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STATE OF ALABAMA)
COUNTY OF SHELBY)

DECLARATION OF PROTECTIVE COVENANTS
FOR
WINDCHASE, A RESIDENTIAL SUBDIVISION

St # 1994-10992

04/05/1994-10992
10:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 MCD 63.00

THIS DECLARATION OF PROTECTIVE COVENANTS (hereinafter referred to as the "Declaration") is made as of this 4th of April, 1994 by Windmere Development Co., Inc., an Alabama corporation, (hereinafter referred to as the "Developer"), which declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants").

WHEREAS, the Developer is presently the owner of all of the real property described in Plat of Windchase prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 18, at Pages 55A and 55B; and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of Windchase Subdivision (sometimes herein referred to as the "Project" or "Subdivision") and for the maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desires to subject said real property, together with such additions thereto as may for the benefit of the said real property and each owner thereof; and

WHEREAS, the Developer has deemed it desirable for the establishment and enforcement of uniform standards of development quality and the effect preservation of the appearance, value and amenities to create a nonprofit corporation (sometimes delegated and assigned the powers of maintaining and administering certain areas thereof which benefit all owners of property therein and enforcing the Protective Covenants and of levying, collecting and depositing such charges and assessments as may be authorized in this Declaration for that purpose; and

WHEREAS, the Developer has or will incorporate the Association under the laws of the State of Alabama, as a nonprofit corporation, for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Developer declares that the real property described in Section 2.01 hereof, and such additions thereto as may hereafter be made pursuant to Section 2.02 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said real property, as well as their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

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

1.01 "Association" shall mean and refer to Windchase Homeowners' Association, Inc., an Alabama nonprofit corporation, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles of Incorporation (hereinafter referred to as the "Articles") and By-Laws (hereinafter referred to as "By-Laws" of the Association make reference.

1.02 "Common Areas" shall mean and refer to all real and/or personal property which the Association and/or the Developer owns, leases, or has otherwise acquired for the common use and enjoyment of the members of the Association, and all real and/or personal property within or in the vicinity of the Property (hereinafter defined) in which the Association and/or the Developer has an interest for the common use and enjoyment of the members of the Association. In addition, the entrance, boundaries and/or median of any portion of a private or dedicated road, within or abutting the Property shall be included in the Common Area shall be restricted to park landscape, entry features, directional graphic system, drainage and retention, landscape medians, security, safety, pedestrian paths, roads, lighting, recreational facilities or any other use to which the Board of Directors of the Association may accede.

Developer agrees that all Common Areas denominated as such on the Plat, if any, the fee simple title to which may be owned or held by Developer, shall be conveyed to the Association not later than sixty (60) days after Developer has sold the last Lot in the Project.

1.03 "Developer" shall mean and refer to Windmere Development Co., Inc., and Alabama corporation, or its successors or assigns if such successors or assigns acquire any portion of the Property from the Developer and is designated as successor developer by Windmere Development Co., Inc..

1.04 "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust which holds a first mortgage or other first lien or charge upon any Lot or portion of a Lot or any interest therein which is of record in the Office of the Judge of Probate of Shelby County, Alabama.

1.05 "Lot" shall mean and refer, to the individual lots (as defined in the Subdivision Regulations of the Shelby County Planning Commission) as reflected on subdivision plat(s) for the Subdivision as recorded in the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time.

1.06 "Owner" shall mean and refer to one or more persons or entities who or which have fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.07 "Property" or "Project" shall mean and refer to all real property which is presently or may hereafter be subject to this Declaration pursuant to Article II hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, **ADDITIONS THEREON, DELETIONS THEREFROM**

2.01 Legal Description. The real property which presently is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Alabama, and is described in the Plat of Windchase, prepared by K.B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 18 at Pages 55A and 55B.

2.02 Additions to Property. Upon the approval in writing of the Association, the owner of any property who desires to subject it to this Declaration, may file a Supplementary Declaration to that effect in the Office of the Judge of Probate of Shelby County, Alabama. Such Supplementary Declaration may contain such complementary additions to and modifications of the Protective Covenants as the Association shall determine to be necessary or proper to reflect the different character, if any, of the additional property, provided they are not inconsistent with the general plan of this Declaration.

