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Return to: NowackHoward, LLC
One Alliance Center, Suite 1650
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Attn: MW

STATE OF GEORGIA
COUNTY OF COBB

Reference: Deed Book 8508
Page 485

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR CREEKSHIRE
AND SUBMISSION TO THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT**

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Creekshire was recorded at Deed Book 8508, Page 485, et seq., on September 29, 1994, in the Cobb County, Georgia land records ("Declaration"); and

WHEREAS, Creekshire Homeowners Association, Inc. (hereafter referred to as "Association") is the homeowners association identified and defined within the Declaration; and

WHEREAS, Article IX, Section 9.02(c) of the Declaration provides that the restrictions of the Declaration may be amended at any time to submit the Development to the terms and provisions of the Georgia Property Owners' Association Act, by an agreement signed by a majority of all Owners of Lots within the Development, and for so long as the Declarant has the right to approve amendments as set forth above, the Declarant, and for so long as the Builder as the right to approve amendments as set forth above, the Builder; and

WHEREAS, the Declarant no longer owns any property described in Exhibit "A" to the Declaration and its consent is not necessary for this Amendment; and

WHEREAS, the Builder no longer owns any property described in Exhibit "A" to the Declaration and its consent is not necessary for this Amendment; and

WHEREAS, this Amendment does not materially or adversely alter, modify, change, or rescind any right, title, interest, or privilege granted in the Declaration or accorded to the holder of any Mortgage encumbering any Lot; provided, however, if a court of competent jurisdiction determines that this Amendment does so without such Mortgagee's necessary approval, then this Amendment shall not be binding on such Mortgagee, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Amendment shall control with respect to the affected Mortgagee;

THIS AMENDMENT SUBMITS THE CREEKSHIRE DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS DUE ON LOTS.

WHEREAS, pursuant to Article IX, Section 9.02(c) of the Declaration, a majority of all Owners of Lots within the Development have approved this Amendment in accordance with the terms and provisions of the Declaration and desire to affirmatively amend the Declaration to be governed by the Georgia Property Owners' Association Act; and

WHEREAS, for purposes of this Amendment, the effective date shall mean the date this Amendment takes effect as of recordation (hereafter referred to as the "Effective Date"); and

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

1.

The Declaration is hereby amended by adding the following footer to the first page of the Declaration:

THIS DECLARATION SUBMITS THE CREEKSHIRE DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS DUE ON LOTS.

2.

Article I, Section 1.13 of the Declaration, "*DEFINITIONS; Development*," is hereby amended by deleting Article I, Section 1.13 by adding to the end thereof the following:

All of the real property in the Development, including all property shown on the Creekshire plats, shall be owned in fee simple and subject to the provisions of this Declaration and constitutes a residential property owners' development which hereby submits and is subject to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie, 1982), as such Act may be amended from time to time.

3.

Article I of the Declaration, "*DEFINITIONS*," is hereby amended by adding the following new Sections 1.24 through 1.27 to the end thereof:

1.24 Act. "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.

1.25 Annual Assessment. "Annual Assessment" shall mean assessments levied on all Lots subject to the assessment provisions of Article IV herein.

1.26 Special Assessment. "Special Assessment" shall mean assessments levied on Lots in accordance with Article IV, Section 4.05 herein.

1.27 Specific Assessment. "Specific Assessment" shall mean specific special assessments levied on Lots in accordance with Article IV, Section 4.06 herein.

4.

Article IV of the Declaration “*ASSESSMENTS AND MAINTENANCE CHARGES*” is hereby amended by deleting Article IV in its entirety and substituting therefore the following new Article IV to incorporate the provision of the Georgia Property Owners’ Association Act.

ARTICLE IV
ASSESSMENTS

4.01. Purpose of Assessments. The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be levied and used for any purpose the Board of Directors determines will benefit the Owners or the Creekshire Development, including but not limited to, and in addition to other purposes set forth in the Declaration and the Act, the acquisition, construction, improvement, maintenance, repair, replacement, and equipping of Common Property, the enforcement of the restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses, including legal expenses, of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

4.02. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments and other charges levied pursuant to this Declaration and the Bylaws, including Annual Assessments or charges, Special Assessments, and Specific Assessments, which shall include fines and the Capital Contribution Assessment. Except as provided below, or elsewhere in the Act, the amount of all Common Expenses shall be assessed against all the Lots equally. No assessments shall be due for any Common Property.

All assessments and charges levied against a Lot and its Owner, together with late charges, interest, costs of collection, including court costs and reasonable attorneys’ fees actually incurred (including post-judgment attorneys’ fees, costs and expenses), the expenses required for the protection and preservation of the Lot, and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the person or entity who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot. The Association, in the Board’s discretion, may record a notice of such lien in the Cobb County, Georgia, land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority and may be foreclosed upon by the Association as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. No Owner may exempt him or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver or enjoyment of his or her Lot or any part of the Common Property.

4.03. Delinquent Assessments. All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner’s debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 10 days of the due date, or such later date as may be provided by the Board of Directors:

- (a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;
- (b) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;
- (c) the costs of collection, including court costs, the expenses required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred;
- (d) the fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until judgment rendered in the action is otherwise satisfied;
- (e) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any Annual or Special Assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and
- (f) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

Notwithstanding anything in this Declaration to the contrary, if assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Property are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs, and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

In addition to all other rights of the Association, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all Mortgagee having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under this Declaration, and of those actions taken or proposed to be taken by the Association as a result of the default.

4.04. Computation of Operating Budget and Assessment. To establish the Annual Assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Association, which may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 30 days before the due date of such Annual Assessment, or the first installment thereof. The budget and the Annual Assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

If the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine a new budget, the budget then in effect shall continue until a new budget is adopted as provided herein. The Board may adopt an adjusted budget at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses on which the Board establishes the Annual Assessment.

