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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
WYNDHAM GATES**

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EXHIBIT "A"

Description of Property

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STATE OF ALABAMA
COUNTY OF LEE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WYNDHAM GATES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this ____ day of _____, 2008, by McDowell & Associates, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

Declarant is the owner of the real property described in **Exhibit "A"** attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Property (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in **Exhibit "A"** and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

1. NAME

The name by which the Property is known is Wyndham Gates.

2. DEFINITIONS

Generally, terms used in this Declaration shall have their normal, generally accepted meanings. Unless the context otherwise requires, certain terms used in this Declaration shall be defined as follows:

(a) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 10 hereof.

(b) Articles or Articles of Incorporation mean the Articles of Incorporation of Wyndham Gates Neighborhood Association, Inc., filed with the Office of the Judge of Probate of Lee County, Alabama and the Secretary of State of the State of Alabama.

(c) Association means Wyndham Gates Neighborhood Association, Inc., a Alabama nonprofit corporation, its successors or assigns.

(d) Association Legal Instruments mean this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.

(e) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(f) Builder shall mean any Person which purchases one or more Lots for the purpose of constructing improvements thereon for later sale to consumers, or purchases parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business.

(g) Bylaws mean the Bylaws of Wyndham Gates Neighborhood Association, Inc., attached to this Declaration as **Exhibit "C"** and incorporated herein by this reference.

(h) Class "B" Control Period shall refer to the period of time during which the Class "B" Member is entitled to appoint the members of the Board of Directors, as provided in Article III, Section 2 of the Bylaws.

(i) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

(j) Common Property shall mean all real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners of Wyndham Gates, including easements held by the Declarant for such purpose.

(k) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Declarant, the Board or the ACC.

(l) Declarant means McDowell & Associates, LLC, a Georgia limited liability company and such of its successors-in-title who shall: (i) acquire, from a predecessor "Declarant," and for the purpose of development or sale, all or any portion of the real property described in **Exhibit "A"** or in **Exhibit "B"** hereof, and (ii) be designated as the "Declarant" in the deed of transfer by which such successor-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the Office of the Judge of Probate of Lee County, Alabama.

(m) Effective Date means the date that this Declaration is recorded in the Office of the Judge of Probate of Lee County, Alabama.

(n) Electronic Record means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.

(o) Electronic Signature means a signature created, transmitted received, or stored by electronic means and includes but is not limited to a secure electronic signature.

(p) Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot who has requested in writing notice of certain items as set forth herein.

(q) Lot means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Office of the Judge of Probate of Lee County, Alabama.

(r) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

- (s) Mortgagee or Mortgage Holder means the holder of any Mortgage.
- (t) Occupant means any Person occupying all or any portion of a dwelling on a Lot as his or her principal or primary residence for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (u) Owner means the record title holder of a Lot, but shall not include a Mortgage Holder.
- (v) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.
- (w) Property means that real estate which is submitted to the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.
- (x) Secure Electronic Signature means an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the electronic signature is invalidated.
- (y) Supplemental Declaration shall mean an amendment or supplement to this Declaration filed pursuant to Paragraph 18 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration is located in Opelika, Lee County, Alabama, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership. Every Owner shall be deemed to have a membership in the Association. This 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 owned. 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 Bylaws. 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.

(b) Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(i) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall be entitled to one equal vote for each Lot in which they hold the interest required for membership under Paragraph 4(a) hereof; there shall be only one vote per Lot. In any situation where a Member is entitled personally to exercise the vote for his Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine

among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot vote shall be suspended if more than one Person seeks to exercise it.

(ii) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member shall be entitled to appoint and remove all directors and officers of the Association during the Class "B" Control Period, as specified in Article III, Section 2, of the Bylaws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and committees as provided in Article III, Section 3, of the Bylaws.

The Class "B" membership shall terminate and shall automatically convert to Class "A" membership for each Lot owned by the Declarant, upon the earlier of:

- (1) The expiration of the Class "B" Control Period, pursuant to Article III of the Bylaws; or
- (2) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) Except as provided below, or elsewhere in the Association's Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots equally.

(b) Notwithstanding the above, the Board of Directors shall have the power to make specific special assessments pursuant to this Paragraph in its discretion, as it shall deem appropriate. Failure of the Board to exercise its authority under this Paragraph 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 do so in the future.

(i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited according to the benefit received.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

For purposes of this subparagraph, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

6. COMMON PROPERTY.

Common Property shall include all entry features to Wyndham Gates subdivision, including entry area landscaping, all detention pond and open space areas. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense.

7. ASSOCIATION'S RIGHTS AND RESTRICTIONS.

The Association shall have the right and authority, in addition to and not in limitation of all other rights it may have:

(a) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots;

(b) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) to grant permits, licenses, utility easements, and other easements, permits or licenses across property owned by it, as necessary for the proper maintenance or operation of the Property as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

(d) to control, manage, operate, maintain, replace and, in the Association's discretion, alter or improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

(e) to enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge or exercise its powers or responsibilities hereunder, which right may be exercised by the Association, its officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes hereof, any water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry into a dwelling. No Person exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights, and failure to exercise any such rights or to exercise such rights in a timely manner shall not create liability to any such Person, it being agreed that no such duty exists; and

(f) to acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

8. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. The assessments for Common Expenses 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, as may be authorized by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder and assessments levied under Paragraph 16 hereunder. The initial annual assessment for the year in which this Declaration is filed shall be \$250.00, with an initiation fee of \$150.00.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, shall be a charge on the Lot and shall be a continuing

lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Office of the Judge of Probate of Lee County, Alabama records evidencing the lien created under this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

(c) Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(i) If the annual assessment, or any part thereof, is not paid in full by the tenth (10th) day of the month in which it is due or if any other charge is not paid within ten (10) days of the due date, a late charge equal to ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Board and Alabama law, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten percent (10%) per annum or such higher rate as permitted under Alabama law shall accrue from the due date.

(ii) If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges.

(iii) If the Board authorizes payment of assessments in installments, and assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than ten (10) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment if the Owner fails to pay all amounts currently due within thirty (30) days of the date of written notice. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year, unless reinstated in the Board's discretion.