2.03 [This Section intentionally omitted]

2.04 Platting and Subdivision of the Property. The Developer shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property.

ARTICLE III

EASEMENTS

3.01 Owner's Easement With Respect To Common Areas. Every Owner shall have a right and easement of enjoyment in and to all Common Areas subject to the limitations set forth in Section 3.04 of this Declaration.

3.02 Owner's Mutual, Reciprocal, Non-Exclusive, Easement for Ingress and Egress and/or Utilities, Other Services and Drainage. In the event that all of the Owners shall agree, they may elect to create, by having all Owners file a declaration in the Office of the Judge of Probate of Shelby County, Alabama, one or more mutual, reciprocal, non-exclusive easement(s) in favor of each Owner, in common with all other Owners, and their respective tenants, employees, guests, invitees, licensees, agents and contractors under, through and over such portions of the Property as are designated therein in order to: (1) permit vehicular and pedestrian traffic over, through and across such areas designated therein as may from time to time be paved and intended and designated for such purposed and use, and (2) install, maintain, use, repair and replace wires, pipes, conduits, utility lines, sewer and storm drainage lines and other services located or on the Property. The use of each such easement may be made subject to such terms and restrictions as the owners may agree and set forth in such declaration. In the event that all of the Owners shall agree, they may elect to have the Association maintain any such easement or easements.

3.03 Additional Easements and Uses. For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Associations, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, landscaping, irrigation, security, maintenance, drainage, sewer, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restriction), in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonable interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the property and cause the same to be recorded in the Office of the Judge of Probate of Shelby County, Alabama. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may

deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners' their respective tenants, employees, guests, invitees, licensees and agents.

3.04 Limitations. Any easements which may be created pursuant to this Article shall be appurtenant to and the benefits and burdens thereof shall pass along with the title to every Lot and are further subject to the following limitations:

(a) All provision of this Declaration and the Articles and By-Laws of the Association;

(b) All rules and regulation governing the use and enjoyment of the Common Areas which have been or may hereafter be adopted by the Association; and

(C) All restriction contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

3.05 Additional Documents. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.01 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the Association, in the manner set forth herein, all Assessments determined in accordance with the Provisions of this Declaration.

4.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas and of any easement in favor of the Association, and for the establishment of reserves therefor, as well as for such other purposes as are properly undertaken by Association.

4.03 Annual Assessments. The Association shall levy Annual Assessments in such amounts are necessary to meet the Common Expenses (as defined in Article V below) and such other recurring or projected expenses as the Board may deem appropriate. The Assessment year for the Annual Assessment need not be the calendar year.

4.04 Special Assessments. in addition to the Annual Assessments specified in Section 4.03 above, the Association may at any time levy one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair to or replacements of any of the Common Areas, including any fixtures and personal property related thereto.

4.05 Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of all Assessments, the date of commencement for each Assessment, and the due date of such assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that time, prepare a roster of the Lots and Assessments applicable thereto, which roster shall be kept in the office of the Association of the amount of the Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement.

4.06 Date of Commencement and Due Date for Assessments. The liability of a Lot for any Assessment shall commence on the date or dates (which shall be the first day of a month) fixed by the Board in the resolution authorizing such Assessment. The due date of any such Assessment (which may be different from the commencement date) shall also be fixed in the resolution authorizing such Assessment (but which need not be the first day of a month). Such Assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as so fixed in the resolution authorizing the Assessment.

4.07 Allocation of Assessment. The Board shall allocate a portion of each Assessment to each Lot in the Proportion that each Lot bears to the total number of Lots within the Property (to the nearest one-thousandth).

4.08 Certificates Concerning Assessments. The Association shall, upon demand at any time, furnish to any Owner liable for any Assessment or his designee a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.09 Liability of Owners for Assessments. No Owner may exempt himself from liability for any Assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of the Lot or in any other manner.

