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Charles C. Woodroof
Judge of Probate
Limestone County, AL

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WHISPERING PINES SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by **WINTER HOMES INVESTMENT PROPERTIES, LLC, LLC., an Alabama limited liability company** ("Declarant");

WITNESSETH:

WHEREAS, WINTER HOMES INVESTMENT PROPERTIES, LLC, is the owner of the real property described in Exhibit "A" attached to this Declaration; and,

WHEREAS, WINTER HOMES INVESTMENT PROPERTIES, LLC desires to subject the real property described in said Exhibit "A" to the provisions of this Declaration to create a residential Community of single-family homes and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, WINTER HOMES INVESTMENT PROPERTIES, LLC, LLC hereby declares that the real property described in Exhibit "A" attached hereto, 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 of all or any portion thereof. Declarant reserves the right to add additional restrictive covenants in respect to the lands to be conveyed in the future within Whispering Pines or to limit therein the application of this Declaration.

This Declaration does not and is not intended to create a condominium regime subject to the Alabama Condominium Ownership Act of 1973, Ala. Code Section 35-8-1 Et. Seq.

ARTICLE I

Definitions

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "B", 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 hereafter 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 "A", attached hereto and by reference made a part hereof. It is contemplated that the described property will be developed in phases, subdivided and platted for additional Lots and additions, and all such Lots shall be subject to these protective covenants.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant, in its sole discretion, or the Association, with Declarants approval, have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

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 benefit, and enjoyment of the Owners and occupants of Lots, 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. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot 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 obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each 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 maybe due and payable at the time of conveyance to the extent expressly assumed; 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.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of

the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 3. Computation. 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 shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the total Association vote or by the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or 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 then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by the majority of the total Association vote and the Declarant (so long as the Declarant has not transferred its rights to the HOA). 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 5. Lien for Assessments. All sums assessed against any Lot 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 Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records 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 and encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, 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 sixty (60) 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 or 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 on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be

taken or performed by the Association 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 by the Association 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 7. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot subject to this Declaration on the first (1st) day of the month following the conveyance of such Lot to a person other than the Declarant or Winter Homes, LLC. Assessments shall be due and payable in a manner and on a schedule specified as the Board of Directors may provide. Lots which have not been so conveyed and are still titled in the Declarant, or its successors and assigns, or Winter Homes, LLC shall NOT be subject to assessments on the same "per lot" basis as Lots titled to others. The first annual assessments shall be adjusted according to the number of months then remaining in that fiscal year. The initial general assessment shall be Three Hundred Dollars (\$300.00) per year.

Section 8. 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 of Directors 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. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Sections 1 and 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.
- (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Section 9. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

ARTICLE V

Maintenance; Conveyance of Common Property to Association

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping, facilities and improvements situated on the Common Property. The Association shall maintain the entry features at the main entrance of the Community and shall maintain and pay the expenses for water or electricity, if any, provided to all such entry features and or common area facilities. The Association shall also maintain all medians located in the Community. All property outside of Lots located within the Community which was originally maintained by Declarant, any park, playground, clubhouse, pool, and fencing constructed by the Declarant or the Association shall be maintained by the Association. Declarant shall maintain all Common Property until conveyed to the

Association.

Additionally, the Association may maintain the lawns and shrubbery of individual homes on such basis as it deems appropriate and assess each Owner for the cost of such maintenance, which costs shall be paid by Owner as billed. It is anticipated that such maintenance will be done only when the Association deems necessary.

The Association may, with a majority vote, construct such other amenities as deemed appropriate. All such construction shall require the approval of the Architectural Control Committee. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines 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, or invitees, then the Association may perform such maintenance, repair or replacement at Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard and shall conform to any applicable ordinances and regulations.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, the Association shall, except in an emergency situation, which shall be determined in the Association's sole discretion, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice 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 added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. 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 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.