(iv) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Alabama law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).

(d) Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment or installments for the coming year.

The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least thirty (30) days prior to the due date for such assessments. The budget and the assessment shall become effective unless disapproved at a duly called Association annual meeting by a vote of a majority of the total Association membership; however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the members.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above and assessments authorized under Paragraphs 5(b) hereof, the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners. However, prior to becoming effective, any special assessment which would cause the total of special assessments levied against any Lot in one calendar year to exceed two hundred (\$200.00) dollars first shall be approved by the affirmative vote of at least two-thirds (2/3) of eligible Owners present or represented by proxy at a special or annual meeting of the members, notice of which shall specify that purpose.

(f) Capital Budget and Contribution. The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) above. The Declarant, during the Declarant Control Period, shall name no obligation to budget or provide for capital reserves.

(g) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as determined by the Board, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed \$50.00 if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

(h) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

(i) Declarant's Obligation for the Payment of Assessments. So long as the Declarant owns any Lots in Wyndham Gates or seven (7) years from the date of recording of this Declaration, whichever comes first, on an annual basis, the Declarant may elect, but shall not be obligated, to reduce the assessment for any fiscal year by paying a subsidy on such terms and under such circumstances as the Declarant in its sole discretion may decide. The payment of a subsidy shall under no circumstances obligate the Declarant to continue payment of a subsidy in the future. The Declarant's option to subsidize the assessment may be satisfied in the form of cash, or by "in kind" contributions of services or materials, or a combination of these.

(j) Date of Commencement of Assessments. Assessments shall commence as to a Lot on the earlier of (a) the first day of the month following the occupancy of the Lot for residential purposes, or (b) the first day of the month a builder, developer or person intending to construct and/or occupy a residence on the Lot purchases a Lot from Declarant for the purpose of construction of a residence and resale of the Lot and residence. The Declarant or a builder or developer who purchases a Lot for the purpose of construction of a residence and resale of the Lot and residence shall not be responsible for the payment of any type of assessment except as provided herein; provided, however, assessments shall commence on Lots containing occupied residences that are owned by Declarant or any builder or developer on the first day of the month following the occupancy of the residence located on the Lot. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides. Lots which have not been conveyed as provided above shall not be subject to assessment. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

9. INSURANCE.

(a) Individual Lot Owner Insurance. Each Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and all structures constructed thereon. Each Owner further covenants and agrees that, in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Association or Architectural Control Committee, unless a determination not to rebuild is made and agreed upon in writing by Association. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. If the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state, including, but not limited to sodding the lot, in which it existed prior to the beginning of construction within ninety (90) days of the destruction or as otherwise approved by the Association, and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

(b) Association Liability and Directors' and Officers' Liability Insurance. The Board shall obtain a public liability policy applicable to any 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 in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

(c) Premiums and Deductibles on Association Policies. Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

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

(i) All policies shall be written with a company licensed to do business in Alabama.

(ii) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of Lot Owners and their Mortgagees, as their interests may appear.

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

(iv) In no event shall the insurance coverage obtained and maintained 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.

(v) 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 county where the Property is located.

(vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(3) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of anyone or more individual Owners;

(4) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal 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;

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

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

(e) Additional Association Insurance. In addition to the other insurance required by this Paragraph, the Board shall obtain workmen'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 or dishonesty insurance. The

amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

10. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except for the Declarant and as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining written approval of the Declarant or Architectural Control Committee ("ACC"),

(i) make any encroachment onto the Common Property,

(ii) construct any dwelling or other improvement on a Lot,

(iii) make any exterior change, alteration or construction on a Lot, or any alteration of the Lot which affects the exterior appearance of the Lot, or

(iv) erect, place or post any object, sign, clothesline, playground equipment, light, basketball goals, trampolines, outbuildings, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling, or on any Common Property.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and the Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions.

The ACC or the Board, subject to this subparagraph (a), may allow such encroachments on the Common Property as it deems acceptable.

If the Board or ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Board or ACC may reasonably require have been submitted, then the Owner submitting the application may issue written notice, by certified mail, to the Association president, informing of the Owner's intent to proceed with the modification as identified in the application, unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice. If the Board fails to issue such written disapproval within that ten (10) day period, then its approval will not be required and this subsection will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this subsection are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, Bylaws or Association rules, or of any applicable zoning or other laws.

(b) Architectural Control Committee. The Architectural Control Committee shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

(c) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Board or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. The Declarant shall not be obligated to obtain ACC approval so long as the Class "B" Control Period exists.

(d) Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Declarant, Association, Board, ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction or modifications to any Lot, nor may any action be brought against the Association, the Board, the ACC, or any member thereof, for any such injury, damage or loss.

(e) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Declarant, Board or ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) Enforcement. Any construction, alteration or other work done in violation of this Paragraph, the Declaration, the Bylaws, the design standards or any applicable zoning regulations shall be deemed to

be nonconforming. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees, may be assessed against such Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot.

If any Owner or Occupant makes any exterior change, alteration, or construction upon the Common Property in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remains on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction. Furthermore, the Board shall have the authority to record in the Office of the Judge of Probate of Lee County, Alabama notices of violation of the provisions of this Paragraph.

(g) Commencement of Construction. All improvements approved by the ACC hereunder must be commenced within ninety (90) days from the date of approval. If not commenced within such time, then such approval shall be deemed automatically revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within ninety (90) days of commencement.

(h) Applicability to the Declarant. The provisions contained within this Paragraph shall not apply to the Declarant.

11. USE RESTRICTIONS.

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws, Articles of Incorporation and the rules and regulations of Wyndham Gates. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

(a) Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within that dwelling so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (2) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., FedEx, etc.); (3) the business activity conforms to all zoning requirements for the

Property; (4) the business activity does not increase traffic in the Property more than with customary residential occupancy; (5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage for the Common Property, if any; and (6) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

(b) Number of Occupants. The maximum number of occupants in a dwelling on a Lot shall be limited to two (2) people per bedroom in the dwelling. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

(c) Subdivision of Lots and Outbuildings. No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, at any time, either temporarily or permanently, except by the Declarant, or with written ACC, Board or Declarant approval.

(d) Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body.