4.10 Effect of Non-Payment of Assessments: The Lien, the Personal Obligation; Remedies of the Association.

(a) If any Assessment or other charge or lien provided for herein is not paid in full on the due date set by the Board, then such Assessment charge or lien shall become delinquent on the thirtieth day thereafter, and together with interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot encumbered thereby, and also the personal obligation of its Owner, his heirs, and

his or its successors and/or assigns. The personal obligation of any Owner to pay such Assessment, however, shall remain his or its personal obligation and shall not pass to any successors or assigns unless expressly assumed by them.

(b) If any Assessment is not paid within thirty (3) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at eight percent (8%) per annum, and the Association may bring an action against the Owner personally obligated to pay the same and/or commence the foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgement shall included the aforesaid interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. The Lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. Any person (except and Institutional Mortgagee) who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien Granted to the Association and shall acquire his interest in any Lot expressly subject to any such lien of the Association.

(c) The lien herein granted to the Association shall be perfected by recording a Claim of Lien in the Office of the Judge of Probate of Shelby County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall have been fully paid. Such Claim of Lien shall include only Assessments which are due and payable when the Claim of lien is recorded, plus interest, late charges, costs, attorneys' fees and advances to pay taxes, prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such Claim of Lien shall be signed and verified by an officer or agent of the Association. upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of any officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.

(d) The lien of any Assessments shall be subordinate to the lien of any Institutional Mortgagee bearing a recording date in the Office of the Judge of Probate of Shelby County, Alabama, prior to the date of recording the Association's Claim of Lien. Where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or where any Institutional Mortgagee or its designee accepts a deed to a Lot in lieu of foreclosure, such acquirer of title, its successor and assigns, shall not be liable for any Assessment pertaining to such Lot or chargeable to the former Owner which became due prior to eh acquisition of title to such Lot, unless such delinquent Assessment was secured

by a Claim of Lien recorded prior to the recordation of the Institutional Mortgagee's mortgage. Such unpaid Assessments shall be instead collectible from all Owners, including such acquirer, its successors and assigns. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof of liability for the enforcement or collection thereof by means other foreclosure.

(e) Any person who acquires an interest in a Lot, except an Institutional Mortgagee as specifically provided above, including, but not limited to, persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the Common Areas until such time as all unpaid Assessments due and owing by the former Owner have been paid in full. Any party who has a contract to purchase a Lot, or who proposes to make a loan secured by a mortgage on a Lot, may, by written request, inquire of the Association whether the Lot is subject to any Assessments and the due date of any such Assessments and the amount of the due date of any such Assessments and the amount of the interest due on any delinquent Assessments and an authorized representative of such Association shall give the requesting party a written response, providing all such information, within ten days of Association's receipt of such inquiry and such response shall be binding upon the Association does not make such response is incorrect or if the Association does not make such response within said ten-day period, any such Assessment shall not be an obligation of such purchaser or lien on the Lot, but shall continue to be a personal obligation of the Owner of the Lot.

(f) The Association shall have the right to assign its Claim of Lien, and any other lien rights provided for in this Article, for the recovery of any unpaid Assessments to the Developer, to any Owner or group of Owners or to any third party.

4.11 Exempt Property. The Board of Directors shall have the right to exempt any portion of the Property from the assessments, charge and lien created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

(a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) As Common Area as defined in Section 1.02 hereof;

(c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

4.12 Exempt Lots. All Lots titled in the name of the Developer shall be exempt from payment of all assessments herein provided for. This exemption shall be terminated upon conveyance of any Lot by the Developer.

ARTICLE V

COMMON EXPENSES

The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article IV hereof. The enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by Assessment.

5.01 Maintenance and Repair of Common Areas. The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean, attractive and sanitary condition.

5.02 Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

5.03 Fidelity and Directors' Insurance. Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

5.04 Enforcement of Declaration and Rules and Regulations. All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, the By-Laws or this Declaration.

ARTICLE VI

ARCHITECTURAL CONTROL

6.01 Necessity of Architectural Review and Approval. No improvement or structure of any kind, including without limitation, any building, fence, wall, sign, lighting system, site paving grading, satellite dish, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed or maintained upon the Property, nor shall any addition, change or alteration therein, thereof or thereto be made, nor any subdivision platting or replatting of the Property be made, unless and until the plans and specifications, showing the color, nature, kind, shape, materials and location of the same, shall have been submitted to and approved in writing by the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography.

