

authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

- (e) charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-Members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
- (f) suspend, pursuant to Section 3.05, the voting rights of any Member and the rights of enjoyment granted or permitted by Section 2.02;
- (g) modify the boundary lines between Common Property and adjoining Lots or streets;
- (h) sell, lease or otherwise convey all or any part of its properties and interests therein, provided, however, that, except for modifications to the boundary lines between Common Property and adjoining Lots or streets, the Association shall not convey all or any part of the Common Property without the approval by a two-thirds (2/3) vote of the Members of the Association;
- (i) enter into and enforce all applicable provisions of valid agreements of the Association;
- (j) maintain and keep in good repair the Common Property to the extent that such Common Property is not otherwise maintained by the applicable governmental authority; and
- (k) employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the Association, the Board, and the officers of the Association.

2.04 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 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 of its Members.

2.05 Types of Common Property: At the time of the conveyance of any real property or grant of any easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or

easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes without the prior written consent of a two-thirds (2/3) vote of the Members of the Association (excluding the Declarant) and of the Declarant during the period when the Declarant has the right to appoint members of the Board.

- 2.06 **Delegation of Use:** Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.
- 2.07 **Maintenance:** 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 and improvements situated on the Common Property. In addition, the Association shall maintain all landscaping located along or in dedicated rights of way which was installed and maintained by Declarant to the extent permitted by the applicable governmental authority, and shall maintain all entry features, fencing, walls, and irrigation systems, if any, which were installed by Declarant, shall maintain all storm water, storm water management, and detention facilities serving the Development until such facilities are dedicated to and accepted for maintenance purposes by the applicable governmental authority, and such additional items as the Board shall specify from time to time. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.
- 2.08 **Other Property:** The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and agreements to share costs regarding such property where the Board has determined that this would benefit the Owners.

ARTICLE III

WINDSONG HOMEOWNERS ASSOCIATION OF EFFINGHAM, INC.

- 3.01 **Purpose, Powers, and Duties of the Association:** The Association has been formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things, which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purpose, and subject to any limitations contained in this Declaration, the Association (a) shall have all of

the powers of a corporation organized under the Georgia Non-Profit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers, and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 Membership in the Association: Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this declaration. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

3.03 Voting Rights:

- (a) Each Owner of a Lot, with the exception of Declarant, shall be a Class A Member. Until such time as Declarant relinquishes control, Declarant shall be the sole voting member of the association. At the time when Declarant relinquishes control, each Class A member shall be entitled to one (1) vote per Lot owned by such Owner. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.
- (b) The Declarant shall be the sole Class B Member. The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.
- (c) The Development may be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Effingham County. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the annexation of additional real property composed of Lots pursuant to Article X of this Declaration, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in this Section 3.03; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.
- (d) The Declarant shall be the sole Class B member and at such time as the Declarant is in control of the Association, a quorum shall consist of the presence of the Class B member. At the time when Declarant is no longer in control of the Association and unless otherwise provided in the Declaration, a quorum at any meeting of Members, whether annual or special, shall consist of the presence at such meeting, in person or by proxy, of Members entitled to cast one tenth (1/10) of the votes of the

Membership. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subject meeting shall be one-half (1/2) of the required quorum. Unless otherwise provided in the Articles of Incorporation of the Association, or in the Declaration, or in these By-Laws, a majority of the votes entitled to be cast by all Members present at a meeting shall be necessary and sufficient to decide and act upon any question which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.

3.04 Board of Directors: The affairs of the Association shall be managed by the Board. The number of directors and the method of election of directors shall be as set forth in the By-Laws of the Association.

3.05 Suspension of Membership: The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

- (a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within ten (10) days after having received notice of the same pursuant to the provisions of Sections 5.12, 6.14 or 8.02 hereof;
- (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
- (c) shall be in violation of any of the rules or regulations of the Association relating to the use, operation, or maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in Subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 Termination of Membership: Membership shall cease only when a person ceases to be an Owner.

3.07 Voting Procedures: The procedures for the election of directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B", as each shall from time to time be in force and effect.

3.08 Control by Declarant:

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove all members of the Board of the Association, and all officers of the Association until the first of the following events shall occur: (i) the expiration of thirty (30) years after the date of the recording of this Declaration; (ii) the date upon which one hundred (100%) percent of all of the 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 surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.
- (b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IV

ASSESSMENTS

4.01 Covenants for Assessments and Creation of Lien and Personal Obligation:

Each Owner of a Residence, jointly and severally, for himself, his heirs, devisees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments, any applicable Parcel assessments, and any specific assessments which may be believed by the Association pursuant to this Declaration against all Residences owned by such Owner;
- (b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the

Association pursuant to this Declaration against all Residences owned by such Owner:

- (c) that there is hereby created a continuing charge and lien upon all Residences owned by such Owner against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;
- (d) that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns; such charge and lien is superior to any and all charges, liens, and encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) any first mortgage on a Lot or Lots (a "First Mortgage"); such continuing charge and lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a First Mortgage shall extinguish such continuing charge and lien with respect to amounts owed as of the date of foreclosure;
- (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed; and
- (f) that all annual, special, Parcel, and specific assessments (together with interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees) levied against any Residence owned by such Owner during the period that such Owner is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01(c) hereof) a personal obligation which will survive any sale or transfer of the Residence owned by 'such Owner; and that the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantee shall obtain a certificate as provided in Section 4.10 hereof, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the certificate.