Noxious, destructive, offensive or unsanitary activity shall not be carried on upon the Property. No Owner or Occupant may use or allow the use of the Lot or any portion of the Property at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Property. In this regard, specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

(i) Any screaming, shouting, excessively loud talking, whistling, or playing of music or television either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in a dwelling on any other Lot;

(ii) Any fighting, raucous behavior or insobriety either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in a dwelling on any other Lot;

(iii) The use of any alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations either outside of a Lot at any time or within a Lot if such sounds can be heard or vibrations felt in the normal course of activities in a dwelling on any other Lot;

(iv) Any threatening or intimidating conduct towards any resident, guest or pet at the Property;

(v) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property at the Property or which creates any threat to health or safety of any other resident or pet;

(vi) Any excessively loud play or playground activities either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in a dwelling on any other Lot;

(vii) Any conduct which creates any noxious or offensive odor either outside of a Lot at any time or within a Lot if such odors can be detected in the normal course of activities in a dwelling on any other Lot;

(viii) Any similar action or activity outside of a Lot on the Property, or which occurs inside a Lot but which interferes with the peaceful use and enjoyment of other Lots by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot; or

(ix) Any construction or similar activities in a Lot which can be heard in other Lots between the hours of 9 p.m. and 7:30 a.m.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Alabama law.

No Lot Owner or Occupant may use or allow the use of the Lot in any manner which creates noises between the hours of 11 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Property, without prior written consent of all Owners and their Mortgagees.

(e) Firearms and Fireworks. The display or discharge of firearms or fireworks on any Lot is prohibited; provided, however, that the display of lawful firearms is permitted by law enforcement

officers. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(f) Pets: No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property, as determined in the Board's discretion.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in unfenced areas. Pets must be inside between the hours of 11pm and 6 am so as to not disturb any Owners or Occupants in the Association. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written ACC approval as provided herein. Feces left by pets upon any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs may be brought onto or kept at the Property at any time. Any animal determined in the sole discretion of the Association to be dangerous shall not be brought onto or kept on the Property at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Board.

Any Owner or Occupant who keeps or maintains any pet on any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Properties.

(g) Parking. No Owner or Occupant may keep or bring onto the Property more than a reasonable number of vehicles per Lot at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules, depending on the size of the driveway, limiting the number of vehicles which may be parked at the Property. Vehicles only may be parked in garages, designated parking spaces or other areas authorized in writing by the Board or Declarant. Vehicles shall not be parked in such a manner as to prevent the safe flow of traffic along the public street or to prevent the safe flow of ingress and egress from any particular driveway. Vehicles shall not be parked in front of or block access to fire hydrants located throughout the subdivision.

Disabled and stored vehicles are prohibited from being parked on the Property, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Property, other than in a garage, for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, buses, trucks with a load capacity of one (1) ton or more and vans (excluding mini-vans and sport utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes, tool racks, business decals or signs, or other visible business evidence), and vehicles with commercial writings on their exteriors are also prohibited from being parked on a Lot or on the Property, except: (1) in garages or as otherwise approved by the Board, or (2), in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Lot.

(h) Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except that two (2) professional security signs not to exceed six (6") inches by six (6") inches each in size may be displayed from within a dwelling on a Lot. The Declarant and the Association shall have the right to erect reasonable and appropriate signs. The Declarant and the Association also shall have the authority to adopt regulations permitting temporary signs on Lots such as "For Rent" or "For Sale" signs, signs announcing open houses, births, birthdays or other events for limited periods of time, but in no event shall there be more than one (1) "For Rent" or "For Sale" sign on any lot at any given time. No "For Rent" or "For Sale" signs shall be erected, placed, or permitted on a Lot or on the Property of an Owner where the Owner has no intention of renting or selling the Property. No sign of any type shall be placed on a Lot or on the Property of an Owner that is intended by the Owner to hurt or prevent the sale of another Lot, such as a Lot of a neighboring Owner, a Lot of the Declarant, or any Lot owned by another developer or builder. Any signs erected at either entrance into the subdivision shall only be erected, placed or permitted upon approval by the Declarant or the Board.

(i) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. Receptacles for collection shall be placed out of sight. On the day of garbage collection, the receptacles shall be removed from the driveway and placed out of sight by the end of the day.

(j) Impairment of Dwellings and Easements. An Owner shall do no act or any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

(k) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to 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 on any part of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles shall be kept only on the rear patio or rear deck serving the Lot. To be "neat" shall require, at a minimum that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. All improved Lots must have grass lawns; no gravel or similar type lawns are permitted.

(l) Garages. No Owner or Occupant shall park his or her car or other motor vehicle on any portion of the Property, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible.

(m) Antennas and Satellite Dishes. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal.

(n) Fences. No fence or fencing type barrier of any kind shall be placed erected, allowed, or maintained upon any portion of a Lot without the prior written consent of the Board or its designee. Fencing must be iron rail, privacy or picket type fencing. The Board or its designee may issue guidelines detailing acceptable fence styles or other specifications consistent with the immediately preceding sentence, but in no event may a chain link fence or a free-standing hog wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

(o) Vegetable Gardens, Statuaries, Play Equipment. Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls, or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the community shall be permitted without approval of the Board or the ACC.

(p) Above Ground Pools. Above ground swimming pools shall not be permitted in the community.

(q) Streets. The streets are public streets and will be maintained by the City of Opelika or Lee County. Declarant, its partners and affiliates, the Association, the Board and its designee, and the officers, directors, shareholders, members, employees, agents, successors and assigns of any of them, shall not be held liable in any manner whatsoever for, and hereby disclaims any and all such liability and responsibility for, any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any street within the community. Each Owner of a Lot, by acceptance of a deed therefore, on behalf of such Owner and such Owner's family members, guests, and invitees, hereby agrees not to bring any action or suit against Declarant, its partners and affiliates, the Association, the Board and its designee, and the officers, directors, shareholders, members, employees, agents, successors and assigns of any of them, and hereby releases, remises, quitclaims and covenants not to sue any or all of the foregoing, for any claims, demands and causes of action arising out of or in connection with the authorized or unauthorized use of any street within the community and hereby waives the provision of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

(r) Window Treatments. The color of window treatments visible from the outside of the Lot must be white or off-white. Bed sheets shall not be used as window treatments.

