanding the foregoing, the Declarant and any lots or property owned by Declarant, or their assigns shall be exempt from the payment of any assessments due hereunder until title to the subject vacant lot has been sold and conveyed and transferred to a third party.

**Section 10. Loans from Declarant.** The Declarant may, but shall in no way be required, loan money to the Association and/or advance funds to pay for insurance premiums, taxes, maintenance, and other expenses of the Association. The Association shall account for such loans/advances on an annual basis. At that time, upon request from the Declarant, the Association's officers shall execute a note in favor of Declarant with interest to accrue at ten percent (10%).

**Section 11. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Residences for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein.

**Section 12. Association's Assignment of Assessment Rights to Creditor.** The Declarant, for so long as the Declarant has the authority to appoint the Directors and officers of the Association, or thereafter, the Board of Directors of Directors, may assign the rights to receive payments for assessments or Special Assessments from Owners, as well as the right to enforce the collection of assessments and special assessments by exercising the Association's authority under Section 6 of the Declaration to impose a lien against any Lot in favor of the Association for the benefit of the Creditor, or directly for the benefit of the Creditor, as a result of nonpayment of assessments.

**Section 13. Association's Grant of Power of Attorney to Creditor.** The Declarant,

for so long as the Declarant has the authority to appoint the Directors and officers of the Association, or thereafter, the Board of Directors of Directors, may grant a limited purpose power of attorney to a Creditor for the specific purpose of enforcing the right to collection of assessments and special assessments by exercising the Association's authority under Section 6 of the Declaration to impose a lien against any Lot in favor of the Association for the benefit of the Creditor, or directly for the benefit of the Creditor, as result of nonpayment of assessments.

## ARTICLE V

### **Maintenance: Conveyance of Common Property by Declarant to Associations**

**Section 1. Associations' Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property to include clubhouse, pool and any facilities located thereon (hereinafter for this section only referred in whole as "Common Property"). This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: Community hiking and biking trails; grass and other landscaping along dedicated rights-of-way; sedimentation ponds; and Community entrance features.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into leases, easements and covenants and to share costs agreements regarding such property (and any other property) where the Board has determined that this would benefit Owners.

The foregoing maintenance costs shall be assessed as a part of the General Assessment or specific assessments, as determined by the Board in accordance with this Declaration.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

**Section 2. Owner's Maintenance Responsibility.** Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing and edging on a regular basis; tree and shrub pruning; tree removal and replacement within 30 days due to death, disease or nuisance or as directed through notification by Board for one of the aforementioned reasons; watering landscaped areas; keeping improvements, exterior

lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements.

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair or replacement of items for which he or she is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designers sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his or her designee shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner.

**Section 3. Party Walls and Party Fences.** Each wall or fence built which shall serve and separate any two (2) adjoining Residences shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No party wall or fence shall be constructed in a manner that will interfere with the functioning of established drainage easements as set out on recorded plats affecting the Property.

No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Architectural Control Committee or its designee. "See Fencing - Article VI, Section 18 for further regulations and procedures on fences."

The cost of reasonable repair and maintenance of a party wall or fence shall be shared equally by the Owners who make use of the wall or fence in equal proportions.

In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

**Section 4. Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Declarant shall have the right, without limitation, to include Lakes and Dams in the property that may be conveyed by Declarant and which shall be accepted by the Association. The Declarant may place conservation restrictions or easements on Common Property prior to conveying it to the Association, regardless of whether or not the restriction is in place before the recording of a plat referencing "Common Area".

**Section 5. Additional Improvements.** Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging, maintaining, or otherwise removing silt from any lake or water feature that may be conveyed.

## ARTICLE VI

### Use Restrictions and Rules

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) vote, may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community and to set the maximum and minimum speeds of vehicles on private streets within the Community and to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. The Board may also restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of Declarant.

**Section 2. Residential Use.** All Residences shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. However, the Board may permit Residence to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance. The Board may issue rules regarding permitted business activities. Residences of more than two stories are prohibited unless approved by the Declarant or Board.

**Section 3. Signs.** No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, both the Declarant and the Board shall have the right to erect reasonable and appropriate signs, and "For Sale" signs consistent with the Community-Wide Standard may be erected upon any Residence. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Residence as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof. Signs placed in Commercial Areas must be approved in writing by the Architectural Control Committee.

