

**DECLARATION OF COVENANTS,
RESTRICTIONS, AND EASEMENTS**

***WINDSONG
SUBDIVISION***

**FOR FRED WILLIAMS HOMEBUILDER,
INCORPORATED**

**EFFINGHAM COUNTY,
GEORGIA**

OCTOBER 11, 2007

THE WINDSONG SUBDIVISION

HOMEOWNER'S ASSOCIATION

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DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR WINDSONG SUBDIVISION

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR WINDSONG SUBDIVISION (hereinafter referred to as this "Declaration") is made as of the 11th day of October, 2007, by Fred Williams Homebuilder, Incorporated, a Georgia limited liability company (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the Owner of certain real property in Effingham County, Georgia, which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

The subdivision described in Exhibit "A" attached hereto, shall be known as Windsong (said real property, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof is hereinafter referred to as the "Development") Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property now or hereafter made subject to this Declaration. Declarant also desires to establish a method for the administration, maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described in Exhibit "A" attached hereto and made a part hereof shall be held, sold, and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property (as hereinafter defined). The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors and assigns and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

- 1.01 **Association:** "Association" means Windsong Homeowners Association of Effingham, Inc. (a non-profit, non-stock, membership corporation organized under the Georgia Non-Profit Corporation Code), its successors and assigns.
- 1.02 **Board:** "Board" means the Board of Directors of the Association.
- 1.03 **By-Laws:** "By-Laws" means the By-Laws of the Association.
- 1.04 **Commencement Date:** "Commencement Date" means the date this Declaration is recorded in the Deed Records of Effingham County, Georgia.
- 1.05 **Common Property:** "Common Property" means all real and personal property owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.
- 1.06 **Declarant:** "Declarant" means Fred Williams Homebuilder, Incorporated, a Georgia limited-liability company, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, and provided further in the instrument of conveyance to any such successor-in-title or assign, or in a separate instrument recorded in the Deed Records of Effingham County, Georgia, such successor-in-title or assign is designated as the "Declarant" hereunder by the party executing such instrument, which party is the "Declarant" hereunder at the time of the execution of such instrument; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at anyone time.
- 1.07 **Development-Wide Standard:** "Development-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to this Declaration or the By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.
- 1.08 **Lot:** "Lot" means any parcel of land shown upon a subdivision plan recorded in the Office of the Clerk of the Superior Court of Effingham County, covering any

portion of the Property, as such boundaries may be modified in accordance with Section 6.04; provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section 2.03(g) or Section 2.05.

- 1.09 **Member:** "Member" means any member of the Association.
- 1.10 **Membership:** "Membership" means the collective total of all Members of the Association.
- 1.11 **Occupant:** "Occupant" means any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.
- 1.12 **Owner:** "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.
- 1.13 **Parcel:** "Parcel" means and refers to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. For example, and by way of illustration and not limitation, a condominium development, a townhouse development, an apartment complex, and a single family detached home subdivision may each be designated as separate Parcels. If separate Parcel status is desired, the Declarant shall designate in an amendment to this Declaration the property that shall constitute a separate Parcel or Parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same Parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five (75%) percent of the total vote entitled to vote thereon in such area.
- 1.14 **Property:** "Property" means that certain real property described in Exhibit "A" attached hereto, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.
- 1.15 **Residence:** "Residence" means a Structure and the Lot on which it is situated which is intended for independent use and occupancy as a residence for a single family. A Structure and the Lot upon which it is situated shall not become a Residence until the Lot and Structure located thereon shall have been conveyed to a party other than the builder thereof or the Structure has been occupied by an Occupant, whichever shall first occur. The Owner of a Residence shall notify the Association or its designee immediately upon the conveyance of the Lot and Structure located thereon to a party other than the builder thereof or the occupancy of the Structure by an Occupant.

1.16 Restrictions: "Restrictions" means all covenants, restrictions, easements, charges, liens, and other obligations created or imposed by this Declaration.

1.17 Structure: "Structure" means:

- (a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, doghouse, coop or cage, covered or uncovered patio, deck, swimming pool, dock, recreational equipment, fence, mailbox, driveway, curbing, paving, wall, tree, shrub, artificial vegetation, statue, flagpole, flag (and other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer), lighting fixture, or any other temporary or permanent improvement to such Lot;
- (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not Subsection (b) of this Section 1.17 applies to such change.

ARTICLE II

COMMON PROPERTY

2.01 Conveyance of Common Property:

- (a) The Declarant, from time to time at no expense to the Association, may convey real and personal property to the Association, and may grant easements to the Association, for the common use and enjoyment of the Owners of Residences (such real and personal property and easements are hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances and grants of Common Property.
- (b) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority, by a deed recorded in the Deed Records of Effingham County, Georgia.

- (c) Lakes, dams, and detention ponds shall, without limitation, be included in the property that may be conveyed by Declarant and which shall be accepted by the Association. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake or detention pond that may be conveyed.

2.02 Right of Enjoyment: Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property as it is constituted from time to time, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(f) and 3.05.

2.03 Rights of the Association: The rights and privileges conferred in Section 2.02 hereof shall be subject to the right and, where applicable, the obligation of the Association acting through the Board to:

- (a) promulgate rules and regulations relating to the use, operation, and maintenance of the Common Property, including, but not limited to, provisions for the imposition and assessment of fines for violation of any such rules or regulations;
- (b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees, and other sources; and provided, however, that the Association shall not deed, grant, or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by a two-thirds (2/3) vote of the Members of the Association (excluding the Declarant) and by the Declarant during the period when the Declarant has the right to appoint members of the Board;
- (c) grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency, or to any utility company, broadband provider, or cable television system;
- (d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or