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 XIII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners 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 vote of the Association entitled to vote thereon and the consent of Declarant (so long as the Declarant has not transferred its rights to the HOA). Construction of the dwelling must begin within twelve

(12) months of the date of acquisition and be fully completed, and a Certificate of Occupancy obtained, within thirty-six (36) months from that date with reasonable extensions to be provided at Declarant's discretion.

Section 2. Residential Use. All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time except with the written approval of the Architectural Control Committee. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot 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 and does not unduly increase traffic flow or parking congestion and is allowed as a home occupation by ordinances of the City of Athens or Limestone County district. The Board may issue rules regarding permitted business activities. No structure of a temporary character including, without limitation, a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 3. Signs. No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, "For Sale" and "For Rent", of not more than five (5) square feet and consistent with the Community-Wide Standard, upon any Lot, and any builder may erect one (1) sign not larger than ten (10) square feet to advertise the property during the construction and sale period. This restriction shall not apply to entry signs or signs advertising the property for sale placed by the Declarant. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot 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.

Section 4. Vehicles. The term "vehicles," as used herein, shall include, without limitation, motor homes, ATVs, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, recreational vehicles, tractors, mowers and automobiles. All vehicles shall be parked within garages or driveways. Parking of any vehicle in yards or on unpaved areas is prohibited.

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. No vehicle, boat, trailer, bus, camper, recreational vehicle, motor home, tractor, mower or mobile home shall be temporarily kept or stored in the Community for any period in excess of two (2) weeks unless kept in a garage or other area designated by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers that 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 eighteen wheel trucks or the cabs of such trucks shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community.

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

Section 5. Leasing. Lots may be leased for residential purposes only. All leases shall have a minimum term of six (6) months. 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. It being the Owner's ultimate responsibility for tenant's behavior and all assessments due for the Lot.

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 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 Lot without the prior written consent of the Architectural Control Committee, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board, and not to exceed a total of three (3) pets per Lot at any time; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners 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 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. Excessive barking shall be considered a nuisance and subject to special assessment and or fine.

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 of his or her property. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. 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 Lot 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 obnoxious 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 in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other Sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 9. Unsanitary 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.

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 shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, colors, and location shall have been submitted in writing to and approved by an Architectural Control Committee established by the Board. The Board 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. Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may provide for a review fee. For so long as Declarant has not transferred its rights to the HOA, Declarant shall have the right to appoint all members of the Architectural Control Committee. Upon the surrender in writing of such right, the Board shall appoint the members of the Architectural Control Committee.

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 therefor, 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, member, 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 he 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, quit-claims, 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 that provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given. A One Hundred Seventy-Five Dollar (\$175.00) non-refundable plan review fee shall be paid to the Architectural Control Committee along with the proposed house plan. This fee shall not be applicable to Winter Homes, LLC. The Declarant hereby appoints Kenny Winter, Jimmy Schrimsher and Michelle Coker as the initial Architectural Committee.

Section 11. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. Satellite dishes will be allowed only with prior approval of the Architectural Control Committee and must include location, size, color and shall not be visible from the street on which house fronts.

Section 12. Tree removal. No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees; or (c) for safety reasons.

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 of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. 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. Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 15. Garbage Cans. All garbage cans and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property and shall be kept in a clean and sanitary condition. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community.

Section 16. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to alter any Lot or Lots owned by Declarant. Any such division or boundary line change shall not be in violation of the applicable subdivision and zoning regulations.

Section 17. Guns. The use of firearms in the Community is not permitted. The term "firearms" shall include "BB" guns, pellet guns and small firearms of all types.

Section 18. Fences. No fence shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior consent of the Architectural Control Committee. No fence shall be located closer to the front property line of any Lot than the rear most

corner of the dwelling without the prior consent of the Architectural Control Committee.

It is the responsibility of each Owner to maintain fences located along their Lot lines, except where the fence is located between lots, then, it is the responsibility of each Owner to pay one-half (1/2) the cost of maintenance of said fence. In the event any Owner shall fail to maintain their fence after notice by the Association, then, the Association may make such repairs and charge the Owner the cost of such repair plus a twenty-five (25%) service fee. Any damage done to the fencing shall be repaired solely at the expense of the Owner or whose agents or invitees caused such damage.