6.02 Architectural Review Board.

(a) The architectural review and control functions of the Association shall be administered and performed by the Architectural review Board (hereinafter referred to as the "ARB"), which shall consist of not more than (three (3) members who may or may not be members of the Association. So long as the Developer owns any Lots within the Property, the ARB shall be designated by the Developer. The ARB shall initially be comprised of Charles Givianpour, Bryson Weygand and John Baird, who shall serve until their death or resignation or until their successors are elected as herein provided.

(b) The vote or written consent of a majority of the members of the ARB shall be the Act of the ARB; provided that a majority of the members of the ARB may delegate the right to act for an on behalf of the ARB to one or more of its members.

(c) Subject to the provisions of subparagraph (a) above, the remaining members of the ARB shall have full authority to elect a successor to the ARB upon the death or resignation of a member of the ARB. Subject also to the provisions of subparagraph (a) above, the Owners of a majority of the Lots shall have the power, through a duly recorded written instrument, to remove a member from the ARB and to elect a member of the ARB to fill any vacancy in the ARB created by such removal or otherwise.

(d) The members of the ARB shall not be entitles to any compensation for services performed pursuant to this covenant.

6.03 Powers and Duties of the ARB. The ARB shall have the following powers and duties:

(a) To adopt and approve, from time to time and at its election, Architectural Planning Criteria (hereinafter referred to as "APC") for the Property. The PAC, if any, shall be consistent with the provisions of this Declaration, and shall no be effective until approved in writing by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and voting. Notice of the adoption of the APC, or any modification or amendment to the APC, including a verbatim copy thereof, shall be delivered to each member of the Association, provided that such delivery shall not constitute a condition precedent to the effectiveness or validity of such adoption or modification.

(b) To require submission to the ARB of plans and specifications for any improvement or structure of any kind, and any change, modification or alteration thereof, including, without limitation, any such improvement of change to any building, fence, wall, sign, lighting system, site paving, grading, satellite dish, screen enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or is proposed upon any Lot or the Property. Such plans and specifications shall be in such form and shall contain such information as may be reasonably be limited to:

1. An accurately drawn and dimensional plot plan showing all building set-backs, easements, drives and walks.

2. Foundation plan, floor plan, exterior elevations of building as they will actually appear after all back filling and landscaping is done from finished ground up. (The back filling sketch may be drawn by builder.)

3. All plans must include a summary specifications list of proposed materials and samples of exterior materials which cannot be adequately described on the plans, and of materials with which the committee is unfamiliar.

The ARB may also require such additional information as reasonably may be necessary for the ARB to evaluate completely the proposed structure or improvement in accordance with this Declaration and the APC.

(c) To approve or disapprove the submitted plans and specifications for any improvement or structure as hereinabove described prior to commencement of construction of such improvement or structure. In the event that the ARB shall fail, for a period of ten (10) days from the date of receipt of such submission, to approve or disapprove any plans or specifications submitted to it for approval, the same shall be deemed to have been approved. The approval by the ARB of plans and specifications submitted for its approval, as herein specified, shall not be deemed to be a waiver by the ARB of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use of other Lots. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board of Directors of the Association, within thirty (30) days of such decision, for a review thereof. The determination of the Board of Directors, after reviewing any such decision, shall in all events be dispositive. If any improvement or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARB, shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARB, then the Owner shall, upon and in accordance with a demand by the ARB, then the Owner shall, upon and in improvement or structure either to be restored to its original condition or to comply with the plans and specifications as approved by the ARB, and shall bear all costs and expenses of such restoration or compliance, including the costs and reasonable attorneys' fees of the ARB. Notwithstanding the aforesaid, after the expiration of one year from the date of final completion of any such improvement or structure, such improvement or structure shall be deemed to comply with all of the provisions hereof unless notice to the contrary shall have been recorded in the office of the Judge of Probate of Shelby County, Alabama, or legal proceedings shall have been instituted to enforce such time enter any building or property subject to the jurisdiction of the ARB which is under construction or on or in which the agent or member may believe that a violation of the protective covenants in this Declaration is occurring or has occurred. Prior to the use or occupancy of any improvement or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the

ARB that the construction thereof has been complete in accordance with the plans and specifications approved by the ARB. In the event that the ARB shall fail, for a period of ten (10) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The ARB may, from time to time, delegate to a person or persons, who may or may not be a member of the ARB, the right to approve or disapprove plans and specifications and to issue such certification.

