

# Amendment # 4

PLEASE RETURN THIS INSTRUMENT TO:  
Steven M. Winter, Esq.  
WEINSTOCK & SCAVO, P.C.  
3405 Piedmont Road, N.E.  
Suite 300  
Atlanta, Georgia 30305

Gwinnett County Cross Reference: Deed Book 7200  
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Hall County Cross Reference: Deed Book 1717  
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STATE OF GEORGIA  
COUNTIES OF HALL AND GWINNETT

## AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR WINDRUSH SUBDIVISION

THIS AMENDMENT TO THE DECLARATION OF RESTRICTIVE COVENANTS FOR WINDRUSH SUBDIVISION (hereinafter "Amendment") is made and entered into as of this 30<sup>th</sup> day of May, 2002 by D.W. Millen and Associates, Incorporated, a Georgia corporation (hereinafter the "Declarant").

### WITNESSETH:

WHEREAS, that certain Declaration of Restrictive Covenants for Windrush Subdivision was recorded by the by Declarant, on or about February 24, 1992 in Deed Book 1717, Page 240, et seq., of the Hall County, Georgia records and March 6, 1992 in Deed Book 7200, Page 98, et seq., of the Gwinnett County, Georgia records (hereinafter, together with all duly recorded Amendments thereto, being collectively referred to as the "Declaration"); and

WHEREAS, the Declaration may be amended in accordance with Article II, Section 2.3 by the Declarant if it is the owner of any real property then subject to the Declaration; and

WHEREAS, Declarant is currently the title owner of real property subject to the Declaration; and

WHEREAS, the following Amendment has been approved by the Declarant; and

NOW, THEREFORE, the Declaration is hereby amended as follows:

I. By deleting Article I, Section 1.1 of the Declaration in its entirety and substituting therefor a new Article I, Section 1.1, which shall read as follows:

Section 1.1(a)            Creation of Design Review Board.

The Declarant shall establish and maintain a Design Review Board ("DRB") consisting of at least one (1) and no more than five (5) members, who shall be Members of the Association. Until the Conversion Date, the Declarant shall appoint all members of the DRB and all members of the DRB may be removed by Declarant with or without cause. For purposes of this Article, Conversion Date shall be defined as the date at which the Declarant no longer owns any Lot (excepting any Common Property owned by the Declarant, if any) at the Windrush Subdivision. After the Conversion Date, the DRB shall consist of at least three (3) and no more than five (5) Members of the Association, and the Board of Directors shall have the exclusive right and authority at any time, and from time to time, to appoint and remove members of the DRB with or without cause.

Section 1.1(b)            Function of DRB.

No Improvements shall be erected, constructed, placed, altered, remodeled, maintained or permitted to remain on any portion of the Property, including on any Lot, until two (2) complete, final building plans and specifications shall have been furnished to the DRB and approved by it in writing (with one (1) copy to be retained by the DRB for its records) (notwithstanding the rights of the Modifications Committee as provided in Section 1.1(c) of this Article). For purposes of this Article, Improvements shall mean and refer to any residential structure (and all garages, porches, balconies, accessory structures, decks, overhangs, foundations, extensions, and projections appurtenant thereto), driveways, parking areas, fences, walls, recreational equipment, playhouses, play equipment, pools, steps, landscaping, lighting, signage, and all other structures, improvements, or landscaping materials of every kind and type placed, erected, constructed or maintained or permitted on a Lot. The DRB shall have the authority to select and employ professional consultants to assist it in discharging its duties and the cost of such consultants shall be paid by the Lot Owner for which plans and specifications have been submitted for approval prior to such plans and specifications being considered for approval by the DRB.

Section 1.1(c)            Modifications Committee.