**Section 4. Vehicles and Garages.** The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, all terrain vehicles, and automobiles. All vehicles shall be parked within garages, driveways, or other Board approved paved parking areas on a Lot. Parking in yards and street is prohibited. Owner shall be allowed to park at the Residence only one more vehicle than garage spaces located at Residence.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles; provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except when garage is in use.

**Section 5. Leasing.** Residences may be leased for residential purposes. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

**Section 6. Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

**Section 7. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residence, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

**Section 8. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Residence to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

**Section 9. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

All maintenance of yards, unless specifically identified as being the responsibility of The Association, shall be the responsibility of such lot Owner, in the event that The Board of Directions of The Association determines that a yard is unsightly or unkempt The Board shall give the Owner written notice of noncompliance and demand for compliance. If Owner fails to comply the Board may assess a fine and/or bring the yard into compliance at the Owner's expense.

**Section 10. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration of any nature whatsoever shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by Architectural Control Committee(s) established by the Declarant. A \$175.00 non-refundable plan review fee shall be paid to Declarant, its successors and assigns, which is to be submitted along with the proposed building plans. The following items, without limitation, must be submitted to the Architectural Control Committee for written approval; fences, basketballs goals, posts and hoops, detached buildings, detached garages and any other exterior items on the premises. The Declarant may employ for the Architectural Control Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to pay any fees charged by such architects or other qualified persons. The Declarant/Architectural Control Committee may also delegate certain responsibilities to one or more Owners or other individuals.

The Declarant hereby appoints Kenny Winter as the initial representative of the Architectural Control Committee.

In the event that the Architectural Control Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted, unless additional information is required of homeowner, therefore thirty (30) from last correspondence. If no approval or no correspondence received within thirty days (30), approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of their successors-in-

interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Control Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of their successors-in-interest. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Control Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Control Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that they will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**Section 11. Antennas.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Residence without the prior written consent of the Board or its designee. No free-standing antennas whatsoever shall be placed on any Residence. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. No "satellite receiving dish" larger than 45 inches in diameter shall be allowed in the Community. The Board shall at all times comply with the Federal

Communications Commission guidelines when determining restrictions on programming signals. Satellite dishes shall only be installed on the rear of the residence with no wires running down the side of any residence. There may be fees associated with installation of a "satellite receiving dish".

**Section 12. Tree Removal.** No trees shall be removed without the express consent of the Declarant or Board or their respective designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons; or (d) trees in the immediate location of building approved by the Architectural Review Committee.

**Section 13. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 14. Site Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**Section 15. Clotheslines, Garbage Cans, Woodpiles, Etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except when done during the normal construction of a residence or by Declarant.

Exterior storage containers, including but not limited to PODS' containers, shall not be left on any portion of the community, except by special written authorization of the Board, for any period longer than seven (7) days. After such seven (7) day period, such container shall be considered a nuisance and may be removed from the Community by the Board and the homeowner shall be responsible for the cost of the removal of the container.

**Section 16. Subdivision of Lot.** No Lot shall be subdivided, or its boundary lines changed except with the prior written approval of the Declarant or its designee. Declarant, however, hereby expressly reserves the right to replat any Residence or Residences owned by Declarant during the time in which Declarant may annex property. After the expiration of the Declarant's right to annex, the Board must approve all resubdivisions. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 17. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.

**Section 18. Fencing.** No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Architectural Review Committee or its designee. Fences will be compatible within the home and have architectural interest. Flat wood fencing that does not have architectural interest and visual relief will not be approved. No fence will be higher than six feet from the final ground level to the top of the fence except by special permission of the Architectural Control Committee. The exterior side of the fence has to be finished; specifically, the structural characteristics must be covered. Brick is the preferred material to use at the corner posts. No rough sawn board of any kind will be used in the fence. All wood will be painted or opaque stained and maintained in a satisfactory manner. No chain link fence will be allowed within the subdivision. Fences regardless of construction will not be permitted any nearer, to front lot line than the rear most corner of the dwelling except in special circumstances. All fences shall be set on the property lines unless owner does not want neighbor to attach to fence then fences shall be set at least 2 feet inside of property line.