4.05. Special Assessments. In addition to all other assessments and charges provided for herein, the Board of Directors may levy a Special Assessment against all Owners for any purpose. Special Assessments totaling more than, in the aggregate, an amount equal to the Annual Assessment in any fiscal year must first be approved by at least a majority of those Owners either voting by written consent or by written ballot without a meeting, or at least a majority of those Owners present or represented by proxy at a duly called meeting of the Members, notice of which shall specify the purpose of such meeting.

4.06. Specific Assessments. In addition to all other assessments and charges provided for herein, the Board of Directors may levy Specific Assessments as provided for in this Declaration, including reasonable fines and the Capital Contribution Assessment, and pursuant to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. By way of illustration, but not limitation, the Board may specifically assess for the following Common Expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association:

(a) Common Expenses which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and

(b) Common Expenses which benefit all Lots, but which do not provide equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received; and

(c) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot(s) may be specifically assessed by the Board of Directors against such Lot(s) based upon the conduct committed which occasioned any such Common Expenses.

Additionally, fines, costs of self-help and/or the Right of Abatement, and other charges assessed against less than all the Lots shall be deemed Specific Assessments.

Failure of the Board to specifically assess any such Common Expenses shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

4.07. Capital Budget and Contribution. The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

4.08 Statement of Account. Any Owner, Mortgagee, or a person or entity having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten dollars (\$10.00) or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

4.09. Capital Contribution Assessment. Upon acquisition of record title to a Lot by an Owner thereof, the purchaser or grantee becoming the Owner of the Lot shall be assessed and obligated to pay to the Association, in addition to the Annual Assessment and all other assessments levied under this Declaration, a non-refundable, non-prorated capital contribution assessment in an amount equal to two (2) months' of the Annual Assessment applicable to the Lot for the year in which such acquisition occurs (hereinafter, the "Capital Contribution Assessment"). The Capital Contribution Assessment shall be due and payable at the time of each such transfer or conveyance and shall be collected and paid to the Association at or upon the closing or date of each transfer or conveyance.

The Capital Contribution Assessment shall constitute a Specific Assessment under this Declaration and shall be a continuing lien against each transferred Lot, and a personal obligation of the Owner of the Lot, collected in the same manner provided in this Declaration for the collection of all other assessments.

Notwithstanding the foregoing, the following grantees shall be exempt from payment of the Capital Contribution Assessment: (i) any grantee who is the spouse or former spouse of the grantor; (ii) any grantee who is the child or grandchild of the grantor; (iii) any grantee to whom a Lot is transferred by will or under the laws of intestacy.

4.10. Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

5.

Article VIII, Section 8.02(b) of the Declaration "ENFORCEMENT; Right of Abatement" is hereby amended by deleting therefrom the last sentence of Section 8.02(b) and substituting therefor the following:

Such lien shall have the priority as set forth in the Act.

6.

Article VIII, Section 8.03(e) of the Declaration "ENFORCEMENT; Fines and Penalties and Creation of Lien" is hereby amended by deleting therefrom the last sentence of Section 8.03(e) and substituting therefor the following:

Such lien shall have the priority as set forth in the Act.

7.

Article VIII, Section 8.05 of the Declaration “*ENFORCEMENT; Collection of Assessments and Enforcement of Lien*” is hereby amended by adding to the end thereof the phrase “*actually incurred, as set forth in the Act.*”

8.

Article IX, Section 9.01 of the Declaration, “*DURATION AND AMENDMENT; Duration and Perpetuities*” is hereby amended by deleting Article IX, Section 9.01 in its entirety and substituting therefore the following:

Section 9.01 Duration. This Declaration and the covenants, conditions, restrictions, and easements set forth herein shall run with and bind all property in the Development and shall inure to the benefit of and shall be enforceable by the Association and any Owner, their respective legal representatives, heirs, successors, and assigns perpetually to the extent provided in the Act.

9.

Article IX, Section 9.02 of the Declaration, “*DURATION AND AMENDMENT; Amendment*” is hereby amended by deleting Article IX, Section 9.02 in its entirety and substituting therefore the following new Article IX, Section 9.02:

9.02 Amendment. Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, this Declaration may be amended by the agreement of Owners of Lots to which two-thirds (2/3) of the votes in the Association pertain. Notice of a meeting, if any is called, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment to this Declaration shall be effective until executed with a sworn statement by the Association president, vice president, or secretary in accordance with the Act and recorded in the Cobb County, Georgia land records.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Office of the Clerk of the Superior Court of Cobb County, Georgia within one (1) year of the date of recordation of such amendment in the Cobb County, Georgia land records. If legal action is not instituted to challenge the validity of any amendment to this Declaration within one (1) year of the recording of the Declaration in the Cobb County, Georgia land records, then such amendment shall be presumed to be validly adopted.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to comply with 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").

10.

Except as stated herein, the terms and provisions of the Declaration shall remain unchanged.

IN WITNESS WHEREOF, the undersigned officers of Creekshire Homeowners Association, Inc. hereby certify that this First Amendment to the Declaration was duly adopted and lawfully obtained by the required majority of the Owners of Lot in the Association, with all required notices properly given.

This ____ day of _____, 2023.

CREEKSHIRE HOMEOWNERS ASSOCIATION, INC.

Denny Zollweg, President

Sworn to and subscribed before me
this ____ day of _____, 2023.

Witness: _____

Notary Public

[NOTARY SEAL]

Eric John, Secretary

Sworn to and subscribed before me
this ____ day of _____, 2023.

[CORPORATE SEAL]

Witness: _____

Notary Public

[NOTARY SEAL]