(d) To adopt fees which shall be designed to reimburse the Association for the necessary and reasonable costs incurred by it in processing requests for ARB approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the Association, in cash, at the time that any application for approval is sought from the ARB.

(e) In the event the fees specified in subparagraph (d) above or any other costs or expenses of the ARB or Board pursuant to any other provisions of this Article are not paid by the Owner, they shall become a lien of the Association on the affected Lot enforceable in the manner specified in Article IV hereof.

(f) Neither the ARB nor any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specification submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. The ARB shall not be liable to any Owner for any actions taken, or omitted to be taken by the ARB or the individual members thereof in the performance of their respective duties hereunder.

6.04 Subsurface Conditions.

(a) The Property is located in an area which may include sinkholes, underground mines, and subsurface conditions which may result in sinkholes. Approval of the submitted plans and specifications by the ARB as herein provided shall not be construed in any respect as a representation or warranty of the ARB and/or the Developer to the Owner submitting such plans and specifications, or successors or assigns of such Owner, that the surface or subsurface conditions of the Lot are suitable for the construction of the improvements contemplated by such plans and specifications. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Lot for the construction of any and all structures and other improvements thereon.

(b) Neither the ARB and its individual members, not the Developer and its partners, agents, and employees and the officers, directors, agents and employees of its partners, shall be liable to any Owner, or the successors, assignees, licensees, lessees, employees and agents of any Owner, for loss or damage on account of injuries to the property or to any buildings, improvements, or structures now or hereafter located upon the Property, or on account of injuries to any Owner, occupant, or other person in or upon the Property, which are caused by, or arise as a result of, past or future soil and/or subsurface

conditions, known or unknown (including, without limitation, sinkholes, underground mines, and limestone formations), under or on the Property.

6.05 Construction of Improvements.

(a) During all construction, all vehicles involved, including those delivering supplies, must enter the Lot on the driveway only as approved by the ARB so as not to damage, unnecessarily, trees, street paving and curbs. The Association shall have the right to repair any damage not repaired after then (10) days written notice and to charge the Owner a reasonable cost for such repair, which charge shall constitute a lien upon such Lot enforceable in accordance with Section 4.10 of this Declaration. During construction, the homes garages and building sites must be kept clean. All building debris, stumps, trees, etc. must be removed from each Lot by Owner or his agents as often as necessary to keep the Lot attractive. Such debris will not be dumped in any area of the Property.

(b) Upon the commencement of construction of any building on a Lot, work thereon must be prosecuted diligently and continuously and must be completed within twelve (12) months from the date of commencement of construction.

ARTICLE VII

RESTRICTIONS

7.01 Use Restrictions. The Property will be used for residential purposes only, and no trade or business purposes, including all types of home industry, will be permitted. No building or structure other than a single family dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners; and

(b) raising, breeding, or keeping of any animals, bird, or fowl; provided that an Owner shall be permitted to keep not more than two dogs and/or cats as domestic pets on a single Lots and provided further that the Association, in it sole discretion, may approve more animals to be kept as domestic pets on a Lot; and

(c) exploring, mining, boring, quarrying, drilling, or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas.

Any Owner may request from the Association at any time a determination of whether a projected use of its Lot is permitted. A certificate to that effect sighed by an officer of the Association shall be deemed to be dispositive of that issue.

7.02 Lot Size. Unless otherwise permitted in Article II of this Declaration, no Lot shall be subdivided without the prior written approval of the Association.

7.03 Limitation on Size and Location of Structures.

(a) No structure shall be erected, altered, placed or permitted to remain on any Lot other than a main single family dwelling not to exceed two and one-half stories, or thirty-five (35) feet in height and private garage for not more than four cars. No detached building other than the main single family dwelling shall be constructed or permitted on any Lot unless previously approved by the ARB. Notwithstanding anything to the contrary herein, the Developer shall be permitted to construct and maintain on one Lot only a structure and related facilities designed and used as a sales center for the marketing of real estate including the Lots subject to these covenants and adjoining land and improvements thereon owned by the Developer.

