

ARTICLE X

ANNEXATION, WITHDRAWAL, AND CONSTRUCTION AND SALE PERIOD

- 10.01 Annexation of Property:** Until January 1, 2011, any additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Effingham County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or by filing an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the owners of the real property to be annexed if any portion of such real property is owned by someone other than Declarant. After December 31, 2010, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association.
- 10.02 Withdrawal of Property:** For so long as Declarant has authority to appoint and remove directors and officers of the Association, Declarant, without the consent of the Class A Members, shall have the right to withdraw portions of the Property from the provisions of this Declaration if the withdrawn property has been subjected to the provisions of this Declaration in error, or if the withdrawal is required by any changes in the plan for the Development. Such withdrawal shall be accomplished by filing in the Office of the Clerk of the Superior Court of Effingham County, an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the Owners of the real property to be withdrawn if any portion of said real property is owned by someone other than Declarant.
- 10.03 Construction and Sale Period:** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, or any amendments thereto, Residences have been completed on all Lots which have been made subject to this Declaration, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the development, construction, and sales activities related to property subject or which may be 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 Development; the right to tie into any portion of the Development with driveways, parking areas, and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation,

electrical, telephone, natural gas, cable television, water, sewer and drainage lines and facilities constructed or installed in, on, under, and/or over the Development; the right to carry on sales and promotional activities in the Development; the right to maintain sales signs and project signs on individual Lots, within the right-of-way of any road, and at the entrance(s) to the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off- street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this 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 any damage at its sole expense.

ARTICLE XI

MISCELLANEOUS

- 11.01 No Reverter:** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.
- 11.02 Severability:** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.
- 11.03 Headings:** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.
- 11.04 Gender:** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.
- 11.05 Notices:** All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, an Owner, or any other person, shall be in writing. Except where different or additional notice provisions are provided in this Declaration, all such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant:

c/o Mr. Fred Williams
Fred Williams Homebuilder, Incorporated
2680 Quacco Road
Pooler, Georgia 31322

Owners:

Each Owner's address as registered with the
Association in accordance with the By-Laws

or if no such address has been registered, at the Owner's last-known address.

The Declarant reserves the right to change its address from time to time by filing an amendment to this Declaration specifying its new address in the Deed Records of Effingham County, Georgia.

Any written communication mailed in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.06 No Liability: Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration or any provision herein is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability. In addition, neither the Declarant nor the Association shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration, the By-Laws, the rules and regulations adopted by the Association, or the Design Standards.

11.07 Association Insurance:

- (a) If required by applicable law, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief, and extended coverage insurance in an amount, subject to reasonable deductibles, adequate to cover the cost of replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures, and contents thereof, and (ii) comprehensive general liability, insurance covering all of the Common Property, including, without limitation, the operation, maintenance, or use thereof, and improvements and facilities thereon, for at least One Million Dollars (\$1,000,000.00) for bodily injury, including death and property damage, arising out of a single occurrence. Each such policy of insurance shall require that the certificate holders and insured be given thirty (30) days' prior written notice of any cancellation of such policies.
- (b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or

reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote entitled to vote thereon and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available, provided, however, such extension shall not exceed one hundred and twenty (120) days.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. 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 for 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 in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development in a neat and attractive condition until the Association establishes another use for said property.

- (c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be charged to and allocated among the persons who are responsible hereunder for maintenance or repair of the damaged or destroyed property.
- (d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time by either the Veterans Administration or the Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.
- (e) All insurance coverage required by the Association shall be written in the name of the Association as trustee for the benefit of the Association, the Owners and each such Owner's mortgagee. The Board shall be required to

make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Board, 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 reduced in amount, cancelled, 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 Board 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 Board, its manager, any Owner or Mortgagee;
- (iv) that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and
- (v) in no event shall the insurance coverage obtained by the Board 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.

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 law.

- (f) The Association shall obtain and maintain directors' and officers' liability insurance for all directors and officers of the Association and a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum, including reserve funds, the custody of the management agent at any time during the period of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be cancelled or substantially modified (including

cancellation for non-payment of premium) without at least ten (10) days' prior notice to the Association.