4.02 Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance, and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of

operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

- 4.03 Accumulation of Funds Permitted:** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purpose.

4.04 Annual Assessment:

- (a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Residence shall be subject to a maximum annual assessment of One Hundred and No/100 (\$100.00) Dollars per year, as may be adjusted after December 31, 2007, pursuant to Sections 4.04(b) and (c) below. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year, and the "First Assessment Year" shall be the year 2007.
- (b) Commencing with the First Assessment Year and continuing thereafter, without a vote of the Membership, the annual assessment may be increased at any time and from time to time during each Assessment Year by a maximum percentage which is equal to the greater of (i) ten (10%) percent, or (ii) the percentage increase, if any, in the Consumer Price Index for all urban consumers (the "CPI") as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the United States, All Items (1982 - 84 = 100) for the monthly period ending on the 31st day of the month of October which immediately precedes each Assessment Year over the CPI for the monthly period ending on the 31st day of the month of October one year earlier. If such Consumer Price Index should cease to be published, the Association shall use the most comparable governmental index published in lieu thereof.
- (c) Commencing with the First Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may, at any time and from time to time, be increased by more than the amount permitted in Section 4.04(b) if such increase is approved (i) by the Declarant, until such time as the Declarant is no longer in control of the association in accordance with section 3.08, or (ii) by a two-thirds (2/3) vote of the Members of the Association.

- (d) In addition to the annual assessment provided in Sections 4.04(a), (b), and (c), above, at the closing of each Residence to a party other than the builder thereof, the purchaser thereof shall pay to the Association \$100.00 as a working capital contribution. This contribution is a re-occurring contribution with respect to each Residence, which is payable whenever the Residence is transferred and is not refundable in the event of a sale or transfer of the Residence.

4.05 Special and Parcel Assessments:

- (a) In addition to the annual assessment authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair, or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, if such special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association.
- (b) The Association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel assessments for the purpose of paying, in whole or in part, the costs of estimated expenses for the sole benefit of a particular Parcel, which Parcel assessments shall be allocated equally among the Residences in a Parcel.

4.06 Assessment Procedure:

- (a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV. The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). At the closing of the initial sale of each Residence to a party other than the builder thereof, the purchaser thereof shall pay to the Association a prorate share of the annual assessment from the closing date to the end of the year. The Board shall also establish an "annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repairs and replacements of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all future repairs and replacements of the Common Property, it being intended that a portion of the costs will be covered by special assessments. The Board shall cause the Association to send to each Owner at least fifteen (15) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on

the fifteenth (15th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in monthly, quarterly, semi-annual installments or annual during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements, which may be levied in accordance with the provisions of this Article IV.

- (b) All Members of the Association shall be given written notice by the Board not less than fifteen (15) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) or Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action.

4.07 Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Residences.

4.08 Contribution by Declarant: For so long as Declarant has the authority to appoint and remove directors and officer of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of annual, special, Parcel, and specific assessments collected by the Association in any Assessment Year, and such advances shall be deemed to be loans to the Association and shall be evidenced by promissory notes from the Association to Declarant, which shall be due and payable upon demand, with interest at the rate often (10%) percent per annum after demand.

4.09 Effect of Non-Payment of Assessments: Any assessment which is not paid; on or before the date on which payment is due shall bear interest thereafter at the lower of the highest legal rate of interest which can be charged, or the rate of ten (10%) percent per annum, or such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of anyone or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence) together with a late or delinquency charge not in excess of the greater of Ten (\$10.00) Dollars or ten (10%) percent of the amount of the unpaid portion and interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration

- 4.10 Certificate of Payment:** Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association or its agent may charge a fee not exceeding Ten (\$10.00) Dollars as a prerequisite to the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter herein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.
- 4.11 Approval by Declarant:** Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint and remove officers and directors of the Association.
- 4.12 Specific Assessments:** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association, as provided herein.
- (a) expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all : of the Residences which are benefitted according to the benefit received;
 - (b) expenses incurred by the Association pursuant to Section 6.14 hereof;
 - (c) reasonable fines as may be imposed in accordance with the terms of this Declaration and the By-Laws; and
 - (d) the deductible for any casualty insurance policy carried by the Association, which shall, in the event of damage or destruction, charged to and allocated among the persons who are responsible for maintenance or repair of the damaged or destroyed property.