**Section 19. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

**Section 20. Air-Conditioning Units.** No window air conditioning units may be installed.

**Section 21. Artificial Vegetation, Exterior Sculpture, Flagpoles, Holiday Trim, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee or its designee. Temporary flagpoles may be attached to the front of the home for the purpose of flying the American Flag. The only flags permitted are the American Flag or seasonal and holiday flags, unless otherwise approved by the Board. Tasteful holiday trim may be displayed in the appropriate season provided that it is not installed earlier than 45 days prior to the date of such holiday and shall be promptly removed no later than 30 days following the date of such holiday.

**Section 22. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee or its designee.

**Section 23. Swimming Pools.** Above ground swimming pools shall not be permitted. No in ground swimming pools, jacuzzi tubs or any such structure shall be erected, altered, placed or permitted on any lot without written permission by the Architectural Control Committee or its designee.

**Section 24. Driveways.** Except as may be permitted by the Architectural Control Committee or its designee, driveways shall be constructed with concrete. Pavers will require written approval from the Architectural Control Committee.

**Section 25. Exteriors.** Except as may be permitted by the Architectural Control Committee or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. No Residence exterior shall be constructed of untreated wood. All such wood exteriors must be painted or specifically approved by the Architectural Review Committee. Minimum 80% of exterior shall be brick or stone.

**Section 26. Window Coverings.** Aluminum foil on windowpanes, mirrored or reflective glass is not allowed.

**Section 27. Chimneys.** All chimneys that are on the exterior wall must have either brick or stone on the three exterior sides of the chimney. Interior chimneys may have either a siding or stucco product on all four sides of the chimney.

**Section 28. Mailboxes.** Only approved mailboxes can be installed in the community. Each mailbox must be the designated model of the Architectural Control Committee, or its designee. Each mailbox shall have a black finish.

**Section 29. Landscaping.** The purpose of this restriction is to promote landscape development of single-family residential lots that will preserve and appreciate the value of the development by promoting a high quality, cohesive level of landscaping. These requirements may be altered or amended at the discretion of the Architectural Control Committee. All landscape plans must be submitted and approved by the ACC prior to installation.

**Guideline for Landscaping Planning:**

- (a) Existing vegetation and trees should be preserved whenever possible to provide screening and lend an established feeling to the Community. No trees may be removed without the express written permission of the ACC.

- (b) Shrubs should be well distributed, but not necessarily evenly spaced. Shrubs may be used for screening and to minimize the visual impact of driveways and parking areas.
- (c) Earth berms may be used to create a sense of enclosure and to screen driveways, especially if planted with shrubbery.
- (d) Unified mulched planting beds edged in materials such as brick, natural stone or steel that appear neat longer and their shape is preserved.
- (e) Exterior building material colors should be considered when selecting flowering trees and shrubs so that colors will not compete with or negate each other.
- (f) Each lot owner shall be responsible for maintenance of their property to include keeping flower beds mulched and trees and shrubs pruned and trimmed. Landscape shall be kept in as good a condition as when originally installed.
- (g) Lawns shall be maintained and kept at a maximum height of 4 inches on all completed landscape packages.
- (h) All Lots shall have underground irrigation systems for the front lawns.

**Section 30. Screening of Heating and Cooling Units.** All exterior heat and air conditioning compressors or air handlers must be screened from view. This can be accomplished with vegetation, brick and/or stone. If vegetation is used it must create a walled off effect. The screening is encouraged on all sides of the equipment but is required on the front and side of the equipment.

**Section 31. Basketball Goals.** No basketball goals may be erected or constructed on the front of any lot. Only Architectural Control Committee approved basketball goals may be erected or constructed. It is permitted to utilize a portable basketball hoop provided said structure remains on owner's driveway at all times in an upright position and be kept in good repair.

**Section 32. Swing sets and Play Equipment.** Swing sets and play equipment must be placed in the rear yard and be made of wood or molded plastic or other high quality non-metallic materials. Play equipment must be kept at least ten (10) feet from the lot line to protect the neighbor's property. Equipment of any kind that is permanently kept outside (in excess of two-week intervals) must be submitted to the Architectural Review Committee for approval, and owner is required to screen equipment from neighbor's site lines with fencing.

