

BOOK 7200 PAGE 98

DECLARATION OF Georgia, Hall County, Clerk Superior Court
RESTRICTIVE COVENANTS Filed in office, this 24 day of Feb
FOR 19 92 at 1:45 PM Recorded in Book 1717
WINDRUSH SUBDIVISION Page 41-42 this 25 day of Feb, 1992

DWIGHT S. WOOD, Clerk
P.O. Box 31265
mail: Chestnut + Linington

STATE OF GEORGIA
COUNTIES OF GWINNETT AND HALL

THIS DECLARATION, made this 17 day of February, 1992, by D.W. MILLEN & ASSOCIATES, INCORPORATED, a Georgia Corporation ("Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property (the "Property"), known as Windrush Subdivision ("Windrush"), and being more particularly described as follows:

All that tract or parcel of land lying and being in Land Lots 331 and 332 of the 7th District of Hall County and Land Lots 327, 332, and 333, 7th District of Gwinnett County, Georgia, as more particularly shown on the plat of Windrush Subdivision, Unit One, dated December 31, 1992, Prepared by Hobby Land Surveying, said plat being recorded in Plat Book 55, page 18-21, Gwinnett County Records, State of Georgia, and in Plat Book Slide 114, page 237A, Hall County Records, State of Georgia.

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.
172 MAR -6 AM 9:00
MARY R. YATES, CLERK

WHEREAS, declarant has subdivided the property for the purpose of the development of Windrush as a residential community and desires to subject the property to the protective covenants and restrictions hereinafter set forth in this Declaration ("Declaration"); and

WHEREAS, the protective covenants and restrictions hereinafter set forth are for the purpose of protecting the value and desirability of the lots in Windrush, and it is to the benefit and advantage of Declarant and its successors in ownership of said lots that these protective covenants and restrictions regulating the use of one or more of such lots, be established, set forth and declared to be covenants running with the real property of Windrush and that provision be made for subjecting other real property which may be developed as a part of Windrush to these protective covenants and restrictions;

NOW THEREFORE, in consideration of said benefits, Declarant hereby declares that the property is subject to the covenants and restrictions hereinafter set forth in this Declaration and shall be upheld, transferred, sold, conveyed, used, occupied and mortgaged or

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CHESTERFIELD INDUSTRIAL PARK
6400 PEACHTREE INDUSTRIAL BOULEVARD
DORAVILLE, GA 30360

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otherwise encumbered subject to said covenants and restrictions; Declarant further hereby declares that such other real property as may later be subjected to this Declaration pursuant to the provisions of Section 2.2 of Article II, shall, from and after the filing of record of a supplementary declaration as described in Section 2.3 of Article II, be held, transferred, sold, surveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration. Every grantee of any interest in property, now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or other conveyance, whether or not such deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to the covenants and restrictions hereinafter set forth and shall be deemed to have assented to said covenants and restrictions. Said covenants and restrictions shall run with the Property, and shall be binding upon all persons claiming any interest in any property now or hereafter made subject to this Declaration until terminated by operation of law or as hereinafter provided.

ARTICLE I

SECTION 1.1. Review of Architectural Plans and Specifications by Declarant

Amended
See
Amendment #44
dated
5-30-02

Declarant is hereby granted the authority to approve or disapprove the building plans and specifications for any building or structure or for any exterior addition to, change in or alteration of any building or structure, erected and maintained upon any lot subject to this Declaration.

Before any residence, garage, carport, playhouse, outbuilding, fence, wall, or other structure shall be commenced, erected or maintained upon any property subject to this Declaration, complete, final building plans and specifications shall have been furnished to Declarant, with one copy to be retained by Declarant for its records, and such plans and specifications shall include the following information:

- (1) Nature, shape and kind of structure;
- (2) Type of materials;

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- 3) Finishes and colors of all exterior surfaces, including roof coverings;
- 4) Location on lot and floor plan;
- 5) Front, side and rear elevations;
- 6) Location of drives and parking areas; and
- 7) Name of builder;

The purpose of the section, in providing Declarant with the authority to approve or disapprove plans and specifications constructed on the lots in Windrush, is to maintain the value of unsold lots in Windrush and to protect Declarant against a diminution of such value resulting from the construction of a residence or other structure incompatible with the property development of Windrush. Refusal of approval of such plans and specifications shall be in the sole discretion of Declarant and shall be based upon the following factors:

- (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.