All fencing is required to be stained oxford brown using Olympic #713 or a color determined by the Declarant and which shall be approved by the Architectural Control Committee in writing prior to application. No chain link fence will be allowed within the subdivision. Fencing material shall be approved the Architectural Control Committee prior to installation. Fencing shall be stained within six (6) months of occupancy.

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 and Utility Meters. Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed. No air conditioning apparatus, utility meter or unsightly projection shall be attached to the front of any dwelling unless hidden from view of the street by fence or landscaping.

Section 21. Artificial Vegetation, Exterior Sculpture and Other Outdoor Features. No artificial vegetation shall be permitted on the exterior of any property. All exterior features including but not limited to sculptures, fountains, columns, balusters, flags, flag poles and other similar items must be approved by the Architectural Control Committee prior to construction.

Section 22. Energy Conservation Equipment. No solar energy collector panels or attendant hardware, windmills 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. If approved, the equipment shall not be installed so that it is visible from the front street.

Section 23. Swimming Pools. In-ground swimming pools and spas are permitted and must be located in the rear of property only. Above ground swimming pools shall not be permitted

Section 24. Lighting. Except for approved lighting as originally installed on a residence, exterior lighting visible from the street shall not be permitted, except for (a) one (1) decorative post light; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights for a sixty (60) day period beginning on November 14th of each year; or (d) front house illumination of model homes.

Section 25. Exteriors. The exterior of all improvements within the Community shall be established and approved by the Architectural Control Committee. All exteriors must be approved by the Architectural Control Committee prior to construction. No Owner shall alter or change any part of the exterior of the improvements, including, but not limited to, the roof type, color of shingles, stone, brick and siding type or color without the prior written consent of the Architectural Control Committee. Minimum 80% of exteriors of all homes shall be a mix of stone, metal, brick and/ or hardi board. All roofs of all homes shall be constructed with architectural shingles. Exterior wall chimneys must have either brick or stone on the three exterior sides of chimney.

Section 26. Window Coverings. The portion of all window coverings visible from the exterior of any dwelling shall be white or off-white unless otherwise prior approved by the Architectural Control Committee.

Section 27. Minimum Building Size. All Dwellings shall contain a minimum of heated living space, which shall specifically exclude, without limitation, open porches, garages and unfinished storage areas. The minimum building size of a Dwelling shall not be less than 1500 square feet.

Section 28. Setback Lines. All Dwellings shall be set back lines as shown on the Plat

of the property as recorded in the Office of the Judge of Probate of Limestone County, Alabama. Declarant must approve any variation as to any set back line(s).

For the purpose of this Section 27, eaves, steps and overhang stoops shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

No building shall be located on any Lot nearer to the front Lot line than as shown on the Plat of the property as recorded in the Office of the Judge of Probate of Limestone County, Alabama. The Architectural Control Committee may mandate the positioning of the improvements and landscaping for all Lots. Where two (2) or more Lots are acquired as a single building site, the side lot lines shall refer only to the Lot lines bordering the adjoining property owners.

Section 29. Mailboxes. All mailboxes, erected on any Lot, must conform to one standard design. A design will be provided and approved by the Architectural Control Committee and such design will be made available to the Owner upon approval of building plans for the Lot by the Architectural Control Committee.

Section 30. Propane Gas Tanks. No propane gas tanks shall be allowed.

Section 31. Landscaping/Gardens. No vegetable gardens, compost gardens, greenhouses or other food source planting shall be allowed in the front or on the sides of any residence on any Lot. Any of the above must not be visible from the street. Landscaping plans must be approved by the Architectural Control Committee 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) If irrigated, underground irrigation systems for the front lawns.

Section 32. Oil and Mineral Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, or any other substances, shall be erected, maintained or permitted on any Lot.