(s) Pedestrian Paths. Except as herein provided, the pedestrian paths within the community shall be used as foot paths only. No bicycles, roller blades, skate boards or similar wheeled means of transportation or recreation shall be permitted to be used on a path. Provided, however, this provision shall not prohibit the use of a pedestrian path by any person with a disability by the use of a wheelchair or other necessary transportation device, and further provided that the Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the paths. This provision shall not apply to concrete sidewalks located along the public streets within the community.

(t) Buffer Area. The community contains undisturbed buffer areas as shown on the recorded subdivision plats for the community. The buffer areas shall not contain any improvements. Except for the initial construction of utilities by the Declarant, the buffer areas shall exist as undisturbed natural buffer areas of existing vegetation. Owners shall not disturb the buffer areas in any way including,

without limitation, the construction of any improvements in the buffer areas, landscaping, or cutting of trees, bushes or other vegetation.

(u) Wetlands and Streams. Except as herein provided, all wetlands, storm water retention or detention ponds and streams within the community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. Neither the Association nor the Declarant shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the wetlands, or streams within the community. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes, or other refuse in any wetlands, storm water retention ponds or streams within the community. Applicable governmental agencies, the Declarant and the Association shall have the sole right to control the water level of all bodies of water located within the community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, storm water retention ponds and streams within the community. Owners shall have no riparian or littoral rights with respect to the waters in any stream within the community and shall not be permitted to withdraw water from any stream as may exist in the community without the prior written consent of the Board of Directors.

(v) Stream Buffer. Land-disturbing activities shall not be conducted within any stream buffer area as shown on the recorded subdivision plats for the community, except with prior written approval under Article 10 hereof and compliance with Alabama Law.

(w) Applications of Fertilizers and Pesticides. Owner acknowledges that the reckless application of fertilizers and pesticides on their property can have an adverse environmental impact on the aquatic life in the stream located on the northern portion of the subdivision. Declarant will provide to the Owner of each Lot literature provided by Lee County regarding the environmental impacts of improper application of fertilizers and pesticides.

12. LEASING.

In order to preserve the character of Wyndham Gates Subdivision as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Lots shall be governed by the restrictions imposed by this Paragraph 12. Except as provided herein, the leasing of Lots shall be prohibited.

(a) Definition. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include exclusive occupancy by the spouse, child or parent of an Owner and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence.

If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or agent of such other legal entity shall be deemed an Owner of such Unit for purposes of this Paragraph 12. Such person's designation as an Owner of such Unit pursuant to this Paragraph 12 shall terminate automatically upon the termination of such person's relationship with the entity holding record title of the Unit.

(b) General. Owners desiring to lease their Lots may do so only if they applied for and received from the Board of Directors either a "leasing permit" or a "hardship leasing permit". Such a permit, upon its issuance, will allow an Owner to lease his or her Lot provided that such leasing is in strict accordance with the terms of the permit and this Paragraph 12. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph 12. All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner's predecessor in title).

(c) Leasing Permits. An Owner's request for a leasing permit shall be approved if current, outstanding leasing permits have not been issued for more than twenty-five percent (25%) of the Lots at any given time in the Wyndham Gates Subdivision. A leasing permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to (a) an Owner's spouse, (b) a person cohabitating with the Owner, and (c) a corporation, partnership, company or legal entity in which the Owner is a principal; (2) the failure of an Owner to lease his or her Lot within ninety (90) days of the leasing permit having been issued; or (3) the failure of an Owner to have his or her Lot leased for any consecutive ninety (90) day period thereafter. If current leasing permits have been issued for more than twenty-five percent (25%) of the Lots at any given time, no additional leasing permits shall be issued (except for hardship leasing permits) until the number of outstanding current leasing permits falls below twenty-five percent (25%) of the Lots in the Wyndham Gates Subdivision. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they so desire when the number of current outstanding leasing permits issued falls below twenty-five percent (25%) of the Lots in the Wyndham Gates Subdivision. The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

(d) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease his or her Lot on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board of Directors shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors. (1) the nature, degree and likely duration of the hardship, (2) the harm, if any, which will result to the Wyndham Gates Subdivision if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship and (5) whether previous hardship leasing permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) an Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits. Hardship leasing permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a leasing permit.

(e) Leasing Provisions. Leasing shall be governed by the following provisions:

(1) Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease, the name, address, and home and business telephone numbers of the proposed lessee and the names of all other people occupying the Lot, the Owner's address other than at the Lot, and such other information as the Board may reasonably require.

(2) General. Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Lot. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases shall be for a period of at least six months, except with written Board approval. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

(3) Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot in the Community shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into a lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, lessee need not make such payments to the Association in excess of, or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the owner of the premises during the term of the agreement and any other period of occupancy by lessee. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(ii) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a

rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Alabama law. The Owner hereby delegates and assigns to Wyndham Gates Neighborhood Association, Inc., acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(iii) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.

(iv) Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, and they shall be permitted to lease without obtaining a permit.

13. SALE OF LOTS.

A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. The Lot Owner transferring or selling his or her Lot must provide the purchaser or new Owner copies of the current Declaration, Bylaws, and rules and regulations. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

14. MAINTENANCE RESPONSIBILITY.

(a) Association's Responsibility. The Association shall maintain and keep in good repair any Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping, grass areas, paving and other improvements, which are situated on the Common Property.