**Section 33. Dwelling Restrictions.**

- (a) All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior of at least eighty percent (80%) stone or masonry brick construction, with no less than eighty percent (80%) of the exterior of the

sides of the dwellings or buildings consisting of stone, masonry brick, hardy plank or comparable siding material. Visible unpainted red "sewer brick" will not be allowed.

(b) All dwellings shall have side or rear entry garages. No front entry garages will be permitted, unless approved by the ACC under special circumstances dictated by the design and topography of the site.

(c) Roofs of dwellings constructed on all of said lots shall be of architectural grade shingles.

(d) All dwellings shall have a roof pitch of 8/12 or greater unless otherwise approved by the Architectural Control Committee.

(e) All one-story dwellings shall have at least 2000 square feet of heated living area. All other dwellings shall have at least 2300 square feet of heated living area. No residences may be constructed over two story's without the Architectural Control Committee's approval however basements will be allowed and not be considered a story.

(f) All Single-Family Residences must be constructed on a crawl space, basement foundation, block or fill slab. Monolithic slabs are not permitted.

(g) A sidewalk meeting the requirements of the City of Athens or the Limestone County district shall be installed along the street fronting each Lot by the Owner prior to the issuance of a certificate of occupancy for any improvement located on such Lot. Sidewalks shall not be altered or obstructed by any Owner or Occupant. Any sidewalk located on a Lot shall be maintained by the Owner.

**Section 34. Construction Improvements.** During the construction of any improvements on a lot, all portions of such lot shall be maintained in a clean condition, free of debris and waste material. All unused materials shall be stored (to the extent possible) out of view from any of the Common Roads. All construction trash, debris and rubbish shall be properly disposed of outside of The Henderson Estates. All construction activities shall require a dumpster to be on site to be emptied each time the same shall become full, and a portable toilet which shall at all times be cleaned at regular intervals. Silt fencing where required shall be maintained at all times. No dirt, mud, gravel or other substances shall be allowed to collect or remain on any Common Road within The Henderson Estates. Each owner/builder requesting approval from the Architectural Review Committee for a construction project shall deposit with the Committee a \$500.00 refundable bond to ensure compliance with these rules and proper construction procedures.

**Section 35. Approved Builders.** Due to the close proximity of the homes constructed and the need for harmonious design, Declarant has determined that only approved builders should be allowed to construct a dwelling within Henderson Estates. Declarant shall maintain a list of approved builders. Other than the approved builders on such list, no other builder may

construct a dwelling in Henderson Estates without approval of Declarant.

## ARTICLE VII

### Insurance and Casualty Losses

**Section 1. Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and the entry features, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association and shall be paid pursuant to **Article XIII Section 20** herein below of this Declaration. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in subparagraph (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All insurance policies shall be reviewed annually by Declarant until the earlier occurrence of (i) Declarant no longer owns Lot in said subdivision or (ii) Declarant transfers his rights. At the occurrence of either, the Board shall review all insurance policies.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, the Declarant, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of anyone or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be affected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

**Section 2. Property Insured By Association: Damage and Destruction.** Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least sixty-six (66%) percent of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

**Section 3. Property Insured By Owners: Damage and Destruction.** By virtue of taking title to property within the Community, each Owner covenants and agrees with all other Owners and with the Association that in the event that the Association does not carry insurance on the Owner's property, each individual Owner shall carry liability and casualty insurance. Each individual Owner further covenants and agrees that in the event of a partial loss of damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Residence

of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

**Section 4. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

## ARTICLE VIII

### Condemnation

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VIII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## ARTICLE IX

### Annexation of Additional Property

**Section 1. Unilateral Annexation by Declarant.** As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until fifteen (15) years after the recording of this Declaration to add, annex and submit any Additional Property to the terms and provisions of this Declaration and the jurisdiction of the Association by filing for record a Supplementary Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land or nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