Section 33. Sidewalks. Any sidewalk installed shall meet the requirements of the City of Athens and shall initially be installed by the developer according to the City of Athens planning department. Sidewalks shall not be altered or obstructed by any Owner or Occupant and any sidewalk located on a Lot shall be maintained by the Owner.

Section 34. Driveways. All driveways must be concrete unless approved by the

Architectural Control Committee prior to construction.

Section 35. Outdoor Furniture. No outdoor furniture shall be permitted in the front or side yard of any Lot.

Section 36. Swing Sets Play Equipment and Trampolines: All swing sets, play equipment and trampolines shall be located in the rear of the Lot, at least ten (10) feet from the lot line and shall not be visible from the street and must be fenced. Owner agrees to indemnify and hold Declarant harmless for any injury or damage which may result.

Section 37. Temporary Structures. No temporary structures of any kind shall be permitted to remain on any Lot; however, this provision shall not apply to Lots owned by the Declarant. No temporary structures, including storage buildings/units shall be allowed without written approval from the Architectural Control Committee.

Section 38. 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, metal, hardy board 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, metal, masonry brick, hardy plank or comparable siding material. Visible unpainted red "sewer brick" will not be allowed. Detached structures shall match houses.
- (b) Front entry garages will be permitted upon approval by the Architectural Control Committee.
- (c) Roofs of dwellings constructed on all of said lots shall be of 30 year architectural grade shingles.
- (d) All dwellings shall have a roof pitch of 8/12 or greater unless otherwise approved by the Architectural Control Committee. Porch roof pitch shall match dwelling pitch unless otherwise approved by the Architectural Control Committee.
- (e) All one-story dwellings shall have at least 1500 square feet of heated living area. All other dwellings shall have at least 1800 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 or Monolithic slabs.
- (g) Any detached building approved by Declarant or Architectural Control Committee must have front façade which matches dwelling.

Section 39. 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 WHISPERING PINES. Declarant shall maintain a list of approved builders. Other than the approved builders on such list, no other builder may construct adwelling in WHISPERING PINES without approval of Declarant.

ARTICLE VII

Architectural Control Committee

Section 1. Committee Composition. The Architectural Control Committee shall consist of not less than three (3) nor more than five (5) persons, each of whom shall be appointed or elected as provided in Section 2 below. The members of the Architectural Control Committee may, but shall not be required to be, members of the Association or Owners of any Lot or Dwelling. The term of office for each member of the Architectural Control Committee shall be three (3) years (coinciding with the fiscal year of the Association), except at provided in Section 2(d) below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Dwelling, shall be deemed to ratify the provision of Section 2 below.

Section 2. Appointment and Removal of Architectural Control Committee Members.

- (a) Until such time as Declarant transfers its rights to the HOA, or until such earlier date as Declarant may elect, in Declarant's sole discretion, Declarant shall have the sole and exclusive right to appoint and remove all the members of the Architectural Control Committee.
- (b) At such time as Declarant no longer owns any portion of the dwelling or, upon

Declarant's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the Architectural Control Committee as Provided in Section 2(a) above, then the members of the Architectural Control Committee shall be appointed by the Association.

(c) Any member of the Architectural Control Committee may be removed, with or without cause, by (i) Declarant, in its sole discretion, during the period of time that the provision of Section 2(a) above are in effect or (ii) the Association, in the event the provision of Section 2(b) above are in effect. In the event of death or resignation of a member of the Architectural Control Committee, then Declarant, in the event the provisions of Section 2(a) above are applicable, or the Association, in the event the provisions of Section 2(b) above are applicable, as the case may be, shall appoint a substitute member of the Architectural Control Committee to fill the vacancy of such deceased or resigning member for the remainder of the terms of such former member.

(d) The Declarant shall appoint the initial Architectural Control Committee for terms ranging from one (1) to three (3) years each, in Declarant's sole discretion. The initial Architectural Control Committee shall be Kenny Winter, Jimmy Schrimsher and Michelle Coker. At the expiration of the term of office of each respective member of the initial Architectural Control Committee, Declarant, in the event the provisions of Section 2(a) are applicable, or the Association, in the event the provisions of Section 2(b) are applicable, shall appoint a successor of such member for a period of three (3) years.