(b) Owner's Responsibility. All maintenance, repair, replacement and improvement of the Lot shall be the responsibility of the Owner and shall be made in a manner consistent with the Community-Wide Standards and this Declaration. In addition, each Owner shall maintain any public right of way located between the Owner's Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners. Such maintenance shall include, but not be limited to, maintaining fencing in good repair, exterior painting as needed, pressure washing of homes as needed to remove dirt and mold build-up, and maintenance of all vegetation and landscaping in good and presentable condition.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property (unless directly and solely caused by the negligence or gross negligence of the Association) or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments 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 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 Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

(c) Failure to Maintain. If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists or unless the notice required hereunder has already been provided to the Owner for the same violation, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, then the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required with respect to an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work

on behalf of the Owner and at the Owner's expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

(d) Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

15. MORTGAGEE'S RIGHTS.

So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) and so long as the U.S. Department of Housing and Urban Development ("HUD") is insuring or the Veterans Administration ("VA") is guaranteeing any Mortgage in the Community, 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 Lot Owners give their consent, the Association shall not:

- (i) by act or omission seek to abandon or terminate this Declaration or the Association;
- (ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) partition or subdivide any Lot;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Property.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

- (i) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;
- (ii) 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 Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;
- (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.
- (v) any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

16. GENERAL PROVISIONS.

(a) Enforcement. Each Owner and every occupant of a Lot shall comply strictly with this Declaration, the Bylaws, the rules and regulations, as they may be lawfully amended or modified from time to time, and with any deed restrictions. The Board of Directors may impose fines or other sanctions, which shall be collected as provided for the collection of assessments. Fines shall be imposed pursuant to the procedure outlined in the Bylaws. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Declarant, the Board of Directors (on behalf of the Association), or an aggrieved Owner (in a proper case). Failure by the Declarant, Association or any Owner to enforce any of the foregoing provisions shall not be a waiver of the right to enforce those provisions in the future.

The Association shall have the authority to record in the Office of the Judge of Probate of Lee County, Alabama a notice of violation identifying an uncured violation of the Declaration or rules and regulations regarding the Lot.

The failure of the Association to enforce any provision of the Declaration or any rule or regulation shall not be deemed a waiver of the right of the Association to do so thereafter.

(b) Security. The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve safety in the Community. However, each Owner, for themselves and their tenants, guests, licensees, and invitees acknowledge and agree that the Association and the Declarant and their respective successors and assigns are not providers insurers or guarantors of security within the

community, nor shall any of the foregoing be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures taken. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Owner.

(c) No Discrimination. No action shall be taken by the Association which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(d) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration and 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.

(e) Electronic Records, Notices and Signatures. Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically.

17. EASEMENTS.

(a) Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property 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 which the Association may have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the 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. Likewise, there is also reserved to any utility company, such as Alabama Power, non-exclusive easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property 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 which the Association may have installed to serve the Property.

(b) Easement for Entry. The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Association. Owners shall have a non-exclusive appurtenant easement over and across the Lot of an adjacent servient Owner for maintenance of the dominant Owner's Lot.

(c) Easement for Entry Features. There is hereby reserved to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar

streetscapes for the Property on which entry features and similar streetscapes are located. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and similar streetscapes and the right to grade the land under and around such entry features.

(d) Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant or a Builder owns any Property in Wyndham Gates for development and/or sale, Declarant reserves an easement across all Property for Declarant to maintain and carry on, upon such portion of the Property as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction, and sales activities related to property described on **Exhibit "B"** to this Declaration, including, but without limitation, (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Property, including, without limitation, any Lot, (b) the right to tie into any portion of the Property with driveways, parking areas and walkways, (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property, (d) the right to grant easements over, under, in or on the Property, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property, (e) the right to carry on sales and promotional activities in the Property, (f) the right to erect and maintain signs, and (g) the right to construct and operate business offices, construction trailers, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at its sole expense. This Paragraph shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

18. ANNEXATION AND WITHDRAWAL OF PROPERTY.

(a) Annexation Without Approval of Owners. The Declarant shall have the unilateral right, privilege, and option, but not the obligation, from time to time, at any time until all property described on **Exhibit "B,"** attached hereto, has been subject to this Declaration, or for seven (7) years from the Effective Date herein, to subject to the provisions of this Declaration all or any portion of the real property described in **Exhibit "B."** The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in **Exhibits "A" or "B"** and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the public records of Lee County, Alabama. Such Supplemental Declaration shall not require the consent of Owners, but shall require the consent of the owner of the property being submitted hereto, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

(b) Annexation With Approval of Owners. Subject to the consent of the owner and the consent of the Declarant (so long as the Declarant has an option to subject additional property to this Declaration as provided above), upon the affirmative vote, or written consent, or any combination thereof, of Owners holding a Majority of the total Association vote and with the approval of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Judge of Probate of Lee County, Alabama, 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 in the Supplementary Declaration.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of Lee County, Alabama. Any such Supplemental Declaration shall be signed by the votes constituting a majority of the Lots and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

(c) Withdrawal of Property. The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to this Paragraph 18, without prior notice and without the consent of any person, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

(d) Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than the Declarant.

(e) Amendment. This Paragraph 18 shall not be amended without the prior written consent of Declarant so long as the Declarant owns or has the right to unilaterally annex any property described in Exhibits "A" or "B" hereto.

19. AMENDMENTS.

(a) By Declarant. The Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibits "A" and "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment shall not materially adversely affect the substantive rights of any Lot Owner, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

(b) By Lot Owners. Thereafter, except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Owners holding sixty-seven (67%) percent of the total votes and, while it owns any property described in Exhibits "A" and "B" hereto. Each Lot shall be deemed to have one vote, regardless of the number of Owners per Lot. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until filed in the Office of the Judge of Lee County, Alabama.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Office of the Judge of Probate of Lee County, Alabama, then such amendment or document shall be presumed to be validly adopted.

20. SEVERABILITY.

Invalidation of anyone of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

21. DURATION.

The covenants, restrictions and easements of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Declarant or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Alabama law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one (51%) percent of the persons owning Lots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all owners affected by the covenant and a description of the covenant to be terminated. A written instrument reflecting any termination must be recorded no sooner than, but within two (2) years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Paragraph.

[SIGNATURE OF DECLARANT APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed the Declaration this the 8th day of August, 2008.

McDowell & Associates, LLC
a Georgia limited liability company

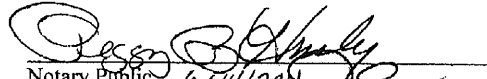
By: 
Dino McDowell, Member

STATE OF Georgia
COUNTY OF Carroll

I, Peggy Bolton Husby, a Notary Public in and for said County in said State, hereby certify that Dino McDowell & Associates, LLC, whose names as Member of McDowell & Associates, LLC, a Georgia limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily and with full authority for and as the act of said limited liability company.

Given under my hand this the 8th day of August, 2008.