11.08 Variances: Notwithstanding anything to the contrary contained herein, the Declarant or the Board or the designee of either of them shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, any rule, regulation, or use restriction adopted by the Association, and the Design Standards adopted by the Architectural Control Committee 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 Development.

11.09 Grievances: In the event any Owner intends to commence a legal action against the Declarant or the Association, or any of their officers, directors, employees, or agents, for any matter related to this Declaration, the Association, the Architectural Control Committee, the Design Standards adopted by the Architectural Control Committee, or the Common Property, as a condition precedent to the bringing of such action, such Owner must make a good faith effort to meet with the Declarant or the Association, as the case may be, in person at which time such Owner shall state his or her grievance and in good faith give the Declarant or the Association an opportunity to respond.

ARTICLE XII

MORTGAGEE PROVISIONS

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

12.01 Special Mortgagee Provisions:

- (a) As used in this Section 12.01, the term "Eligible Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a Lot which has requested notice in accordance with the provisions of Section 12.01(b).
- (b) A holder, insurer, or guarantor of a first mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), will be entitled to timely written notice of:
 - (i) any proposed amendment of the Declaration effecting a change in (A) the boundaries of any Lot or the exclusive easement rights appertaining thereto; (B) the interests in the Common Property or the liability for common expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Lot; or (D) the purposes to which any Lot or the Common Property are restricted;

- (ii) any proposed termination of the administration of the Common Property pursuant to this Declaration;
 - (iii) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such Eligible Holder;
 - (iv) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such Eligible Holder which remains uncured for a period of sixty (60) days;
 - (v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (vi) any proposed action which would require the consent of a specified percentage of Eligible Holders, as specified herein; and
 - (vii) an annual financial statement, or audit if available, of the Association for the immediately preceding fiscal year, free of charge.
- (c) To the extent permissible under the law of the State of Georgia, the following provisions shall apply:
- (i) Any restoration or repair of the Common Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51 %) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated, is obtained.
 - (ii) Any election to terminate the administration of the Common Property, pursuant to this Declaration after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated.
- (d) The following provisions do not apply to amendments to the constituent documents or termination of the Association pursuant to Section 12.01(c) hereof made as a result of destruction, damage, or condemnation, or to the addition of land pursuant to any plan of expansion or phased development previously approved by the Department of Housing and Urban Development ("H.U.D.") or the Veterans Administration ("V.A.") to the extent such approval is required by H.U.D. or the V.A.:

- (i) The consent of Owners representing at least sixty-seven. (67%) percent of the Class II A" votes and of the Declarant, so long as It holds any land subject to this Declaration, and the approval of the Eligible Holders of first mortgages on Lots to which at least sixty-seven (67%) percent of the votes of Lots subject to a mortgage appertain, shall be required to terminate the administration of the Property subject to this Declaration.
- (ii) The consent of Owners representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of Eligible . Holders of first mortgages on Lots to which at least fifty-one (51 %) percent of the votes of Lots subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the By-Laws or the Articles of Incorporation to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:
 - (A) Voting;
 - (B) Assessments, assessment liens, or subordination of such liens;
 - (C) Reserves for maintenance, repair, and replacement of the Common Property
 - (D) Insurance or fidelity bonds;
 - (E) Rights to use of the Common Property;
 - (F) Responsibility for maintenance and repair of the several portions of the Property;
 - (G) Expansion or contraction of the Property or the addition, annexation, or withdrawal of land to or from the Property;
 - (H) Boundaries of any Lot;
 - (I) Convertibility of Lots into Common Property or of Common Property into Lots;
 - (J) Leasing of Lots;
 - (K) Imposition of any right of first refusal or similar restriction on the right of a Lot' Owner to sell, transfer, or otherwise convey his or her Lot

- (L) Establishment of self-management by the Association where professional management, if any, has been employed; and
 - (M) The approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51 %) percent of the votes of Lots subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Lots.
- (e) The provisions of this Section 12.01 shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Lot Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in this Declaration, the By-Laws, or the Articles of Incorporation for any of the actions contained in this Section 12.01.