Section 3. Procedure and Meetings. The Architectural Control Committee shall select a chairman and him or her, or in his or her absence, the vice-chairman, shall be the presiding officer at all meetings of the Architectural Control Committee. The Architectural Control Committee shall meet as necessary as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice chairman. A majority of the total number of members of the Architectural Control Committee shall constitute a quorum of the Architectural Control Committee for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Control Committee shall constitute the action of the Architectural Control Committee on any matter which comes before it. The Architectural Control Committee is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the Architectural Control Committee in performing its functions set forth herein. Each member of the Architectural Control Committee may be paid a stipend or honorarium as may from time to time be determined by the Declarant in the event the provision of Section 2(a) above are applicable or the Association, in the event the provision of Section 2(b) above are applicable and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the Architectural Control Committee, subject to the approval of such expenses by the Declarant, in the event the provisions of Section 2(a) above are applicable or the Association, in the event the provision of Section 2(b) above are applicable. The Architectural Control Committee shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the Architectural Control Committee.

Section 4. Architectural Standards. The Architectural Control Committee is hereby authorized but not required to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot are to be submitted to and approved by the Architectural Control Committee and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the Architectural Control Committee shall be in addition to the provisions and requirements set forth in these Covenants and shall be binding upon and enforceable against all Owners.

Section 5. Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or dwelling without Architectural Control Committee approval of the plans and specifications for the same or (b) the Architectural Control Committee shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or dwelling are not being complied with, then, in either event the Owner of such Lot or dwelling shall be deemed to have violated these Covenants and the

Architectural Control Committee shall have the right to exercise any of the rights and remedies set forth in Section 11 below.

Section 6. Inspection. The Architectural Control Committee or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or dwelling or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the Architectural Control Committee.

Section 7. Subsurface Conditions.

(a) The property is located in an area which includes underground geological formations or conditions which may result in surface subsidence. Approval of the submitted plans and specifications by the Architectural Control Committee as herein provided shall not be construed in any respect as a representation or warranty of the Architectural Control Committee and/or the Declarant and/or the Association to the Owner submitting such plans and specifications. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Lot for the construction of any and all Dwellings or other Improvements thereon.

(b) Neither the Architectural Control Committee and its individual members, nor the Association and its members, nor the Declarant and its partners, agents and employees and the officers, directors, agents and employees of its partner (both in its capacity as a Declarant as herein described and as the owner or property owner of any mineral subjacent to the Property), shall be liable to any Owner or Occupant, or the Successors, assigns, licensees, lessees, employees, and agents of any Owner or Occupant, for loss or damage on account of injuries to any parcel of the Property, to any buildings, Improvements, dwellings or other structures now or hereafter located upon any parcel of the Property, or on account of any past or future injuries to any Owner, Occupant, or any other person in or upon any parcel of the Property, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, geological formations or conditions) under or on the Property.

Section 8. Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Declarant, the Association, the Architectural Control Committee, nor any agent, employee, representative, member, shareholder, partner, joint venture, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provision of this Article VII, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article VII, (d) the construction or performance of any work related to such plans, drawings, and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any dwellings, Improvements or the personal property of any Owner, Occupant or those respective family members, guests, employees, servants, agents, invitees, or licensees of such Owner or Occupant, which any be caused by or arise as a result of any defect, structural or otherwise, in any dwelling or Improvements or the plans and specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, geological formations or conditions on or under any Lot or dwelling) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or dwelling or any Improvements situated thereon.

Section 9. Commencement and Completion of Construction.

(a) With respect to each Lot, construction of the dwelling shall be commenced within one (1) year from the date of purchase of such Lot from Declarant. Upon commencement of construction of such dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be complete within one (1) year of the commencement date of said construction without prior approval of the Architectural Committee or the Declarant, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities. In addition to all other rights and remedies for breach of these Covenants, in the event

the Owner of any Lot shall fail to commence construction of a dwelling within (1) year from the date of purchase of such Lot from Declarant, then Declarant shall have the option, but not the obligation, to repurchase such Lot for an amount equal to the purchase price paid to Declarant for such Lot, without interest.