NOTARY SEAL


Notary Public 6/14/2011

2338 202
DEEDS Book & Page

EXHIBIT "B"

Description of Property Contiguous to Exhibit "A"

All that tract and parcel of land now and hereafter owned by Declarant in Lee County and contiguous to that property described in **Exhibit "A."**

2338 203
DEEDS Book & Page

EXHIBIT "C"

BYLAWS

OF

WYNDHAM GATES NEIGHBORHOOD ASSOCIATION, INC.

2338 204
DEEDS Book & Page

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BYLAWS
OF
WYNDHAM GATES NEIGHBORHOOD ASSOCIATION, INC.

Article I. General

Section 1. Applicability. These Bylaws provide for the self-government of Wyndham Gates Neighborhood Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions, Restrictions and Easements for Wyndham Gates Neighborhood Association, recorded in the Office of the Judge of Probate of Lee County, Alabama ("Declaration").

Section 2. Name. The name of the corporation is Wyndham Gates Neighborhood Association, Inc. ("Association").

Section 3. Definitions. The terms used herein shall have their generally accepted meanings or such meanings as are specified in the Declaration.

Section 4. Membership. An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse may exercise the powers and privileges of the member. If title to a Lot is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Lot. Membership does not 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. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 5. Entity Members. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of a limited liability company or representative of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 6. Voting. Each Lot shall be entitled to one (1) equally weighted vote, which vote may be cast by the Owner, the Owner's spouse or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they

determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, or to act as proxy for any other member or to be elected to the Board of Directors, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum, or for any other purpose.

Section 7. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

Section 8. Purpose. The Association shall have the responsibility of administering the Community, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Community and performing all of the other acts that may be required to be performed by the Association pursuant to the Alabama Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Alabama Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Section 9. Electronic Documents and Signatures.

(a) Documents. Whenever these Bylaws require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an Electronic Document. "Electronic Document" means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, facsimile transmissions, etc. Records, documents and instruments shall not be denied effect or validity solely on the grounds that they are electronic.

(b) Signatures. Whenever these Bylaws require a signature, an electronic signature satisfies that requirement only if: (1) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (2) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.

(c) Verification and Liability for Falsification. The Board may require reasonable verification of any electronic signature, document, record or instrument. Pending verification, the Board may refuse to accept any electronic signature, document, record or instrument which, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other Person for accepting or acting in reliance upon an electronic signature or Electronic Document which the Board reasonably believes to be authentic. Any Member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees and expenses incurred as a result of such acts.

Article II. Meetings of Members

Section 1. Annual Meetings. The initial annual or special meeting shall be held within one (1) year from the date the Declaration is recorded, or at such other time as established by Declarant. After transition from the Developer to the members, annual meetings shall be set by the Board so as to occur sixty (60) days before or after the close of the Association's fiscal year.

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more members of the Board of Directors. Special meetings also may be called upon written petition of Owners holding a least twenty-five percent (25%) of the total eligible Association vote, for any purpose on which the members are authorized to vote under the Bylaws or the Declaration. Any such written petition by the members must identify the purpose on each page thereof, and the original signed petition be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these Bylaws. Any special meeting called pursuant to written petition shall be set at a date, time and location determined by the Board, within thirty (30) days of the date of the petition.

Section 3. Notice of Meetings. The Secretary shall mail or deliver to each Owner of a Lot of record or to the Lot a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice of an annual meeting shall state the time and place of the meeting. The notice of a special meeting shall state the purpose of any special meeting, as well as the time and place where it is to be held. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed a waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy at the beginning of the meeting, entitled to cast one third (1/3) of the total eligible Association vote shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

Section 6. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding thirty (30) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7. Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or facsimile transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Secretary of the Association, except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall automatically be deemed to invalidate any previously given proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 8. Action Without a Meeting. In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) Ballot. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite majority of the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by the Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 9. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation, unless the Owners present at a particular meeting vote to suspend Roberts Rules at that meeting.

Article III. Board of Directors

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the directors shall be members or spouses of such members; provided, however, no Person and his or her spouse may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. Except for directors appointed by the Declarant, all directors must reside in Wyndham Gates. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the book and records of the Association to be more than thirty (30) days delinquent in the payment of any assessment or charge by the Association. Directors

shall not be eligible to serve more than three (3) consecutive two (2) year terms without first resigning from the Board for a time period which shall be the lesser of: (a) one (1) year; or (b) the period to time from the end of one (1) annual meeting of the Association to the beginning of the next annual meeting of the Association.

Section 2. Directors Appointed by Declarant. Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of: (1) seven (7) years after the recording of the Declaration, (2) the date as of which one hundred percent (100%) of the Lots shall have been conveyed by Declarant to Owners other than a Person constituting the Declarant unless Declarant at that time has an unexpired option to add Additional Property, or (3) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant this authority to appoint and remove directors and officers of the Association.

Section 3. Number of Directors and Term of Office. The Board shall consist of at least three (3) persons during the period in which the Declarant has the right to appoint directors and officers as described in Section 2 of this Article. Thereafter, the Association shall call a meeting to be held at which Owners shall elect three (3) or five (5) directors, the exact number as determined by resolution of the Board. If such meeting is not the annual meeting, the directors shall serve until the next annual meeting. At the first annual meeting after Declarant has surrendered control of the Association, if there are three (3) directors, the two (2) directors receiving the highest number of votes shall be elected for terms of two (2) years each, and the third director shall be elected for a term of one (1) year. If there are five (5) directors, the three (3) directors receiving the highest number of votes shall be elected for terms of two (2) years each, and the two (2) directors remaining directors shall be elected for a term of one (1) year. At each annual meeting thereafter, 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 have been elected by the Association.

Section 4. Nomination. Nomination for election to the Board shall be made from the floor at the meeting. The Board also may appoint a nominating committee to make nominations prior to the meeting.