Declarant shall act with all reasonable promptness upon receipt of plans and specifications submitted in accordance with this section to approve or disapprove such plans and specifications. If Declarant shall fail to approve or disapprove such plans and specifications within thirty (30) days after written demand for the approval of such plans and specifications has been received by Declarant, then Declarant shall be deemed to have approved such plans and specifications, provided, however, that all other conditions and restrictions of this Article I shall remain in full force and effect. Declarant shall not be liable in damages to anyone submitting plans or specifications for approval under this section, or to any owner of property affected by this Declaration by reason of mistake in judgement, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans

Amended
See
Amendment # 4
dated
5-30-02

and specifications, and every owner of any lot, releases and agrees to hold harmless Declarant from any such alleged damage.

Section 1.2 Construction of Residences and other Structures

(a) There shall be a certain minimum area of square feet of total living space ("total living space" as defined herein to be an area exclusive of garages, carports, porches, terraces, bulk storage areas, attics and basements) of the residences located on each lot as follows:

*Amended
See
Amendment #3
dated
12-5-99*

- (i) Any residence shall contain not less than 1400 square feet of total living space for either a one story or split-level residence;
- (ii) Any residence shall contain not less than 1800 square feet of total living space for a two-story or a one and one-half story residence with 700 square feet of total living space on the first floor of such residence.

(b) No temporary house, shack, barn, tent or other out-building shall be permitted on any lot at any time with the exception of:

- (i) Temporary buildings, trailers or mobile units used for construction purposes during the construction period of a residence on such lot; or
- (ii) A temporary real estate sales office maintained by Declarant or Declarant's designated agent for the sale of lots or homes.

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

*Amended
See
Amendment #4
dated
5-30-02*

- (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.

Declarant 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 Declarant 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.

(d) Construction of a residence on any lot shall commence within ninety (90) days from the purchase of said lot by any person. The exterior of all residences and detached buildings shall be completed within six 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, the exterior of all residences and detached buildings shall be completed within one year after the construction of such residence or detached building shall have commenced.

(e) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any residence or structure constructed or places on any lot.

(f) No lot shall be used or maintained as a dumping ground for rubbish, and containers for garbage or other refuse placed on any lot shall be located only behind a residence as such residence fronts on a street of Windrush so as not to be visible from said street except for those times designated by governmental authorities or private garbage collection agencies when such containers are to be placed on said street for collection. Such containers shall be underground or in screened sanitary enclosures, shall be closed at all times, and shall be maintained under sanitary conditions. Incinerators for garbage, trash or other refuse shall not be permitted on any lot, and the location of any garbage area must be approved in writing by Declarant pursuant to the provision in Section 1.1 of this Article.

(g) No stable, poultry house, rabbit hut or other similar yard structure, with the exception of a doghouse, shall be con-

Amended
See
Amendment #4
dated
5-30-02

structed or allowed to remain on any lot. Any structure to be used for the purpose of a doghouse shall be erected and located on a lot in accordance with the provisions of subsection (c) of this section.

(h) Construction of model homes is expressly permitted, provided, however, that such structures conform to the restrictions and requirements of this Declaration.

Section 1.3. Location of Buildings and Structures

(a) No residence shall be located:

(i) Closer to the front on any lot in Windrush than the building set back line shown or specified on any recorded plat of Windrush.

(ii) Closer than 35 feet to any rear lot line, provided that detached buildings, except for tool sheds, may be located not closer than 35 feet from any rear lot line and tool sheds may be located not closer than 35 feet from any rear lot line.

(iii) Closer than 10 feet to any side lot line, except for corner lots fronting two streets as hereinafter described by this subsection.

With respect to corner lots fronting on any two streets, the building set back lines from the street right-of-way lines for all structures erected on such lots shall be those set back lines shown or specified on the recorded plat of Windrush and no structure on any corner lot shall be erected closer than 10 feet to any side lot line which also constitutes a boundary line of another lot or, except for detached buildings, closer than 35 feet to any rear lot line. Detached buildings on such corner lots shall be located in relation to rear lines pursuant to the provisions of Section 1.3 (a)(ii) above. For purposes of this covenant, the set back lines herein specified shall not apply to eaves, steps, and open porches not covered by a roof structure. The restrictions of this subsection shall not apply to mailboxes, hedges, vegetation or ornamental trees, provided, however, that no fences, structures or planting shall be maintained within 30 feet of any street intersection.