(b) If any Owner who is a participant in Declarant's approved builder program ("ABP") fails to comply, in Declarant's sole discretion, with all terms, conditions and provisions of the ABP, Declarant shall have the right, but not the obligation, to repurchase any Lot owned by any such Owner upon which construction of a Dwelling or site preparation has not yet commenced, at an amount equal to the purchase price paid to Declarant for such Lot, without interest.

Section 10. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in these Covenants to the contrary, Declarant, its agents, employees, successors and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvements, and sale of Lots and/or dwellings or the development of Lots, dwellings, Common Property and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model dwellings, all as may be approved by Declarant from time to time; provided, however, that the location of any construction trailer of any assignees of Declarant's rights under this Section 10 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model dwelling and as offices for the sale of Lots and/or dwellings and for any related activities.

Section 11. Enforcement and Remedies. In the event any of the provisions of this Article VII are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guest, invitees, agents, employees or contractors of any Owner or Occupant, then the Architectural Control Committee and the Association shall each have the right, but not the obligation, at their option to (a) enjoin any further construction on any Lot or dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the Architectural Control Committee for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Architectural Control Committee or the Association in enforcing any of the provisions of this Article VII, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, and planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Architectural Control Committee or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article VII, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Article IV and if the same is not paid when due, shall be subject to the lien provided for in Article IV and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Architectural Control Committee and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Architectural Control Committee or the Association may exercise at law or in equity or any of the enforcement rights specified in this declaration.

Section 12. Compliance Certification. The Architectural Control Committee or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary Architectural Control Committee approvals have been obtained and whether any dwelling or Improvement has been constructed in accordance with the provisions of these Covenants. Any such approval shall not be construed in any respect as a representation or

warranty of the Architectural Control Committee and/or Declarant and/or the Association that all applicable rules, regulations and requirements of all Governmental Authorities with respect to any such Lot or dwelling have been fulfilled.

Section 13. Repurchase Option. In the event the Owner of any Lot desires to convey such Lot prior to the expiration of one (1) year after the purchase of such Lot from Declarant, and in the event the Owner has not then commenced construction of a Dwelling thereon, Declarant shall have and retain the option, but not the obligation, to purchase such Lot for an amount equal to the purchase price paid to Declarant for the Lot, without interest. Any such Owner shall give Declarant written notice of such Owner's desire to sell such Lot, and Declarant shall have thirty (30) days after receipt thereof to exercise Declarant's option to purchase such Lot.

ARTICLE VIII

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 and No/1 00 (\$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 expense of the Association. 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) Policies shall be written with a company authorized to do business in Alabama.
- (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 casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be

reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and, familiar with construction in the country where the Community is located.

(c) The Association's Board of Directors 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 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 any one or more individual Owner;
- (iv) that no policy may be canceled, subjected to non-renewal, 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 effected 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, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the director's best business judgment, and, if available, shall at least equal three (3) months assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under "all-risk" policy, if reasonably available, 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. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt on or before the expiration of any policy. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Unit as a specific assessment.

Section 3. Damage and Destruction- Premises Insured by Association.

- (a) **In General.** Immediately after 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 of Directors 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 Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof) 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 sixty (60) 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 of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such 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 of 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 by the Association in a neat and attractive condition.

Section 4. Damage and Destruction Premises Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XIII, Section 1, of this Declaration.

Section 5. 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 IX

Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five (75%) percent of the total Association vote other than Declarant and the Declarant (so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X hereof) shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provision of Article VIII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE X**Annexation of Additional Property****Section 1. Unilateral Annexation by Declarant.**

(a) 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 twenty (20) years after the recording of this Declaration to subject additional property to the provisions of this Declaration and the jurisdiction of the Association by filing for record, in the county in which the property to be annexed is located, a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) 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 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.

