

**WILLOW CREEK  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by Hembree Associates, Inc. hereinafter referred to as "Declarant".

**WINESETH**

WHEREAS, Declarant is the owner of certain property in Land Lot 514 of the 1<sup>st</sup> District, 2<sup>nd</sup> Section, County of Fulton, State of Georgia, which is more particularly described as:

ALL THAT TRACT OR PARCEL of land lying and being in Land Lot 514 of the 1<sup>st</sup> District, 2<sup>nd</sup> Section, Fulton County, Georgia being Lots 1 through and including 46 and all Common Area, known as WILLOW CREEK, Subdivision, as shown on plat by LCE Engineers, Inc., dated July 7, 1998, recorded in the Plat records of Fulton County, Georgia, which plat is by reference incorporated herein and made a part hereof for a more particular description.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and being binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to WILLOW CREEK Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of the obligation.

Section 3. "Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought with the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned and maintained by the Association for the common use and enjoyment of the owners. The Common Area to be owned and maintained by the Association at the time of the conveyance of the first lot shall include all area shown as Common Area on the Plat for WILLOW CREEK Subdivisions described as follows:

- (a) The Common Area located between time rear of lots 15, 16, 31, 32, and 33, and the northern property line along Foe Killer Creek and any improvements located thereon.
- (b) Easement for landscaping and maintenance purposes for the Entrance Wall and all landscaping along Waters Road frontage of WILLOW CREEK Subdivision.
- (c) An easement for ingress and egress and maintenance purposes over any drainage easement, sanitary sewer easement, or access easements which may be necessary or appropriate to maintain said sanitary sewer easements, drainage easements, access easements and retention ponds.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any Plat of the Properties designed for separate ownership and occupancy with the exception of the Common Area.

Section 6. "Plat" shall mean and refer to all recorded plats showing the properties.

Section 7. “Declarant” shall mean and refer to Hembree Associates, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. “Declaration” shall mean and refer to this Declaration of Protective Covenants Conditions and Restrictions.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. *Owners’ Easements of Enjoyment.* Every owner shall have a right and easement of enjoyment in and to the Common Area that is intended for the common use and enjoyment of the Owners subject to the published rules and regulations of the Association including but not limited to the following:

- (a) the right of time Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. *Maintenance of Common Area by the Association.* The Association shall maintain the Common Area and related improvements.

Section 3. *Compliance with the Declaration and Rules and Regulations.* Every Owner and all those entitled to occupy a lot shall comply with the provisions of the Declarations. In addition, any owner and all those entitled to occupy a Lot shall comply with any reasonable rules or regulations adopted by the Association.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to Forty Six (46) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on September 1, 2004

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. *Creation of the Lien and Personal Obligation of Assessments.* The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The recording of the Declaration shall constitute record notice of the existence of the lien, and no further recording of any claim of lien for assessments shall be required.

Section 2. *Purpose of Assessments.* The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. *Maximum Annual Assessment.* Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six hundred and no/100 dollars (\$600.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. *Special Assessments for Capital Improvements.* In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. *Notice and Quorum for Any Action Authorized Under Sections 3 and 4.* Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. *Date of Commencement of Annual Assessments: Due Dates.* The annual assessments provided for herein shall commence as to all Lots except those lots still owned by Declarant on January 1, 1999. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth, whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7. *Effect of Nonpayment of Assessments: Remedies of the Association.* Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Not less than ten days after notice is sent by certified mail, return receipt requested, to the Owner at the address for the Lot and any other address or addresses which the Owner may have designated to the Association in writing, the lien may be foreclosed by the Association by an action, judgment, and foreclosure in the same manner as other liens for the improvement of real Property. The notice shall specify the amount of the assessments due and payable together with other authorized charges and interest accrued thereon. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold lease, encumber, and convey the same.

Section 8. *Subordination of the Lien to Mortgages.* The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE V ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, except as such is installed by the Declarant, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board (hereinafter referred to as the "Architectural Control Committee"). In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE VI GENERAL PROVISIONS**

Section 1. *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. *Severability.* Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain, in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first five (5) year period by Declarant at Declarant's sole discretion, and thereafter by an instrument signed by not less than, seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

## **ARTICLE VII USE RESTRICTIONS**

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage.

Section 2. Fences. All fencing for decorative or functional purposes must be submitted to the Architectural Control Committee for prior approval according to time procedure in Article V above.

Section 3. Dwelling Quality and Size. The living areas of the main structure, exclusive of open porches, garages, carports and breezeways, shall contain the minimum finished square footage allowable under local zoning requirements.

Section 4. Lot Size. No Lot shall be further divided or subdivided, nor shall any easement or right of way be granted without the consent and approval of the Architectural Control Committee, except as outlined in Section 5 herein.

Section 5. Easements. Easements for installation and maintenance of utilities, drainage facilities and cable television are reserved over the rear twenty feet of each Lot, and five feet along all side Lot lines. Declarant, its agents and employees shall have a right of ingress and egress over any Lot as required for construction and development of the property.

There shall be and is hereby reserved to Declarant or its successors in title a perpetual and non-exclusive easement over all Lots for the purpose of installing, repairing, and/or maintaining utility lines and/or structures of any sort, including but not limited to storm drains, surface drainage, sanitary sewers, gas lines, electric lines and/or cables, water lines, telephone lines, and the like.