Section 5. Elections. All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

Section 6. Removal of Members of the Board of Directors. Other than for directors or officers appointed by the Declarant, at any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors may be removed with or without cause by a Majority of the total eligible Association vote, and a successor may then and there be elected to fill the vacancy thus created. Further, any director who is more than thirty

(30) days past due in payment of any assessment or charge shall be automatically removed from the Board of Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 7 below. Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed by the membership shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 7. Vacancies. Except while the Declarant is authorized to appoint directors and officers hereunder, vacancies in the Board of Directors caused by any reason, except the removal of a director by vote of the membership, 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. The successor so selected shall hold office for the remainder of the term of the director being replaced. Notwithstanding anything to the contrary stated herein, any director who is an officer, director or other designated agent of an entity member and whose position become vacant for any reason, may be replaced by the entity who is the Owner unless there has been a transfer of ownership of the Unit, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum is at any meeting of the directors.

Section 8. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority of the total eligible Association vote. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred and No/100 Dollars (\$100.00) per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meetings shall not be considered compensation.

Section 9. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract, unless requested by any other director to leave the room during the discussion.

B. Meetings.

Section 1. Organization Meetings. The Board of Directors shall endeavor to meet within ten (10) days following each annual meeting of the Association, at a time and place determined 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 the Board, but such meetings shall be held at least once every six (6) months.

Section 3. Special Meetings. Special meetings of the Board of Directors may be called by the President on two (2) days notice to each director given by regular first class or electronic mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 4. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

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. 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) 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 which might have been transacted at the meeting originally called may be transacted without further notice.

Section 6. Open Meetings. Except during the time 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. Notwithstanding the above, 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 7. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent to such action in writing, sent via hand delivery, facsimile, regular first class or electronic mail. Such written consents must describe the action taken and be signed by no fewer than a Majority of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

Section 8. 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 by telephone shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 1. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Community and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparing and adopting 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 of the areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property 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 financial depository or institution which it shall approve, or otherwise investing the proceeds, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof including, without limitation, reasonable monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

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

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

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

(m) 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 or corporations. 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 Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, 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 Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice, and for a term not in excess of one (1) year.

Section 3. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Property and facilities without the approval of the members of the Association; the Board shall also be authorized to borrow money for other purposes; provided, however, the Board shall obtain membership approval in the same manner as provided for special assessments if the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Community or the total amount of such borrowing exceeds or would exceed ten thousand (\$10,000.00) dollars outstanding debt at any time.

Section 4. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the period of Declarant control) against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the

limitation below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether or not to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members 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, directors or committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member 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, director or committee member or former officer or director, may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

D. Committees.

Section 1. Architectural Control Committee. The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Community as provided in the Declaration.

Section 2. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 3. Service on Committees. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Article IV. Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer. The Board of Directors may appoint one (1) or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be members of the Board of Directors. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election of Officers. 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 Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first

meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board of Directors, any officer may be removed at any time, either with or without cause, and a successor may be elected.

Section 4. 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 5. Vacancies. 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 6. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Alabama Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 7. 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 8. Secretary. The Secretary shall keep the minutes of all meetings of the members 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 under Alabama law.

Section 9. 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. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 10. Other Officers. Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

Section 11. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V. Rule Making and Enforcement

Section 1. Authority and Enforcement. The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership.

Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance shall entitle the Association and, in an appropriate case, one or more aggrieved Lot Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. If any Occupant violates the Declaration, Bylaws or Association rules and a fine is imposed, the fine may be imposed against the Owner and/or Occupant, subject to Section 2 below. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 2. Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. However, compliance with this Section 2 shall not be required for the following: (i) late charges on delinquent assessments, or (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic.

(a) Notice. If any provision of the Declaration or Bylaws or any Association rule is violated, the Board shall send the violator written notice identifying the violation and sanction being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the sanction. Sanctions may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the sanction. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines up to and including \$25.00 per offense, may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines.

Section 3. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations or performing maintenance on any Lot upon a failure by the Lot Owner to do so) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations. All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner. Additionally, the Association shall have the authority to record in the Office of the Judge of Probate of Lee County, Alabama, a notice of violation identifying an uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

Article VI. Miscellaneous

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid, facsimile or electronic mail:

(a) If to an Owner, at the address which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;

(b) If to an Occupant, at the address of the Lot occupied; or

(c) If to the Association, the Board of Directors or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a Majority of the total eligible Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Alabama Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Alabama Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Alabama Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. These Bylaws may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to the Declaration; (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration; or (e) to submit the Community to the terms of the Alabama Property Owners' Association Act. However, any such amendment shall not adversely affect the title to any Owner's Lot unless any Lot Owner consents to the amendment in writing.

In addition to the above, these Bylaws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least a Majority of the total Association vote, plus the consent of the Declarant. Amendments to these Bylaws shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of these Bylaws which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written consent so long as the Declarant owns any property in the Community, primarily for development and/or sale.

Notwithstanding the above, VA and HUD shall have the right to veto amendments to these Bylaws for as long as the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of these Bylaws. If legal action is not instituted to challenge the validity of an amendment adopted under this Section within one (1) year of the amendment's effective date, then such amendment shall be presumed to be validly adopted.

Section 9. Books and Records.

(a) All members of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;

(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(v) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vi) a list of the names and business or home addresses of its current directors and officers; and

(vii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 9(a);

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or account of other members. Minutes for any Board or Association meetings do not become effective as an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.

ARTICLES OF INCORPORATION

OF

WYNDHAM GATES NEIGHBORHOOD ASSOCIATION, INC.

Article 1. Name. The name of the Corporation is Wyndham Gates Neighborhood Association, Inc. ("Corporation" or "Association").

Article 2. Duration. The Corporation shall have perpetual duration.

Article 3. Applicable Statute. The Corporation is organized pursuant to the provisions of the Alabama Nonprofit Corporation Code or other governing law.

Article 4. Purposes and Powers. The Corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its members.

(a) In way of explanation and not of limitation, the purposes for which it is formed are:

- (i) to be and constitute the Association to which reference is made in the Covenants, Conditions and Restrictions for Wyndham Gates, as may hereinafter be amended, filed of record in the Office of the Judge of Probate of Lee County, Alabama ("Declaration"), to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws of the Association ("Bylaws"), and as provided by law; and
- (ii) to provide an entity for the furtherance of the interests of the owners of units in the single-family home development as described in the Declaration.