In no event shall the Declarant be obligated to submit any Additional Property to the terms and provisions of this Declaration. Notwithstanding anything provided in this Declaration

to the contrary, (i) the provisions of this Section may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of the Declarant, (ii) the rights reserved by the Declarant to add Additional Property to this Declaration pursuant to this Section shall not be deemed to inure to the benefit of any transferee or purchaser of any property constituting part of the Henderson Estates or any Additional Property added to this Declaration unless the Declarant, in its sole and absolute discretion, transfers and assigns to such transferee or purchaser the rights reserved herein by the Declarant by express written reference to this Section. And (iii) if the Declarant elects to add Additional Property to this Declaration, then this Declaration may be amended in accordance with the terms and provisions of this section without any requirement that the consent or approval of any Owner or Mortgagee be obtained. To the extent any Additional Property is added to this Declaration pursuant to the terms and provisions of this Section, then the Declarant shall have the unilateral right, in its sole and absolute discretion to modify and amend any plats, plans, boundaries or areas of the Henderson Estates in order to add any such Additional Property thereto.

## ARTICLE X

### Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Residences in the Community. The provisions of this Article apply to both this Declaration and the By-Laws notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore 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 Community or which affects any Residence on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws of the Association 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.

**Section 2. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Residence in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residence.

**Section 4. Amendment by Board.** Should the Veterans Administration or the Federal National Mortgage Association subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 5. Applicability of Article X.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

**Section 6. Failure of Mortgagee to Respond.** Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE XI

### Easements

**Section 1. Easements for Use and Enjoyment of Common Property.** Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

- (a) the right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property delineated as such in the Plat recorded in Plat Book K, Page 1 in the Office of the Judge of Probate of Limestone County, Alabama, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefore, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, Occupants, and invitees;

(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;

(c) the right of the Board to borrow money for the purpose of improving the Common Property delineated as such in the Plat recorded in Plat Book K, Page 1 in the Office of the Judge of Probate of Limestone County, Alabama, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Residence or other property located within the Community. (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Residence or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall extend to the members of his family and guests. Land Owner shall be deemed to have made a delegation of all such rights (except for the right of ingress and egress to the Owner's property) to the Occupants of any leased Residence. Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and with consent of Declarant, the Board may alter the use of any Common Property.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall not give any Owner the right of ingress or egress across any Residence to obtain access to such Common Property.

## **Section 2. Reserved Easements for the Provision of Services to the Community.**

There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights-of-way, drainage facilities, flood way easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above-described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

## **ARTICLE XII**

### **Amenities/Financing of Amenities**

**Section 1. Amenities.** Notwithstanding anything else in this Declaration to the contrary, the Declarant shall have unilateral right, but not the obligation, to construct a clubhouse, pool, or other amenities within the Common Areas of the Subdivision (collectively or individually, the "Amenities"). The determination of whether Amenities will be constructed in the Common Areas will be determined in the sole and absolute discretion of the Declarant. This right shall include the express right to determine the type and quality of Amenities.

**Section 2. Financing of Amenities.** Notwithstanding anything else in this Declaration to the contrary, Declarant may unilaterally exercise, enforce, and carry out the rights of the Association to mortgage, pledge, or hypothecate any or all of the real property, including without limitation any clubhouse, pool, or other amenities, located within the Common Areas of the Subdivision. The rights described in this Article XII, Section 2 shall include the express right to obtain construction and/or permanent financing or refinancing for the Amenities. The maker under any promissory note will be the HOA, as executed by Declarant. Any Mortgagee may rely on this Article II as affirmative and full evidence of the authority of Declarant to execute such loan documents, on behalf of the HOA, as may be reasonable and necessary to carry out the rights set forth in this Article XII. The Declarant's rights set forth in this Article XII shall not be subject to review or vote by the members of the Subdivision.