The Board of Directors shall appoint a Modifications Committee of not less than three (3) nor more than five (5) members (hereinafter "Modifications Committee"), who shall be Members of the Association. The Modifications Committee shall have all rights and authority of the DRB, concerning the erection, construction, placement, alteration, remodeling or maintenance of any Improvement on any Lot owned by Persons other than the Declarant, affiliates of Declarant or builders who own such Lot for the purposes of residential construction. The Modifications Committee shall be governed by and shall act consistent with all of the rights, obligations, terms, provisions and guidelines concerning and applicable to the DRB set forth in this Article. After the Conversion Date, the Modifications Committee shall automatically

terminate and cease to exist, and all of the rights and powers granted to the Modifications Committee hereunder shall automatically revert to the DRB.

Section 1.1(d) Plans and Specifications.

Such plans and specifications as required to be submitted and approved by the DRB as provided herein shall include the following information:

- (1) Nature, shape and kind of structure or modification;
- (2) Type of materials;
- (3) Finishes and colors of all exterior surfaces, including roof covering;
- (4) The location on Lot and floor plans;
- (5) Front, side and rear elevation;
- (6) Location of drives and parking areas; and
- (7) Name of builder or contractor.

The DRB shall have the right to approve or disapprove any submitted plans and specifications that are not in compliance with this Declaration, if they are incomplete or if the DRB otherwise reasonably determines that such plans and specifications do not comply with the community wide architectural or design standards generally prevailing in the Windrush Subdivision. In making such determination, the DRB may consider among other things, the following:

- (1) Harmony of exterior design with the existing or proposed structures erected on the Lots of Windrush;
- (2) General quality in comparison with the existing standards of structures erected on the Lots of Windrush;
- (3) Location in relation to the surrounding structures, notwithstanding location within the set-back lines as provided in Section 1.2 of this Article;
- (4) Location in relation to topography; and
- (5) Aesthetic considerations.

Should the DRB fail either to approve or disapprove the plans and specifications within thirty (30) days after such plans have been received by the DRB in accordance with the terms of the Declaration, it shall be conclusively presumed that the DRB has approved the plans and specifications. Approval of any plans and specifications with regard to a Lot shall not be deemed

to be a waiver of the DRB's right, in its discretion, to disapprove similar plans and specifications, or any features or elements included therein, for any other Lot.

Section 1.1(e)                      Release of Liability.

Each Owner hereby releases the Declarant, the Association, the Board of Directors, the DRB and the Modifications Committee, from any and all liability for (i) any defects in any plans and specifications submitted, revised or approved pursuant to the terms of this Declaration, (ii) any loss or damage to any Person arising out of the approval or disapproval of any such plans and specifications, (iii) any loss or damage arising from the noncompliance with such plans and specifications or any governmental ordinance or regulation, or (iv) any defects in construction undertaken pursuant to such plans and specifications, regardless of whether such claim arises by reason of mistake in judgment, negligence or nonfeasance by the DRB or Modifications Committee.

Section 1.1(f)                      Compliance with Law.

All Improvements constructed, erected, placed, altered, remodeled, maintained or permitted on any Lot shall comply with any and all applicable federal, state, county and municipal zoning and building restrictions, including, but not limited to, grading, clearing, construction of impervious surfaces, building and other construction rules and regulations.

Section 1.1(g)                      Inspection.

The DRB, or its designee, shall have the right during reasonable business hours to enter upon and inspect any Lot or Improvement under construction to determine whether the approved plans and specifications are being followed or adhered to. If the DRB shall determine that such plans and specifications have not been approved or that the plans and specifications are not being followed or adhered to, the DRB may in its discretion give the owner of such Lot written notice of such violation. If such violation is not corrected, the DRB shall have the right to enjoin further construction and/or require the removal or correction of any work in place that does not comply with the approved Plans or this Declaration and to take such other action as may be allowed under this Declaration, the By-Laws or under applicable law.

Section 1.1(h)                      Interior Alterations.

No Lot Owner shall make any alterations or Improvements to the interior of a residence on his Lot, remove any portion thereof, make any additions thereto, or do anything that would change the exterior appearance of such Improvements without first submitting plans and specifications therefore and obtaining the written consent of the DRB pursuant to this Article. Any other interior alteration of any Improvement may be made by the Lot Owner without first obtaining the approval of the DRB.

II. By deleting Article I, Section 1.2(c) of the Declaration in its entirety and substituting therefore a new Article I, Section 1.2(c), which shall read as follows:

(c) Detached buildings of a permanent nature may be placed on a lot to be used for the following purposes:

- (i) A garage for not more than three (3) automobiles;
- (ii) A building for servants' quarters, guest quarters, or children's quarters;
- (iii) A playhouse or other enclosed building for recreational purposes;
- (iv) A greenhouse;
- (v) A doghouse pursuant to subsection (g) of this section; or
- (vi) a tool shed.

Such buildings shall not exceed twenty (20) feet in height and shall conform in exterior design and quality to the residence. With the exception of buildings used for garages that are part of the residence, detached buildings placed on any Lot shall be located only behind the residence as such residence fronts on a street of Windrush. Such detached buildings shall also be located within such side and rear set-back lines as may be specified on the recorded plat of Windrush and as required by Section 1.3 of this Article. The DRB shall have the right to approve or disapprove the plans and specifications for any detached building to be erected on any Lot, any such building may not be erected until complete final plans and specifications for detached buildings shall have been submitted to and approved by the DRB in accordance with the provisions of Section 1.1 of this Article. Any detached building shall be constructed concurrently with or subsequent to the construction of the residence on the Lot.

-III. By deleting Article I, Section 1.2(d) of the Declaration in its entirety and substituting therefore a new Article I, section 1.2(d), which shall read as follows:

(d) Construction of any approved Improvements shall commence within ninety (90) days from the date of such approval. All Improvements shall be completed within six (6) months after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, floods, lightning, earthquakes, or other casualties; and notwithstanding the foregoing provision, all Improvements shall be completed within one (1) year after the construction of such Improvements shall have commenced.

IV. By deleting Article VI, Section 6.5(a) in its entirety and substituting therefore a new Article VI, Section 6.5(a), which shall read as follows:

(a) This Section is intentionally left blank.

V. By adding a new Article VI, Section 6.9 to the Declaration entitled "Transfer Assessments" which shall read as follows:

Section 6.9

Transfer Assessments.

Except as herein provided, upon each and every transfer or conveyance of a Lot (excepting Common Property), the transferee or grantee becoming the Lot Owner at each such conveyance shall be obligated to pay to the Association, in addition to all other assessments levied under this Declaration, simultaneously upon such conveyance a non-refundable assessment in an amount equal to the total annual assessment per Lot as it exists at the time of the transfer or conveyance (hereinafter the "Transfer Assessment"); provided, however, no Transfer Assessment shall be due on any transfer from the Declarant to a builder who owns such Lot for the purposes of residential construction. All Transfer Assessments collected by the Association shall be deposited by the Association in a reserve account which shall be for the purpose of funding costs required to repair or replace Improvements which are a part of the Common Property. A transfer or conveyance of a Lot upon which a single-family residence has been constructed for the purpose of Estate Planning, as herein defined, shall be exempt from the Transfer Assessment. "Estate Planning" shall mean the transfer of a Lot between spouses or to children of the grantor or to a trust having the spouse or the children of the grantor as the beneficiary.

VI. By deleting the last sentence of Article VIII, Section 8.2(a) of the Declaration and substituting therefore the following:

If the Lot Owner shall fail to take reasonable steps to remedy such violation or breach within ten (10) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

VII. This Amendment shall be effective upon recordation in Hall County, Georgia and Gwinnett County, Georgia Clerks of the Superior Court records.

VIII. Except as amended hereby, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, by execution below, the Declarant has approved this Amendment.

Signed, sealed and delivered  
in the presence of:

DECLARANT:

D.W. Millen and Associates, Incorporated,  
a Georgia corporation

Stan S Miller  
Witness

By: Stan V Miller

Patricia Reda  
Notary Public

Title: President

My Commission Expires: 3/13/06