(b) No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat for the Property. No building shall be located on any Lot nearer than 30 linear feet to the front Lot line, or nearer than 30 linear feet to any side street line. No building shall be located nearer than 10 linear feet to an interior Lot line. No dwelling shall be located on any interior lot nearer than 30 linear feet to the rear Lot line. For the purpose of this covenant, eaves, steps, and open decks or terraces shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

(c) Each main structure residential building, excluding of open porches, garages, basements and carport, shall not be less than 2,000 square feet on the ground floor of any one-story building; not less than a total of 2,200 square feet in the case of a 1-1/2 story building, with a minimum of 1,600 square feet of the 2,200 square feet being on the first floor of a 1-1/2 story building; and not less than 2,400 square feet in the case of a 2-story building with a minimum of 1,300 square feet being on the first floor of the 2-story building.

(d) No tree houses shall be permitted.

7.04 Exterior Lighting. Exterior lighting shall be subject to the review and approval of the ARB.

7.05 Utilities. All electrical and telecommunication lines located upon the Property, other than those existing on the date of this Declaration, shall be installed and maintained underground unless the ARB specifically approves above ground installation of such lines.

7.06 Maintenance. all buildings, landscaping and other improvements upon individual Lots shall be continuously maintained by the Owner thereof so as to preserve a

well-kept appearance, especially along the boundaries of any Lot. The Association shall have the responsibility of insuring that all such improvements are so maintained. The Association may appoint a maintenance committee to oversee and implement its responsibility and to amend and enforce the same, including the following maintenance standards.

(a) Trash. No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the ARB as not to be visible from any road within sight distance of the Lot at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period.

(b) Landscaping. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of a Lot, including vacant parcels. This provision shall not apply to the Developer until the last Lot is sold to an Owner other than the Developer.

7.07 Temporary Structures. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. No storage building of any type shall be permitted unless such building is designed as part of the main residential structure and approved by ARB. There shall be no occupancy of any dwelling until the interior, exterior and landscaping of the dwelling is completed and a certificate, or other satisfactory evidence, of completion is received and approved by the ARB.

7.08 Fences and Hedges. Chain link or any other wire fences shall not be used. A wooden fence or privacy screen may be used; provided that no fence, wall, hedge or shrub planting, which obstructs sight lines at elevations between 2 and 6 feet above the roadways, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersections of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of street line with the edge of a driveway or alley pavement. Trees shall be permitted to remain within such distances of such intersections provided the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

7.09 Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than two (2) square feet, one sign of not more than six square feet advertising the property for sale or rent, or signs used by a builder to advertise during the construction and sales period. All signs shall be nailed to trees. This provision shall not apply to the Developer during the sales period.

7.10 Garages. Garage openings will not be permitted on the front of the houses unless specifically approved by the ARB, where it is unavoidable in which case electric automatic door closures shall be used.

7.11 HVAC Equipment.

(a) Outside air conditioning units may not be located in the front yard or any required side or rear yard.

(b) No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

7.12 Satellite Dishes. The use of satellite dishes will be restricted to the rear of each Lot. No satellite dish will be allowed on the front or side yards of the Lots. A plan illustrating the location and the planting of trees and shrubs (hiding the satellite dish from view) must be submitted to the ARB for written approval prior to the installation. If the dish cannot be hidden from the street view then the use of a dish will be denied by the ARB. If cable television is available to a Lot, no satellite dish will be permitted on that Lot; provided that the Owner of Lot may continue to use a satellite dish which has been installed on a Lot prior to the availability of cable television.

7.13 Storage of Boats, Trailers and Other Vehicles. No motor homes, boats, trailers, wrecked cars, unmaintained cars, or vehicles other than operating automobiles, pickup trucks, or vans can be parked or stored on the streets within the Property or in any location that can be seen from said streets.

7.14 Tenants. It shall be the responsibility of each Owner to insure that any tenant of any Lot portions thereof which is owned by it or him receives a copy of the aforesaid restrictions and that every lease utilized by such Owner contain a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration, the Articles, the By-laws and all Rules and Regulations adopted pursuant thereto and for all costs of enforcing the same.