The provisions of this covenant may be varied by Declarant, its successors or assigns, by reducing the setbacks herein specified up to one-half (½) of the distance stated in order to permit construction on a lot which otherwise would not be feasible. For the purposes of this covenant, eaves, steps, and open porches not covered by a roof structure shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of the building or construction on any lot to encroach upon another lot.

(b) Notwithstanding the provisions of subsection (a) of this section, privacy walls may be constructed along the side and

rear lot liens of a lot in Windrush provided that:

- (i) Such walls shall not be in violation of the provisions of subsection (c) of this section;
- (ii) Such walls shall not exceed eight feet in height; and
- (iii) The plans and specifications for the erection of such walls have been submitted to and approved by Declarant pursuant to the provisions of Section 1.1 of this Article.

(c) No house, garage, carport, playhouse, outbuilding, fence, wall or any other above-ground structure nor any shrubbery, flowers or other vegetation which obstructs horizontal site lines at elevations between two and six feet above the street shall be erected, placed, planted, or permitted to remain on any portion of any corner lot within any triangular area formed by the street property lines and a line connecting them by points 30 feet from the intersection of the street lines. In the case of any rounded corner, the 30 feet shall be measured from the point formed by the intersection of the street, if extended to form an angle instead of a curve. The same site line limitations shall be applied to that area of every lot within the ten-foot radius emanating from the intersection of any boundary line of any lot with the edge of a driveway pavement. Trees may be planted and maintained at a sufficient height to prevent obstruction of such site lines.

Section 1.4. Additional Requirements with Respect to Structures Maintained on Lots

- (a) No outside clothesline shall be permitted on any lot.
- (b) No sign of any kind shall be erected or maintained on any lot with the exception of a professionally lettered sign of builder, realtor, owner or Declarant advertising such lot or the residence on such lot for sale, provided, however, that any such sign shall be in compliance with the following requirements:
 - (i) No sign shall be more than twenty-four (24) inches by thirty (30) inches in size;
 - (ii) No sign of any kind shall be erected or maintained on any lot at the same time;
 - (iii) Any and all signs shall be mounted and/or affixed in a single location separate from the residence and separate from any other structure, such as a garage, fence, retaining wall or shed located on the lot; and
 - (iv) No sign shall be attached to any tree or shrubbery.

Notwithstanding the provisions of this subsection Declarant's right to use such signs as shall be reasonably necessary to promote the sale of lots or homes in Windrush shall be permitted.

(c) All mailboxes and mailbox posts ("Mailbox") shall conform in design and material as designated by Declarant. Only one mailbox may be located on any lot. Owner of residence shall maintain mailbox to compliment the neighborhood as well as the residence to which it belongs. Declarant may remove any nonconforming mailbox and require Owner, at Owner's expense, to purchase or construct, install and maintain conforming mailbox.

(d) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any lot except for the purposes of construction of a residence or detached building on such lot, nor shall any such building materials or devices be stored on any lot for longer than the length of time reasonably necessary for the construction in which the materials or devices are to be used.

(e) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any lot.

(f) No above-ground swimming pool may be located on any lot.

(g) Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles or other vehicles, including, without limitation, boats and campers, and no owner shall park his automobile, boat or other vehicle on the streets of Windrush as a matter of course. Said off-street parking shall be within the confines of a paved driveway, turn-around, garage or carport and not within a front yard unless said front yard is an integral part of a driveway, turn-around, garage or carport and approved by Declarant. In addition, no trucks or commercial-type vehicles shall be stored on any lot except while parked in a closed garage.

(h) No exterior radio antenna or satellite receiving dish or similar apparatus of any kind shall be erected, placed or permitted to remain on any lot.

Section 1.5.

Use of Lots

(a) Owners and residents of Windrush shall refrain from any act or use of their property which could reasonably cause emcarrass-

Amended
See
Amendment
5 dated
10-1-04

ment, discomfort or annoyance to owners and residents of other property subject to this Declaration.