(b) In furtherance of its purposes, the Corporation shall have the following powers which, unless indicated otherwise by the Declaration or Bylaws, may be exercised by the Board of Directors of the Association:

- (i) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Alabama in effect from time to time; and
- (ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws, or the Declaration including, without limitation, the following:
 - (1) to fix and to collect assessments or other charges to be levied against the units;
 - (2) to manage, control, operate, maintain, repair and improve the common area and facilities, and property subsequently acquired by the Corporation, or any property owned by another, for which the Corporation, by rule, regulation, Declaration or contract, has a right or duty to provide such services;

- (3) to enforce covenants, conditions and restrictions affecting any property to the extent the Association may be authorized to do;
- (4) to engage in activities which will actively foster, promote and advance the common interests of all owners of units at the development;
- (5) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real, personal and mixed property of all kinds and any right or interest therein for any purpose of the Corporation;
- (6) to borrow money for any purpose as may be limited in the Declaration;
- (7) to enter into, make, perform or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation or other entity or agency, public or private;
- (8) to act as agent, trustee or other representative of other corporations, firms or individuals, and as such to advance the business or ownership interests in such corporations, firms or individuals;
- (9) to adopt, alter and amend or repeal such bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such bylaws may not be inconsistent with or contrary to any provisions of the Declaration or the Alabama Nonprofit Corporation Code;
- (10) to participate in mergers and consolidations with other nonprofit corporations upon the affirmative vote of at least two-thirds (2/3) of the total eligible vote of the members; and
- (11) to provide any and all supplemental municipal services as may be necessary or proper.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may not now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 4 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article 4.

Article 5. Membership. The Corporation shall be a membership corporation without certificates or shares of stock. All unit owners, by virtue of their ownership of units in the single-family subdivision, are members of the Association. The members shall be entitled to one (1) vote for each unit in which they hold the interest required for membership, in accordance with the Declaration.

Article 6. Board of Directors. The affairs of the Corporation shall be governed by a Board of Directors, the number, qualification and method of election of which shall be set in the Corporation's Bylaws. The method of election and term of office, removal and filling of vacancies shall be as set forth in the Bylaws. The board may delegate such operating authority to such companies, individuals or committees as it, in its discretion, may determine. The initial Board of Directors of the Corporation shall have three directors and the name and address of the persons who are to serve as the initial directors are as follows:

NAME	ADDRESS
Dino McDowell	McDowell and Associates, LLC P.O. Box 949 Carrollton GA 30112
Dennis McDowell	McDowell and Associates, LLC P.O. Box 949 Carrollton GA 30112
Lee Danielly	299 Northgate Trace Roswell, Georgia 30075

Article 7. Liability of Directors. To the fullest extent that the Alabama Nonprofit Corporation Code, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Corporation shall be personally liable to the Corporation or its members for monetary damages for breach of duty of care or other duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 8. Dissolution. The Association may be dissolved upon the affirmative vote or written consent of not less than two-thirds (2/3) of the votes of members other than the Declarant (as such term is defined in the Declaration), the consent of the Declarant (so long as the Declarant owns any property subject to the Declaration or which may be unilaterally subjected to the Declaration by the Declarant). Upon dissolution of the Association, other than incident to a merger or consolidation, so long as the VA is guaranteeing and/or HUD is insuring any mortgage in the development, and unless otherwise agreed in writing by HUD or VA, as applicable, any remaining real property assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes. No such restriction shall exist if VA is not guaranteeing or HUD is not insuring any mortgage in the Development; provided, however, HUD and/or VA must be notified of such dissolution.

Article 9. Amendments. These Articles of Incorporation may be amended as provided by the Alabama Nonprofit Corporation Code pursuant to a resolution duly adopted by the Board of Directors and approved by the affirmative vote of the members of the Association

entitled to cast at least two-thirds (2/3) of the votes which members present in person or by proxy cast at a meeting of the members of the Association or by members casting at least a total majority of the Association vote, whichever is less; provided that, no members shall be entitled to vote on any amendment to these Articles of Incorporation which is for the sole purpose of complying with the requirements of any governmental (including, without limitation, HUD or VA) or quasi-governmental entity authorized to fund, insure or guarantee mortgages on individual units in the single-family subdivision, which amendment may be adopted by the Board of Directors acting alone.

Article 10. Incorporator. The name and address of the incorporator is as follows:

Dino McDowell
McDowell and Associates, LLC
P.O. Box 949
Carrollton GA 30112

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Article 11. Registered Agent and Office. The initial registered agent of the Corporation and the address of the initial registered agent is:

William A. Cleveland
1747 Ogletree Road
Auburn, Alabama 36830

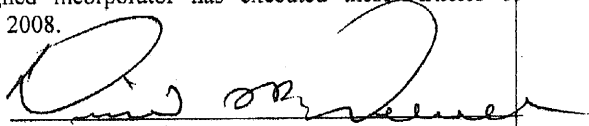
Article 12. Initial Principal Office. The mailing address of the initial principal office of the Corporation is:

Dino McDowell
McDowell and Associates, LLC
P.O. Box 949
Carrollton GA 30112

Article 13. VA/HUD Approval. As long as the Declarant (as such term is defined in the Declaration) has the right to appoint and remove the directors and officers of the Association as provided in the Bylaws, the following actions shall require the prior approval of the U.S. Department of Veterans Affairs ("VA"), so long as the VA is guaranteeing any mortgage in the Community, and the U.S. Department of Housing and Urban Development ("HUD"), so long as HUD is insuring any mortgage in the Community; annexation of additional property to the single-family homes, as applicable; mergers and consolidations; mortgaging of Common Elements (as such term is defined in the Declaration); dedication of Common Elements to any public entity; dissolution; and amendment of these Articles of Incorporation.

[Signature appears on the following page.]

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 8th day of August, 2008.



Dino McDowell, Incorporator

STATE OF Georgia
COUNTY OF Clayton

I, Lesley Bolton Husby, a Notary Public in and for said County in said State, hereby certify that Dino McDowell & Associates, LLC, whose names as Member of McDowell & Associates, LLC, a Georgia limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily and with full authority for and as the act of said limited liability company.

Given under my hand this the 8th day of August, 2008.

NOTARY SEAL


Notary Public
My commission expires: 6/14/2011

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