7.15 Enforcement. If a determination is made by the Association that any of the aforementioned restrictions are being or have been violated upon any Lot, the Association shall so notify the Owner in writing, specifying the violation. If within thirty (30) days from such notification, the Association shall make a second determination that sufficient progress has not been made to remedy the violation. The Owner shall be liable for the cost and expense of all such actions and the Association may treat all such costs and expenses therefor as a charge which shall become a lien of the Association of the affected Lot enforceable in the manner specified in Article IV hereof.

7.16 Variance Requests. The ARB, in its discretion, shall have the authority to modify the requirements of Sections 7.02, 7.03, 7.08, 7.09, 7.10, 7.11, 7.12 and 7.13 of this

Article VII upon the request for a variance from such requirements by an Owner with respect to his Lot. If the ARB grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of these covenants.

ARTICLE VIII

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATIONS

8.01 Membership. Every Owner, including the Developer, shall, for so long as it is an Owner, at all times be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted), or upon such ownership interest being divested in some other manner.

8.02 Voting. Subject to the restrictions hereinafter set forth, each member shall be entitle to one (1) vote for each Lot in which he holds the interest required for membership. When one or more person hold such interest, all such persons may be members, and the vote(s) for such Property shall be exercised in the manner set forth in the By-Laws, but in no event shall more than one vote be cast with respect to any one Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of this Declaration, the Articles or the By-Laws, the affirmative vote of Owners who own a majority of the total Lots of Property that are represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth in the By-Laws.

Notwithstanding the provisions of this Section 8.02, the Developer shall have the right to elect the members of the Board of Directors of the Association, and in the event of the vacancies, the Developer shall fill vacancies, until such time as all lots have been sold to Owners other than Developer, or the Developer elects, at its option, to terminate its control of the Association, whichever first occurs.

ARTICLE IX

NATURE OF PROTECTIVE COVENANTS; DEFAULTS AND REMEDIES

9.01 Protective Covenants Running with the Land. The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with such

Property and inure to the benefit of and be enforceable by the Developer, by the Association, or by any Owner for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive period of ten (10) years, unless an agreement, which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration has been recorded in the Office of the Judge of Probate of Shelby County, Alabama.

9.02 Default. Violation or breach of any of the Protective Covenants shall constitute a default hereunder. Any person given the right to enforce the Protective Covenants herein set forth may provide written notice thereof to any Owner (and any Institutional Mortgagee who or which has requested the same and provided to the Association an address for such notices).

9.03 Remedies for Default. The existence of any default which has not been cured within thirty (30) days of the notice specified above shall give the Developer, the Association, any Owner, in addition to all other remedies specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them.

9.04 Nature of Remedies; Waiver. All rights, remedies and privileges granted to the Developer, Association and the Owners, pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

9.05 Assignment. The Developer and/or the Association shall have the right to assign their respective rights to enforce these Protective Covenants. In the event of such assignment, the assignee shall have all the rights, remedies and privileges granted to its assignor under the provisions of this Article IX.

9.06 No Right of Reverter. No covenant, condition or restriction set forth in this Declaration is intended to be, or shall be construed as, a condition subsequent or as creating the possibility of reverter.

ARTICLE X

AMENDMENT OF DECLARATION

10.01 Amendment By Developer. The Developer reserves the right unilaterally to amend this Declaration, and to do so at such time, and upon such conditions, in such form

and for such purposes as it, in its sole discretion, shall deem appropriate by preparing and recording an amendment hereto, provided, however, that this right of unilateral amendment is subject to the limitations set forth in Section 10.03 hereof and provided, further, that this right of unilateral amendment shall expire after all Lots have been sold to Owners other than the Developer, after which time this Declaration may be amended only in the manner set forth in Section 10.02 below.

