



## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.

GEORGIA, Gilmer County  
 Clerk of Superior Court  
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*Colinda Sue Johnson*  
 Clerk of Superior Court

**DECLARATION**  
 of  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
 for  
**THE OAKS OF ELLIJAY**

THIS DECLARATION is made this 19<sup>th</sup> day of September, 2003, by THE OAKS OF ELLIJAY, INC., hereinafter referred to as "Declarant". Declarant is the owner of certain real property located in Land Lots 64 & 65, 11th District, 2nd Section, Gilmer County, Georgia, known as THE OAKS OF ELLIJAY.

The Declarant proposes to subdivide the property into lots for sale to the general public. By this Declaration, Declarant intends to establish certain covenants, conditions and restrictions (referred to collectively hereafter as the "restrictions") on the lots for the benefit and protection of the future and present owners of the lots and for the establishment and maintenance of sound values for the lots. The restrictions herein are intended to run with the land, and to inure to the benefit of and be binding upon each interest so conveyed or reserved and all parties having or acquiring any right, title, interest or estate therein. The restrictions herein are intended to be mutually enforceable by and upon all such parties, which shall include the Declarant, his heirs, successors and assigns.

1.

This Declaration shall be applicable to those subdivided lots (the "Lots") and roads which appear on a Final Plat for THE OAKS OF ELLIJAY, which is filed of record in the Office of Superior Court of Gilmer County. This Declaration shall also be applicable to lots in any future phase of said subdivision, the deeds (or Final Plat) to which bear express reference to this Declaration. Nothing herein shall be construed as an obligation on the part of Declarant to subject other phases or lots in the subdivision to this Declaration.

2.

The Lots subject to this Declaration shall be used for single-family residential purposes only; no commercial activity shall be conducted. No more than one dwelling shall be placed on a Lot; and no Lot shall be further subdivided; provided, however, that this Declaration shall not be construed to prohibit the adjustment or modification of boundary lines to accommodate the design and construction of driveways and dwellings.

3.

No dwelling shall have less than 1800 square feet of finished, heated living space, exclusive of porches, basements, carports, garages, patios, etc., provided that the first or main story in any multi-story structure (excluding the basement) shall have a minimum of 1400 square feet of such space. Each dwelling shall be built on a permanent foundation. No vinyl or aluminum siding shall be permitted on vertical, exterior surfaces. No conventional metal roofs shall be allowed, provided however that decorative or other non-conventional styles shall be allowed with the permission of the Association or its designee. No houses shall be painted white (except for trim)

or ostentatious colors. Exterior paint colors shall be approved by the Association. Construction of the exterior and interior of all dwellings shall be completed within twelve months of commencement. With the exception of foundations, no building shall be constructed of concrete block, and all roofs shall have customary pitch. All exterior concrete block or poured concrete shall be covered by rock, stucco or other decorative material. All construction and other improvements shall be performed in strict compliance with state and local laws, regulations, codes and ordinances, including without limitation all such rules which apply to erosion and sedimentation. No person shall occupy a dwelling, with or without an occupancy certificate, prior to substantial completion of both the interior and exterior. No construction trailers shall be permitted within the subdivision.

## 4.

No commercial, short-wave, TV or other type of conspicuous antennae shall be permitted, without the prior written approval of the Association. Satellite dishes greater than thirty (30") inches in diameter shall be kept in the backyard or behind a screen acceptable to the Association. Other satellite dishes shall be screened from street view. Propane tanks (and any other storage tanks) shall be below ground or screened from street view. Any damage or disturbance to a road, utility installation or other subdivision infrastructure in connection with construction or other activity on a lot shall be the responsibility of the owner of such lot. Such owner shall, at a minimum, repair the damage and restore the system, as nearly as practicable, to its former condition, at such owner's sole expense. Proper culverts or tiles shall be installed under all driveways, which shall have an asphalt or concrete surface. Nothing herein shall be construed to prohibit rock or other decorative hard surface on a driveway. No silt or other drainage arising directly or indirectly from construction shall be permitted on any road or upon the lot of another owner. All stumps and other debris of clearing, excavation or construction shall be promptly removed from the lot and properly disposed of. Any violation of any land disturbance ordinance or law, or other land use regulation, shall be a violation hereof.

## 5.

The Association shall have the authority to review any and all plans for the installation or construction of any improvements (including out-buildings, decks, etc.) upon any Lot. No Lot owner shall engage in such installation or construction (including exterior additions or alterations) without the prior written approval of the Association; provided however, that any application upon which a decision is not made by the Association within thirty (30) days of application shall be deemed approved. The Association shall have the authority to reject any plan which does not, in the reasonable discretion of the Association, represent standards appropriate for the subdivision. The Association may likewise reject any plan if the Association reasonably finds that such plan would create aesthetic values which would adversely impact the monetary or common aesthetic value of the other Lots. The Association shall also have the right to implement reasonable policies for the approval of builders and contractors, including the imposition of reasonable monetary bonds, penalties and indemnifications upon builders and owners to assure prompt completion of proposed improvements and repairs to any damaged subdivision infrastructure. All dwellings shall be constructed of wood, brick, stone, stucco, "hardy-board" or like materials (including synthetic, simulated or "manufactured" stone), and all such exterior materials and colors shall be approved by the Association. The Association shall be authorized to designate an Architectural Control Board (the ACB) to exercise the powers described herein.

## 6.

No mobile homes, octagon homes, or log homes shall be placed on any Lot. Pre-fabricated homes (other than mobile homes) may be constructed with the prior written approval of the

Association. No commercial vehicle, unregistered automobile, motor home, recreational vehicle, camper, boat or boat trailer or like equipment shall be permitted on any lot on a permanent basis (not to exceed forty-eight (48) consecutive hours) without the approval of the Association.