Section 2. Other Annexation. Subject to the consent of the Owner thereof and the consent of the Declarant (so long as the Declarant has not transferred its rights to the HOA) upon the affirmative vote of a majority of the Association vote present at a meeting duly called for such purpose, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located, a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

ARTICLE XI**Mortgage Provisions**

The following provisions are for the benefit of holders of first Mortgages in Lots in the Community. The provisions of this Article apply to both this Declaration and to 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 a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), therefore becoming an "eligible holder", will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss that affects a material portion of the Community or that affects any Lot 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 Lot 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 Lot 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 that would require the consent of a specified percentage of Mortgage holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (FHLMC), the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property that the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection) other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

(c) by act or omission, change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations of use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or restoration of such property.

Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and that may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. 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 Lot 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 4. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements that 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 6. VA/HUD Approval. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration ("VA") so long as the VA is guaranteeing any Mortgage in the Community, and the Department of Housing and Urban Development ("HUD") so long as HUD is insuring any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article X, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and HUD; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Certificate of Formation.

Section 7. Applicability of Article XI. 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 8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XII

Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the term of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot 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 Lot, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(ii) The right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

(iii) The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to 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 by the Association shall be subject and subordinate to any rights, interest, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association 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 Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); and

(iv) The right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. 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 vote present at a meeting duly called for such purpose and by the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof).

(b) Any Lot Owner may delegate his right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot, if leased.

Section 3. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master-television antenna system, cable television system, or security system that the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the Condition upon request by the Board.

Section 5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owner's 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. The foregoing easement shall include the right to construct and install the entry features and planting berm. The Owner of any Lot subject to this easement shall not alter, remove or add improvements to the easement areas without the prior consent of the Association.

In utilizing or accessing any easement retained by or for the benefit of the Declarant, Declarant and its agents or employees shall not be liable for any damage to any landscaping contained within the easement.

ARTICLE XIII

General Provisions

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected to comply with this Declaration the By Laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner 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, rules and regulations, use restrictions, or design guidelines 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 Association or its daily authorized agent shall have the power to enter upon a Lot or any portion of the Common

Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter limit the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total Association vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof). A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security 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 3.

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 a, 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 of 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 reacquires 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 Lot 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 and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

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 Articles 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, Certificate of Formation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided herein terminates, it shall be expressly permissible for Declarant and any builder or Declarant 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 Declarant's development, construction, and sales activities related to property described on Exhibit "A" and other property made subject 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 that 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; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any licensed builder or Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices and may also use recreational facilities available for use by the Community as a reserved easement, 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. This Section shall not be amended without the Declarant's express written consent 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 11. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the By-Laws shall contain a termination clause permitting the Association to terminate the Contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 12. Books and Records.

(a) Inspection by Members and Mortgagees. After ninety percent (90%) of lots are sold, this Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account and minutes of meetings of the members of 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.

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

- (i) Notice to be given to the custodian of the records;
- (ii) Hours and days of the week when such an inspection may be made; and,
- (iii) Payment of the cost of reproducing copies of documents.

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

Section 13. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 14. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. There shall be a one hundred fifty dollar (\$150.00) transfer fee payable at the time of transfer.

Section 15. Agreements. Subject to the prior approval of Declarant (so long as the Declarant has not transferred its rights to the HOA) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others 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 this Declaration, the By-Laws, the Certificate of Formation, any use restriction or rule, 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. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 18. Commencement of Construction In the event construction of a single family dwelling approved by the Architectural Control Committee has not commenced within twelve (12) months from the date of the conveyance of the Lot from Declarant, then, Declarant shall at its sole option have the right to re-acquire such Lot at the price it was sold by Declarant to the initial Owner. It is the intent that this covenant shall run with the land and be binding on the initial Owner and any subsequent purchaser of the initial Owner. In order to exercise this option, Declarant shall give written notice to the then current lot Owner at the lot Owner's last known address and file a notice of

Lis Pendens in the Probate Office of Limestone County, Alabama putting on notice third parties of Declarant's intent to exercise such right of repurchase.