*Amended
see
Amendment #2
dated
10-28-92*

(b) No animal or bird except ^{no more than two} ~~one~~ of a kind which is customarily kept as an outside domestic pet shall be kept on any lot. No pet shall be kept for commercial breeding purposes, and every pet shall be on a leash at all times when outside a residence or other building or enclosed fence area.

(c) The pursuit of hobbies or other activities including specifically, without limiting the generality of the foregoing, the assembly or disassembly of motor vehicles, and other mechanical devices, which might tend to cause disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken in the front of the yard of any lot or in any driveway, garage, carport or other place where such activity is visible from any street.

(d) No residence or detached building on any lot shall be used other than as a one-family dwelling, and no portion of a residence or a detached building on any lot may be used for rental purposes. No trailer, camper, structure of temporary character, tent or garage on any lot shall be used at any time as a residence either temporarily or permanently.

Section 1.6. Maintenance of Lots

(a) Before any residence may be occupied in Windrush, such residence must be finished on the exterior, and the driveway of such residence must be paved. In addition, the yard area of such lot visible from any street must be cleared and all building materials and devices used for the construction of such residences must be removed from such lot pursuant to the provisions of this subsection (d) of Section 1.4 of this Article.

(b) No owner of any lot shall maintain the grounds of such lot, whether vacant or occupied, in other than a neat and attractive condition. No unclean, unsightly, or unkept conditions of buildings or grounds on any lot shall be permitted where such conditions shall tend to decrease the aesthetic standards of the specific area in which such lot is located.

(c) Upon the failure of any owner to maintain his lot, whether vacant or occupied, in a neat and attractive condition, Declarant may after ten (10) days notice to such owner enter upon

such lot and have the grass, weeds, and other vegetation cut and the trees, shrubs and other plants removed therefrom when, and as often as, the same is necessary in the judgement of Declarant in order to maintain the aesthetic standards of the neighborhood as a whole or the specific area in which such lot is located. In the event it is necessary to enter upon such lot pursuant to this subsection

(i) The owner of such lot shall be personally liable to Declarant for the cost of any cutting, clearing and maintenance described above;

(ii) Liability for the amounts expended for such cutting, clearing and maintenance shall be a permanent charge upon and lien upon such lot, enforceable by Declarant by any proceeding at law or in equity;

(iii) All costs incurred by Declarant shall be reasonable; and

(iv) Entry by Declarant for the purpose of performing the work required under this subsection shall only be between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday.

(d) Unless located within twenty (20) feet of a residence or detached building or within twenty (20) feet of an approved site for such residence or building, no trees, shrubs, bushes or other vegetation having a trunk diameter of ten (10) inches or more at a point two (2) feet above ground level shall be cut, destroyed, or mutilated. This subsection may be waived only upon the express prior written permission of Declarant. Dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any lot by the owner thereof.

Section 1.7 Leasing of Lots

See Amendment #6

ARTICLE II

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 the benefit of and be enforceable by (i) Declarant, if it is the owner of any real property then subject to this Declaration, or (ii) by the owner of any interest in any property subject to this Declaration his legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded. Said covenants and restrictions may be renewed and extended, in whole or in part, beyond said twenty-year term for successive periods not to exceed twenty (20) years if an agreement for renewal and extension is signed by (a) Declarant, if it is the owner of any real property

Amended
See Amendment #5 dated 10-1-04

Amended
See
Amendment #5
dated
10-1-04

then subject to this Declaration, and (b) the fee title owners of at least two-thirds (2/3) of the lots in Windrush and if such agreement is recorded in the Office of the Clerk of Superior Court of Gwinnett or Hall Counties, Georgia, provided, however that each such agreement shall specify which of the covenants and restrictions are renewed and extended. No such agreement to renew and extend said covenants and restrictions shall be effective unless filed for record at least one hundred eighty (180) days prior to the effective date of such renewal and extension. Every purchaser or grantee of any interest in any property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the covenants and restrictions of this Declaration may be extended as provided above.