## **ARTICLE XIII**

### **General Provisions**

**Section 1. Enforcement.** Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions and with the design guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to his or her property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules and regulations, use restrictions, or design guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Failure by the Board, Declarant, or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Residence or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Durations.** The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter in effect limit the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten (10) years or such shorter period as may be allowed by law, unless such extension is disapproved at a meeting duly called for such purpose by at least a Majority of the total Association vote (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the Association votes as recorded by a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article IX hereof, the written consent of Declarant. Such meeting or referendum must be held and a written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a renewal period. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

**Section 4. Amendment.** The Declarant expressly reserves the rights to unilaterally amend and to restate this declaration without the consent of an owner, their mortgagee(s) or the association from time to time for so long as the Declarant owns any portion of the "property". Property shall mean and refer to all property, including but not limited to the lots, streets or road rights of ways and common area subjected to this declaration, which is described in exhibit B, together with any additional land that may be developed pursuant hereto and annexed or incorporated in the property by amendments or supplemental declarations. Any such amendment or restatement may contain additional restrictions or obligations affecting the use of the "common area", "lot" or any other such portion of the "property". Any such amendment or restatement may also affect an owner's obligations as a member of the association. Every purchaser or grantee of any lot or common area now and hereinafter designated by acceptance or a deed or other conveyance thereof, acknowledges notice of the Declarant's rights to amend and to restate this declaration and that their rights are subject to change. Any such amendment or restatement shall be applicable to and binding upon the owners and the lots. At the option and sole discretion of the Declarant, any such amendment or restatement made by the Declarant may apply: (1) upon the day of execution or recording of such amendment or restatement Declaration; retroactively to the date of this declaration or to some other specified date in such amending or restatement; or prospectively to some specified date in such amendment or restatement. Certain rights of the Declarant set out in the Declaration shall continue after the Declarant no longer owns any of the property including but not limited to if and when it re acquires any of the property or annexes any additional land to the property.

In addition to the above, this Declaration may be amended on the affirmative vote or written consent, or any combination thereof, of at least one-half (1/2) of the total Association vote **and** the consent of Declarant (so long as Declarant has not transferred its rights to the HOA). Amendments to this Declaration shall become effective upon recording, unless a later effective date is specified therein. No provision of this

Declaration that reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

**Section 5. Partition.** The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within the Community, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of the Declarant.

**Section 6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 7. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 8. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 9. Indemnification.** The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 10. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C", as it may be amended from time to time, to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parades of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 11. Books and Records.** This Declaration, the By-Laws, the Articles of Incorporation, copies of rules and regulations, use restrictions, design guidelines, membership register, books of account (after 80% of lots are sold), and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

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

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 12. Audit.** An audit of the accounts of the Association may be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

**Section 13. Notice of Sale.** If an Owner sells his or her Residence, the Owner shall give to the Board, in writing, the name of the purchaser of the Residence and such other information as the Board may reasonably require. If an Owner fails to notify the Board of such a sale, then the Owner will be personally responsible for any uncollected dues (for the subsequent year) and the Board reserves the right to obtain a judgment against the Owner for any such uncollected dues.

**Section 14. Estoppel Certificate.** Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five (\$25.00) Dollars for the issuance of each such certificate.

**Section 15. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and other having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 16. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 17. Deviations.** The Board or its designee or the Declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the rules and regulations, the use restrictions, and the design guidelines.

**Section 18. Use of Words "The Henderson Estates".** No Person shall use the word "The Henderson Estates" in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of the Declarant. However, Owners or Occupants may use the term "The Henderson Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within The Henderson Estates Subdivision.

**Section 19. Architectural Control Committees.** Unless relinquished earlier, the Declarant shall have complete control of the Architectural Control Committees for so long as it shall own any property in the Community, as expanded, plus an additional six month period. Declarant shall have veto power over the Board as set forth in the Bylaws.

IN WITNESS WHEREOF, the undersigned, have executed this instrument under seal this the 17th day of February, 2022.

**Winter Homes Investment Properties, LLC**

By: \_\_\_\_\_

Kenneth Jeff Winter, Jr., Managing Member

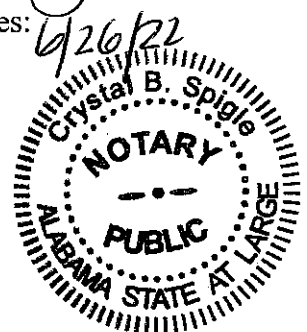
STATE OF ALABAMA  
Limestone County

I, the undersigned Notary Public in and for said county and state, hereby certify that Kenneth Jeff Winter, Jr., whose name is signed as Managing Member of Winter Homes Investment Properties, LLC to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he will full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 17th day of February, 2022.