12.02 Special FHLMC Provision: So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two thirds (2/3) of the first mortgagees or at least two thirds (2/3) T of the total Members of the Association entitled to vote thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which 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);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a residence
- (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 Residences and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or 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 reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which mayor 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.

- 12.03 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 mortgage of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.
- 12.04 Notice to Association:** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such a residence.
- 12.05 Amendment by Board:** Should the Department of Housing and Urban Development ("H.U.D."), the Veterans Administration ("V.A."), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.
- 12.06 V.A. and H.U.D.:** As long as there is a Class B membership, the following actions shall require the prior approval of the V.A. so long as the V.A. is guaranteeing any mortgage in the Property and the prior approval of H.U.D. so long as H.U.D. is insuring any mortgage in the Property: Annexation of additional land to the Property, except for annexation by Declarant in accordance with Article X pursuant to a plan of annexation previously approved by the V.A. or H.U.D.; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws, or Articles of Incorporation.
- 12.07 Applicability of Article XII:** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or Georgia law for any of the acts set out in this Article.
- 12.08 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 XIII

GEORGIA PROPERTY OWNERS' ASSOCIATION ACT

- 13.01 Applicability of Article XIII:** The provisions of this Article XIII shall be of no force or effect until the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of recording of this Declaration; (ii) the date upon which one hundred (100%) percent of all Residences submitted or proposed to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the recording of an Amendment to this Declaration executed by Declarant expressly stating that this Article shall be effective.
- 13.02 Submission to Act:** From and after the date this Article XIII shall become effective pursuant to the provisions of Section 13.01 of this Declaration, the Property, the Association, all Lots in the Development, and all Owners and Mortgagees shall be subject to the provisions of the Georgia Property Owners' Association Act, Official Code of Georgia Annotated Sec. 44-3-220, as now or hereafter amended (hereinafter referred to as the "Act"). Thereafter, the Association and all Owners and Mortgagees shall be entitled to the benefits, and subject to the provisions, of the Act.
- 13.03 Conflicts:** From and after the date this Article XIII shall become effective pursuant to the provisions of Section 13.01 of this Declaration, in the event of any conflicts between the Act, or any of the provisions of this Declaration, the Articles of Incorporation of the Association, or the By-Laws of the Association, the provisions of the Act shall govern and control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

Signed, sealed, and delivered
in the presence of:

FRED WILLIAMS HOMEBUILDER,
INCORPORATED

Unofficial Witness

BY: _____
Fred L. Williams, Jr., President

Notary Public

Notarial Execution Date: _____

My Commission Expires: _____

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration.

IN WITNESS WHEREOF, the Association, acting through its duly authorized Officer, has caused this Declaration to be executed and sealed as of the day and year first above written.

Signed, sealed, and delivered
in the presence of:

WINDSONG HOMEOWNERS
ASSOCIATION OF EFFINGHAM,
INC.

Unofficial Witness

BY: _____
Fred L. Williams, Jr., President

Notary Public

Notarial Execution Date: _____

My Commission Expires: _____

EXHIBIT "A"

ALL THOSE CERTAIN LOTS, TRACTS, OR PARCELS OF LAND SITUATE, LYING, AND BEING IN THE 9TH G.M. DISTRICT, COUNTY OF EFFINGHAM, STATE OF GEORGIA, AND BEING KNOWN AND DESIGNATED UPON THAT CERTAIN PLAT PREPARED BY SOUTHEAST ENGINEERING AND ENVIRONMENTAL, DATED JANUARY 3, 2007, RECORDED JANUARY 29, 2007 IN PLAT CABINET "C," AT SLIDES 153-C, D, E & F AND SLIDE 154-A, IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF EFFINGHAM COUNTY, GEORGIA, ENTITLED "SUBDIVISION PLAT OF WINDSONG, PHASE I, LOCATED IN THE 9TH GMD, EFFINGHAM COUNTY, GEORGIA," WHICH PLAT IS INCORPORATED HEREIN BY SPECIFIC REFERENCE AND MADE A PART HEREOF.

SUBJECT, HOWEVER, TO ALL VALID RESTRICTIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD.