

Amendment # 5

SPACE ABOVE RESERVED FOR RECORDING DATA

After recording, please return to: Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center, Fourth Floor
3500 Lenox Road
Atlanta, Georgia 30326
Attn: AML

STATE OF GEORGIA

Cross Reference: Gwinnett County Deed Book: 7200

Page: 98

COUNTIES OF GWINNETT AND HALL

Hall County Deed Book: 1717

Page: 240

AMENDMENT TO THE DECLARATION OF RESTRICTIVE COVENANTS
FOR WINDRUSH SUBDIVISION AND RELINQUISHMENT OF DECLARANT RIGHTS EXCEPT
FOR ARCHITECTURAL APPROVAL FOR NEW CONSTRUCTION ON VACANT LOTS OWNED
BY DECLARANT

WHEREAS, D.W. Millen and Associates ("Declarant") filed that certain Declaration of Restrictive Covenants for Windrush Subdivision dated February 12, 1992, in Deed Book 7200, Page 98 *et. seq.* of the Gwinnett County land records and in Deed Book 1717, Page 240, *et. seq.* of the Hall County land records (herein together with all duly recorded amendments thereto, being collectively referred to as the "Declaration"); and

WHEREAS, Article II, Section 2.3 of the Declaration may be amended at any time from time to time during the initial period of the Declaration and during the renewal and extension thereof, by an agreement signed by the Declarant, if it is the owner of any real property then subject to the Declaration; and

WHEREAS, Declarant still owns property subject to the terms and conditions of the Declaration; and

WHEREAS, Declarant desires to amend the Declaration as evidenced by its signature hereto; and

WHEREAS, the Declaration and the Articles of Incorporation provide Declarant with certain powers and rights as Declarant, and Declarant desires to fully and forever surrender all rights, powers and privileges afforded to itself under the Declaration and the Articles of Incorporation of the Association, except for any and all requisite architectural approval for new construction on vacant lots owned by Declarant.

NOW, THEREFORE, in consideration of One (\$1.00) Dollar in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declaration is hereby amended as follows and Declarant, on behalf of itself, its predecessors, successors, assignors and assigns, hereby forever relinquishes, renounces, surrenders, and waives all rights, privileges, interests and other powers granted to or retained by itself as Declarant under the Declaration and/or Articles of Incorporation of the Association, except for any and all requisite architectural modification approval for all new construction on the vacant lots owned by Declarant.

1.

Article I, subsection 1.4(g) of the Declaration is hereby deleted in its entirety and the following is substituted therefor:

Vehicles may only be parked in garages, on the concrete slabs appurtenant to each Lot or other areas specifically authorized in writing by the Board. 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, trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles) and recreational vehicles (RV's and motor homes) are also prohibited from being parked on the Property, except in garages or other areas designated by the Board as parking areas for particular types of vehicles.

If any vehicle is parked on any portion of the Property in violation of this subsection or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user. If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

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

that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible; provided, however, that all garage conversions in existence at the time of the adoption of this Amendment, and made in compliance with all of the terms of the Declaration, shall not constitute a violation of this requirement.

2.

Article I, subsection 1.4(h) is hereby deleted in its entirety and the following is substituted therefor:

(h) No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Modifications Committee. 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 of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

3.

Article II, Section 2.1 is hereby deleted in its entirety and the following new Section 2.1 is substituted therefor:

Section 2.1 Duration

The covenants and restrictions of this Declaration shall run with and bind the land, shall be and remain in effect, and shall inure to be benefit of and be enforceable by the Declarant, the Board of Directors and the owner of any interest in any property subject to this Declaration to the extent provided in O.C.G.A. § 44-5-60, as may be amended from time to time.

4.

Article II, Section 2.3 of the Declaration is hereby deleted in its entirety and the following new Section 2.3 is substituted therefor:

Section 2.3 Amendment

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 members of the Association holding a majority of the total eligible vote thereof. 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 certified by the President and Secretary of the Association and filed in the Gwinnett County and Hall County, Georgia land records. For purposes of voting on amendments, no owner shall be "eligible" to vote if more than thirty (30) days delinquent in the payment of any assessment to the Association or if found and noticed to be in violation of the provisions of the Declaration or By-Laws.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"). The Board shall be permitted, without a vote of the membership, to amend the Declaration to subject the Association to the Georgia Property Owners Association Act ("POAA").

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 Gwinnett County and Hall County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

5.

Article VIII of the Declaration is hereby deleted in its entirety and the following is substituted therefor:

ARTICLE VIII

Rule Making and Enforcement

8.01. 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 and the Common Property. 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 Member and Occupant of a Lot 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 Members, 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 or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any Association rules and regulations; provided, however, nothing herein shall authorize the Association or the Board to deny 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 8.02 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.

In any enforcement action taken by the Association under this Article VIII, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant, pursuant to Paragraph 6 of the Declaration.

8.02. Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote or to use the Common Property, 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 8.02 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 fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspensions. Fines and suspensions 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 fine(s) and/or suspension(s). In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines 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.

8.03. 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 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 8.02 of this Article.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property 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. Except in emergency situations or situations involving repeat violations for which notice hereunder already has been given, or as

otherwise specified in the Declaration, entry onto a Lot to abate or remove a violation shall be made only after ten (10) days written notice to the violating Member. All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred by the Association, shall be assessed against the violating Member and his or her Lot. Additionally, the Association shall have the authority to record in the Gwinnett County and Hall County land records a notice of violation identifying an uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

IN WITNESS WHEREOF, the duly undersigned Declarant of the Declaration of Restrictive Covenants for Windrush Subdivision has executed this Amendment this 1 day of October, 2004.

Sworn to and subscribed before me
this 1 day of Oct,
2004.

DECLARANT: D.W. MILLEN & ASSOCIATES, INC.

By: D.W. Millen (Seal)

Title: President

William MacIntyre
Witness

[Signature]
Notary Public

[Notary Seal]