Section 2.2. Additions of Property by Declarant

Without further assent or permit, Declarant, for itself, its successors and assigns, hereby reserves the right, exercisable from time to time at any time during the duration of this Declaration, to extend the scheme of this Declaration to other real property developed as a part of or in conjunction with Windrush by filing for record a supplemental declaration ("Supplement") with respect to the property to be then subjected to the Declaration. A Supplement may be set forth and/or provide for the same covenants and restrictions set forth in this Declaration. Such Supplement may contain such modifications of any of the provisions set forth in this Declaration as may be appropriate in Declarant's discretion to reflect the different character, if any, on the property subjected thereto. Unless effected by amendment in the manner provided in Section 2.3 of this Article, no Supplement shall revoke, modify or add to the covenants and restrictions hereby made applicable to the property subject to this Declaration.

Section 2.3. Amendment

Amended
See
Amendment #5
dated
10-1-04

The covenants and restrictions of this Declaration may be amended at any time and from time to time during the initial period of this Declaration and during the extension and renewal thereof, by an agreement signed by (a) Declarant, if it is the owner of any real property then subject to this Declaration, or (b) the fee title owners of at least three fourths (3/4) of the lots in Windrush. The right to amend these restrictions shall be exercised reasonably, and no such

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Amended
See
Amendment #5
dated
10-1-04

amendment shall become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Hall and Gwinnett Counties, Georgia. Every purchaser or grantee of any interest in any property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that the covenants and restrictions of this Declaration may be amended as provided in this Section.

Section 2.4.Notices

Any notice required to be sent to any owner of a lot in Windrush pursuant to any provision of this Declaration shall be served by depositing such notice in the mails, post paid, regular mail, addressed to the owner for whom it is intended at his last known place of residence, and such service shall be deemed sufficient.

Section 2.5.Enforcement

Enforcement of the covenants and restrictions contained in this Declaration and of any other provision hereof shall be by any appropriate proceeding at law or in equity against any person or persons violating or attempting to violate any of said covenants, restrictions or provisions. Such proceeding may be maintained to restrain violations of said covenants and restrictions, to enforce personal liability, to recover damages for the violation of said covenants and restrictions, or to enforce any lien or charge arising by virtue of such violation.

In the event that any cost is incurred by Declarant or by the owner of property in Windrush in order to prevent the continuing violation on any lot of the covenants and restrictions of this Declaration, the owner of such lot shall be personally liable to Declarant or such other property owner for the costs of preventing such violation, and the liability for such costs expended shall be a permanent charge upon and lien upon such lot, enforceable by Declarant or by other such property owner by any appropriate proceeding at law or in equity. All costs incurred by Declarant or by such other property owner on behalf of such lot owner whose lot is in violation of the covenants and restrictions shall be reasonable, and entry for the purpose of performing the work required to prevent such violation

shall only be between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday.

The failure of Declarant or any owner of property in Windrush to enforce any of the covenants and restrictions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 2.6. Severability

Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid. If any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are to be declared to be severable.

Section 2.7. Captions

The captions of each section hereof as to the contents of each section are inserted only for convenience and in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular sections to which they refer.

Section 2.8. Gender

The masculine gender shall be construed to include the female or menter gender where the context so requires.

Section 2.9. Definitions

Unless the context otherwise requires, whenever used in this Declaration

(a) "Declarant" shall include the authorized agents, successors or assigns of Declarant, but shall not include lot owners of Windrush.

(b) "Person" shall include an individual, a corporation, partnership, association, trustee or other legal entity;

(c) "Lot" shall mean any plot of land shown as a numbered parcel on the aforementioned plat of survey of Windrush or on any plat of survey hereinafter recorded and subject to this Declaration;

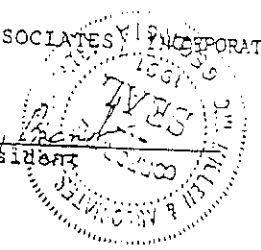
(d) "Lot Owner" shall include any individual or individuals

or any legal entity in which title to any real property subject to this Declaration if vested.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year written above.

D.W. MILLEN AND ASSOCIATES INCORPORATED

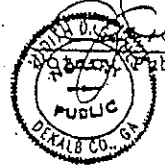
BY: Don W. Milten
DON W. MILLEN, President



(CORPORATE SEAL)

Signed, sealed and delivered this 24 day of Feb, 1982 in the presence of:

[Signature]
Witness



My Commission Expires July 12, 1982