Crystal B. Spigle  
Notary Public

My Commission Expires: 6/26/22



**Exhibit "A"****Definitions**

The following words, when used in this declaration or in any supplementary Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) **"Association"** shall mean **HENDERSON ESTATES SUBDIVISION HOMEOWNERS ASSOCIATION, INC., an Alabama non-profit corporation**, its successors and assigns. The "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Alabama Corporate law.
- (b) **"By-Laws"** shall refer to the By Laws of **HENDERSON ESTATES** attached to this Declaration as Exhibit "C" and incorporated herein by this reference.
- (c) **"Common Property"** shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (d) **"Community"** shall mean and refer to that certain real property and interests therein described in Exhibit "A", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.
- (e) **"Declarant"** shall mean and refer to **WINTER HOMES INVESTMENT PROPERTIES, LLC., an Alabama limited liability corporation**, and its successors-in-title and assigns, provided any such successor-in title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", attached hereto and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto or additional property which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.
- (f) **"Dwelling"** shall mean a house intended to be occupied as a single-family residence.
- (g) **"Lot"** shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as generally described as Exhibit "B" and conveyed

by Declarant/Developer as a separate parcel or tract. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(h) "Majority" means those eligible votes, Owners or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(i) "Mortgage" means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(i) "Mortgagee" shall mean the holder of a Mortgage.

(k) "Occupant" shall mean any Person occupying all or any portion of a dwelling or other property located within the Community for any period of Time, regardless of whether such Person is a tenant of the owner of such property.

(l) "Owner" shall mean and refer to the record owner, whether one or more Persons of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(m) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(n) "Property Owner", "Owner of Property", and "Owner" when used in this Declaration shall mean and refer to all owners of an interest in real property in Henderson Estates which has been subjected to the provisions of this Declaration, including, but not limited to, owners of property of tracts of land and owners of condominium units, whether such property, tracts or units are used AND intended to be used for residential, commercial or recreational purposes.

(o) "Supplemental Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(p) "Architectural Control Committee" means the committee responsible for ensuring and regulating the architectural and aesthetic standard of the Community.

**Exhibit "B"**

Lots 1-33, according to the map or plat of Henderson Estates Phase 1, as recorded in Plat Book K, Page 1, in the Office of the Judge of Probate of Limestone County, Alabama.

**Exhibit "C"**  
**By-Laws**  
*Of*  
**Henderson Estates Subdivision Homeowners Association, Inc.**

**ARTICLE I**

**Name, Membership, Applicability and Definitions**

Section 1. Name. The name of the Association shall be **HENDERSON ESTATES SUBDIVISION HOMEOWNERS ASSOCIATION, INC.** (hereinafter sometimes referred to as the "Association").

Section 2. Membership. The Association shall have one class membership, as is more fully set forth in that Declaration of Covenants, Conditions and Restrictions for HENDERSON ESTATES (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions. Unless the context shall prohibit, the words used in these By- Laws and as set forth in the Declaration, shall be as defined herein.

**ARTICLE II**

**Association Meetings, Quorum, Voting and Proxies**

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

Section 2. First Meeting and Annual Meetings. The Declarant shall call the first annual lot Owners meeting not later than one hundred twenty (120) days following the sale of all lots in all phases of HENDERSON ESTATES. Thereafter, annual meetings shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following that is not a legal holiday (excluding Saturday and Sunday).

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by Owners holding at least fifty (50%) percent of the total Association vote. The notice of any special meeting shall state the date,

time and place of such meeting and the purpose thereof No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) days nor more than thirty (30) days before a meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

Section 8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. The presence, in person or by proxy, of Owners holding at least fifty (50%) percent of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

### ARTICLE III

#### Board of Directors: Number, Powers and Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors must reside in the Community and shall be members or spouses of such members; provided, however, no Person and his or her spouse may serve on the Board at the same time.

Section 2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur:

(a) the expiration of ten (10) years after the date of the recording the recording of the Declaration;

(b) the surrender by Declarant in writing of the authority to appoint and remove Directors and Officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove Directors and officers of the Association. The Directors selected by the Declarant need not be Owners or residents in the Community. The names of the initial Directors selected by the Declarant are set forth in the Certificate of Formation of the Association.