There shall be and is hereby reserved to Declarant or its successors in title a perpetual and non-exclusive easement over all Lots for a distance of 12 feet behind any Lot line which parallels a street for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, mailboxes, entrance features, and/or "theme areas", lights, stone, wood or masonry wall features, and/or related landscaping.

If any portion of a Lot improvement is contiguous to an adjacent Lot, a five-foot valid perpetual easement for the maintenance of the same is hereby created and reserved.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. Except for flower gardens, shrubs, pine straw areas and trees which shall be neatly maintained, all open Lot areas shall be maintained as lawns, and all lawn areas shall be kept mowed and shall not be permitted to grow to a height in excess of five inches. No radio, television, or other antenna or tower of any nature shall be installed on any Lot.

Section 7. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

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Section 8. Signs. No sign of any kind shall be displayed to the public view on any Lot, if not approved by the Architectural Control Committee, except one sign of not more than five square feet advertising the property for sale or rent. During the construction amid/or sales period, real estate sales and construction offices, displays, signs, and special lighting may be erected, maintained and operated by Declarant on any part of the Properties, and on or in any building or structure now or hereafter erected thereon.

Section 9. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 10. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

Section 11. Garbage and Refuse Disposal. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. Storage of any other items shall be within the confines of the rear yards directly behind the house. No accumulation or storage of litter or trash of any other kind shall be permitted on any Lot. This provision shall not apply to Declarant during the development and construction of new homes.

Section 12. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Street property line and a line connecting them at points 25 feet from time intersection of the street lines, or in the case of a rounded properly corner, from the intersection of the street property line extended. The same sight line limitation shall apply on any Lot within ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

Section 13. Streets. All Lots shall be sold with, the provisions that the county may at any time raise or lower the street surfaces and that such action on the part of the county shall in no way be considered a basis for a claim for damages to the abutting property.

Section 14. Vehicles. All motor vehicles shall be currently licensed and maintained in proper operating condition so as not to be a hazard or nuisance by noise, exhaust emissions or appearance. All motor vehicles including trail bikes and motorcycles, shall be driven only upon paved streets and driveways. Overnight parking of recreational vehicles and related equipment shall be in garages or screened enclosures approved by the Architectural Control Committee or stored in such manner as to not be visible from any street. No vehicles; junk vehicles, commercial or industrial vehicles, including but not limited to moving vans, trucks, tractors, trailers, wreckers, hearses, compressors, concrete mixers or buses shall be parked in the street or streets abutting any Lot. No trucks or vans shall be parked outside of any garage at any time and no more than two other vehicles may be parked outside of any garage overnight. No storage of boating equipment, travel trailers, camping equipment, or recreational vehicles shall be allowed. This section shall not apply to the Declarant.

Section 15. Clothes Drying Equipment. No clothes lines or other clothes apparatus shall be permitted on any lot.

Section 16. Mailboxes and Newspaper Tubes. Only mailboxes and newspaper tubes approved by the Architectural Control Committee shall be permitted.

Section 17. Construction and Marketing Activities. So long as the Declarant or its employees are engaged in developing or improving any portion of the Properties, or in performing standard warranty work, such persons shall be exempted from the provisions of this Declaration. Such exemption shall be subject to such rules as may be established by the Declarant to maintain reasonable standards of safety, cleanliness and general appearance of the Properties.

Section 18. Exterior Paint. No person shall paint the exterior of any building a color different from the original color of said building without the proposed color having been approved by the Architectural Control Committee.

Section 19. Hobbies, etc. The pursuit of hobbies or other activities including specifically, without limiting the generality of the foregoing, the assembly and 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 yard of any Lot, or in the driveway, garage or other place where such condition is visible or audible from any street or adjoining Lot.

Section 20. Building Materials. No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing for the construction of an improvement for a Lot may be stored on any Lot for longer than that length of time reasonably necessary for the construction in which same is to be used.

Section 21. Commercial Activities. No business or commercial activity of any nature shall be operated or maintained on any Lot or from any structure located thereon, except that private offices within the dwelling may be maintained and used so long as such use is incidental to the primary residential use of such structure, provided, however, that it is expressly permissible for the Declarant to maintain upon any portion of such Properties such facilities as the Declarant, in its sole opinion, shall deem required for or convenient or incidental to the construction and sale of Lots and Lots with improvements thereupon, including but not limited to storage areas, construction signs, model residences, construction offices, sales offices and business offices.

Section 22. Zoning Regulations. Zoning regulations applicable to the subdivision shall be observed. In the event of any conflict between any provision of such zoning restrictions and the restrictions of this Declaration, the legal code shall apply.

Section 23. Unintentional Violations of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Declarant or its successors reserves the right (by and with mutual written consent of the Owner or Owners for the time being of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3<sup>rd</sup> day of September, 1998.



Signed, sealed and delivered in the presence of:

[Signature]

Unofficial Witness  
[Signature]  
Notary Public



Hembree Associates, Inc.

By: [Signature]

Donald C. Chapman, Jr.  
Vice President

(CORPORATE SEAL)

Notary Public, Cherokee County, Georgia  
My Commission Expires 07-07-2001

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