10.02 Amendment By Association.

(a) Amendments to this Declaration may be proposed by either the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by the affirmative vote of members of the Association who own not less than a majority of the Lots, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to the Declaration being proposed by the said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association or, in the absence of the President, such other officer of the Association, who shall thereupon call a special meeting of the members for the Association for a date not sooner than twenty (20) days, nor later than sixty (60) days, from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than fifty (50) days, before the date set for such special meeting. Such notice shall be given to any Institutional Mortgagee of record who requests such notices and provides an address therefor to the Association. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the member at his post office address as it appears on the records of the Association, the postage thereon being prepaid. Any member may, by written waiver of notice signed by such members, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such special meeting, the amendment or amendments proposed must be approved by the affirmative vote of members who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effect. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Office of the Judge of Probate of Shelby County, Alabama within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such

meeting or represented there at by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

10.03 Restrictions on Amendment. Notwithstanding the foregoing provision of this Articles X.

(a) No amendment shall materially adversely affect the rights of any owner or group of Owners, unless such Owner or all Owners so adversely affected shall consent thereon. For example, no amendment shall alter the basis for apportionment of assessments in a manner which would materially adversely affect any Owner or Owners, as opposed to other Owners, unless the Owner or Owners so adversely affected shall consent thereto.

(b) No amendment shall materially adversely affect the rights and priorities of any Institutional Mortgagees of record or change the provisions of this Agreement with respect to Institutional Mortgagees, unless all Institutional Mortgagees of record so adversely affected shall consent thereto.

(c) No amendment to this Declaration shall make any change in the qualifications of the membership nor in the voting or property rights of members, without approval in writing by all members and the joinder of all Institutional Mortgagees.

(d) No amendment to this Declaration shall abridge, limit, amend or alter the rights, privileges, powers or options of the Developer or any Institutional Mortgagee, as the same are set forth in this Declaration, without the prior written consent of the Developer if it is so affected and/or any Institutional Mortgagee which is so affected.

(e) No amendment shall be made to this Declaration so long as the Developer owns any Lot, unless the Developer shall consent thereto. Such consent may be withheld by the Developer for any reason or no reason at all.

10.04 Scrivener's Error. Notwithstanding the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of an amendment to this Declaration consented to by the Board of Directors of the Association and any Owners or mortgagees of record directly affected by the amendment. If there appears to be any other omissions or errors in this Agreement, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment to this Declaration executed by the Board of Directors of the Association without the consent of any other party.

ARTICLE XI

GENERAL PROVISIONS

11.01 Developer's Lien. In consideration of the conveyance of each Lot to each purchaser, the developer, or his appointee, shall receive, in addition to the consideration for

the sale of the Lot, a six percent (6%) commission on the resale of the Lot when the same has been improved by the construction of a single family residence. The Developer has designated Prime Realty to receive the commission and for such commission Prime Realty will perform the usual and customary services of a "listing broker" and will "co-op" the sale with any other licensed real estate broker or agent. The liability for payment of the real estate commission, on sale of the Lot as an improved Lot, shall be the personal obligation of the person or entity who conveys title to the Lot, as well as a lien upon the lot enforceable as are other liens against the Lot, including, without limitation, the lien for unpaid association assessments set forth in Article V hereof and the lien shall survive foreclosure, disposition of the Lot by operation of law, or otherwise.

11.01 Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage paid, to the address of such Owner as it appears on the records of the Association at the time of such mailing.

11.02 Severability. Invalidation of any provision or provisions hereof by judgement or court order shall in now way affect any previous other provision, all of which shall remain in full force and effect.

11.03 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

11.04 Captions. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope of intent of this Declaration.

11.05 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

11.06 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, the Articles, the By-Laws or the Rules and Regulations, then the provisions of this Declaration shall prevail.

11.07 Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Shelby County, Alabama.

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the date first above written.

"Developer"

WINDMERE DEVELOPMENT CO., INC.
an Alabama corporation

By: C. S. Givianpour
Its President

Date of Execution: April 4, 1994

[SEAL]

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Charles S. Givianpour**, whose name as President of **WINDMERE DEVELOPMENT CO., INC.**, an Alabama corporation, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily as the act of said corporation.

GIVEN under my hand and official seal of office, this 4th day of April, 1994.

[NOTARIAL SEAL]

Mayne Gray-Benton
Notary Public

My Commission Expires: 6/10/97

Inst # 1994-10992

224/05/1994-10992
10:02 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 MCD 63.00

Inst # 1994-10992