Section 19. Construction Improvements All construction sites must be kept clean and free of debris during construction and must be removed at least weekly. All port-o-lets shall not be visible from the street. No burning shall be permitted on the property and no mud, dirt, concrete, gravel or other debris shall remain in the street. All vehicles must park off the street and enter the Lot via the driveway. All construction shall be approved by the Architectural Control Committee prior to construction and all owners shall obtain the necessary permits for the improvements and landscaping.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its proper officer(s) and its seal to be affixed thereto on this the 24 day of May, 2023.

WINTER HOMES INVESTMENT PROPERTIES, LLC, LLC



BY: Kenneth Jeff Winter, Managing Member

STATE OF ALABAMA
COUNTY OF LIMESTONE

I, the undersigned, a notary public in and for said county in said state, hereby certify that Kenneth Jeff Winter whose name is signed as Managing Member of WINTER HOMES INVESTMENT PROPERTIES, LLC, 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 as such managing member and with full authority, executed the same voluntarily for and as the act of said company on the day same bears date.

Given under my hand and seal of office this 24 day of May, 2023.

Michelle Coker
Notary Public, Alabama State At Large
My Commission Expires 5/11/2024

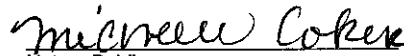

Notary Public:
My Commission Expires: 5/11/2024

EXHIBIT "A"

Legal Description

Lots 1-50 and Common Area, according to the map of plat of Whispering Pines Subdivision, as recorded in the Office of the Judge of Probate of Limestone County, Alabama, in Plat Book K, Page 107.

EXHIBIT "B"**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 **WHISPERING PINES 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 **WHISPERING PINES** 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 Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and Bylaws.
- (e) "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.
- (f) "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.
- (g) "Dwelling" shall mean a house intended to be occupied as a single-family residence.
- (h) "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 "A" and conveyed by Declarant/Declarant 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.
- (i) "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.
- (j) "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 WHISPERING PINES 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 "C"

By-Laws

Of

Whispering Pines Homeowners Association, Inc.

ARTICLE I

Name, Membership, Applicability and Definitions

Section 1. Name. The name of the Association shall be **WHISPERING PINES 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 Whispering Pines (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 ninety (90) days following the sale of all lots in all phases of Whispering Pines. 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 seventy-five (75%) 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 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 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. No proxy voting. There shall be no voting by proxy. All votes must be cast in person at the meeting.

Section 9. Quorum. The presence, in person, of Owners holding at least seventy-five percent (75%) 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, a Director must reside in the Community. 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 twenty (20) 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 I. 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;
- (j) 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 initial management agent shall be Encore Property Management, LLC with compensation set at three hundred dollars (\$300.00) a month. Encore Property Management, LLC shall act in such capacity until the earlier of 1) Declarant no longer owning lots in the subdivision or 2) termination of the management agreement. After the earlier of the above, 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, however, a vote of eighty-five percent (85%) of the voting membership shall be required to cancel a management agreement with Encore Property Management, LLC.

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 One Million and No/100 (\$1,000,000.00) 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. After all lots in all phases of the subdivision have been sold, the offices shall be held by four (4) separate individuals.

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 May 1 through April 30 or as determined by resolution of the Board.

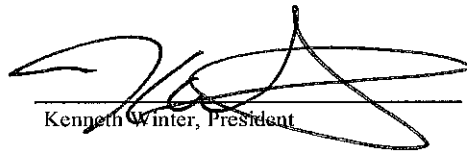
Section 2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Alabama law, the Certificate of Formation, the Declaration, these By-Laws, or a ruling made by the Person presiding over the proceeding.

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 Whispering Pines Homeowners Association, Inc., on this the 24 day of May, 2023.



Kenneth Winter, President



Michelle Coker, Secretary

Recording Fee	103.00
TOTAL	103.00