Section 3. Number of Directors. The Board shall consist of three (3) members.

Section 4. Nomination of Directors. Elected Directors shall be nominated from the floor and may also be nominated by a Nominating Committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 5. Election and Term of Office. Not later than ninety (90) days after termination of the Declarant's right to appoint Directors and officers as described in Section 2 of this Article, the Association shall call a meeting to be held at which Owners shall elect three (3) Directors. The term of two (2) Directors shall expire two (2) years after the first annual meeting following termination of the Declarant's right to appoint directors, and the term of one (1) Director shall expire one (1) year after such annual meeting. At the expiration of the first term of office of each member of the initial Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

At each annual meeting of the membership thereafter, Directors shall be elected to succeed those Directors whose terms are expiring. All eligible members of the Association

shall vote on all Directors to be elected, and the candidate(s) receiving the most votes shall be elected.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by a Majority of the total Association vote and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed by the Owners shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a majority vote of the Directors at a meeting, a quorum being present. This Section shall not apply to Directors appointed by Declarant.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a Director by vote of the Association, shall be filled by a vote of the Majority of the remaining Directors, even though less than a quorum, at any meeting of the Board of Directors. Each Director so selected shall serve the unexpired portion of the term of his predecessor.

#### B. Meetings.

Section 1. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 2. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 3. Special Meetings. Special meetings of the Board shall be held when requested by the President, Vice President or by any two (2) Directors. The notice shall specify place of the meeting and the nature of any business to be considered. The notice shall be given to each by one of the following methods:

- (a) by personal delivery;
- (b) written notice by first class mail, postage prepaid;
- (c) by telephone communication, either directly to the Director or to a Person at the Director's home or office who would reasonably be expected to communicate such notice promptly to the Director; or

- (d) by electronic mail.

All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic mail shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 4. Waiver of Notice. The transactions of any meeting of the Board of Directors, however, called and noticed or wherever held, shall be as valid as though taken at meeting duly held after regular call and notice, if:

- (a) a quorum is present, and:
- (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 5. Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Section 6. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a Majority of the Owners.

Section 7. Open Meetings. All meetings of the Board shall be open to all members, but members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 8. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. Action Without A Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a

meeting if consent in writing, setting forth the action so taken, shall be signed by all of the Directors

Section 10. Telephonic Participation. One or more directors may participate in and vote, during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board

C. Powers and Duties.

Section 1. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Certificate, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all areas that are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository that it shall approve, and using the proceeds to administer the Association;
- (f) making and amending use restrictions and rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these By-Laws,

and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying Insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

U) paying the cost of all services rendered to the Association or its members that are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and,

(l) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize.

The Declarant, or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days written notice.

Section 3. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the members of the Association; provided, however, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed Ten Thousand and No/100 (\$10,000.00) Dollars outstanding debt at any one time.

Section 4. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator specifying:

(i) the nature of the violation and the fine imposed;

(ii) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine imposed;

(iii) the name, address and telephone number of person to contact to challenge the fine;

(iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and,

(v) that all rights to have the fine reconsidered are waived if a hearing is not requested are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

## ARTICLE IV

### Officers

Section 1. Officer - The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under Article III, Section 2 of these By-Laws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

Section 4. President. The president shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The president shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the Alabama Nonprofit Corporation Code.

Section 5. Vice President. The vice president shall act in the president's absence and shall have all powers, duties, and responsibilities provided for the president when so acting.

Section 6. Secretary. The secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Alabama law.

Section 7. Treasurer. The treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 8. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9. Committee. Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## ARTICLE VI

### Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Alabama law, the Certificate of Formation, the Declaration, these By-Laws, or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Alabama law, the Certificate of Formation, the Declaration, and these By-Laws, the provisions of Alabama law, the Declaration, the Certificate of Formation, and the By-Laws (in that order) shall prevail.

Section 4. Amendment The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws; provided, however, that VA and HUD shall have the right to veto amendments to these By-Laws for as long as the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of these By-Laws.

The foregoing was adopted as the By-Laws of the Henderson Estates Subdivision Homeowners Association, Inc., on this the 17 day of February, 2022.

Michelle Coker

Michelle Coker, Secretary