Notwithstanding the foregoing, any such vehicles or equipment may be stored on a lot, provided such vehicle or equipment is kept in an enclosed space approved by the Association. No semi-tractors or other commercial vehicles shall be parked on or adjacent to a lot, or on a subdivision road, except for two-axle vehicles used to commute to and from work. No structure of a temporary character such as a basement, trailer, lean-to, tent, shack, garage, barn or other outbuilding shall be used as a residence at any time. Except for a detached garage, there shall be no shed, shacks, storage buildings or other outbuildings constructed or placed on a Lot. There shall be no camping permitted on any Lot. No clotheslines shall be permitted. No fencing shall be permitted without the prior written approval of the Association.

7.

The establishment, maintenance and use of all Lots with regard to the disposal of sewerage and effluent shall be done in strict compliance with currently existing State and County Health regulations. In particular, no outside toilets shall be allowed on any Lot, and no waste or effluent shall be permitted to enter any streams. All sanitary arrangements must be inspected and approved by local or State Health Officers. All dwellings constructed on a Lot shall be connected to the Ellijay-Gilmer County Water and Sewer Authority sewer and water system available in the subdivision.

8.

No animals or fowl shall be maintained on any Lot except household pets, which must be confined to the Lot unless such pet is on a leash. There shall be no kennels. Any and all fencing of pets shall be approved by the Association and maintained behind the rear of the dwelling. No animal pens shall be permitted. No more than three (3) pets shall be maintained on any Lot.

9.

All set-back lines shall be as depicted on the Final Plat. In the event of a dispute as to the character of a boundary line as a sideline or back line, the decision of the ACB shall be final. The ACB shall be authorized to grant variances to the various setback lines (except to the extent established by local law), provided that such variances do not diminish the aesthetic values of the subdivision or the Lots. Along all boundaries, except those boundaries along a subdivision road, shall be a 2-foot "dead zone" which shall remain free from any construction, improvement or disturbance, except as may be allowed with the written permission of the Association. Where a dwelling is constructed on more than one contiguous Lot, the sideline setback specified in this paragraph shall not apply to any such sideline which has become an interior line by virtue of such consolidation.

10.

No noxious activity shall be carried on any Lot or road, nor shall anything be done thereon which shall become an annoyance or nuisance to the neighborhood. There shall be no discharge of firearms within the subdivision. No mass removal of trees will be allowed, and only minimal removal where such is necessary for construction, or to prevent a hazard. Furthermore, no hardwood trees of a size greater than six (6) inches shall be removed from the property except in connection with the reasonable requirements of construction and landscaping, or where such trees are dead, damaged or present a hazard, unless pursuant to the written approval of the Association. Unauthorized tree removal will subject the violator to an assessment in the amount to be set by the Association, but not to exceed \$5000. No rock shall be removed from any creek.

## 11.

No signs shall be permitted in the subdivision with the exception of signs identifying the Owner, and the Lot number and address, and construction permits, without the prior written approval of the Association. Such signs shall be attractive in appearance and shall be maintained in such condition, and shall have the prior written approval of the Association. Nothing herein shall be construed to prohibit or regulate the maintaining of signs by Declarant for the purpose of sales, marketing and identification of the Lots and homes in the subdivision.

## 12.

No Lot or other area in the subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, including, but not limited to, junk vehicles of any sort and household waste. All Lots shall be kept clean and in sanitary condition. All stumps, brush and debris shall be promptly removed from the subdivision. All landscaping must be maintained in an attractive manner, including the mowing of lawns, to the curb. There shall be no artificial ornaments or decoration maintained in any front yard (with the exception of appropriate seasonal decorations) unless approved by the ACB.

## 13.

Lot owners in the subdivision, by acceptance of a deed or by entering into a contract for the purchase of a lot in the subdivision shall become members of The Oaks of Ellijay Owners Association ("Association"), a non-profit Georgia corporation, and covenant and agree to pay to the Association annual membership dues and such special assessments (collectively, the "Dues and Assessments") as may hereafter be charged by the Association in accordance with its charter and by-laws. The Declarant shall not be liable for the payment of any Dues and Assessments in connection with any Lots held for sale in the course of Declarant's business. Until the Declarant shall sell or otherwise dispose of seventy-five (75%) per cent of the lots in the subdivision, the Declarant shall be entitled to appoint the directors of the Association. Such period of developer control may be shortened (but not lengthened) at the election of the Declarant. At the expiration of such period, the directors of the Association shall be elected by the owners of lots on the basis of one vote per lot. Nothing herein shall be construed as limiting the right of the Declarant to exercise any vote to which it may be entitled by virtue of its ownership of lots.

The Dues and Assessments shall be used by the Association for the purpose of maintaining said roads, if necessary, and any entrance structure, and for other purposes which may from time to time be authorized by the Board of Directors of the Association.

The Dues and Assessments, together with charges, interest, costs and reasonable attorney's fees, in the maximum amount permitted by law, shall be a lien upon the Lot against which Dues and Assessments are made on the due date thereof. Such amounts shall also be the personal obligation of the person or entity who was the owner of the Lot on said due date. Each owner shall be liable for his or her portion of each assessment coming due while he or she is the owner of a Lot and his or her grantee shall be jointly and severally liable for such portions thereof as may be due and payable at the time of conveyance.

Any owner of two contiguous Lots may elect to treat the Lots as one Lot for purposes of the assessment of the Dues and Assessments, and shall be entitled to pay such Dues and Assessments as if both Lots were one Lot; provided, however, that such treatment shall be available commencing the calendar year in which bona fide construction of a dwelling on such consolidated Lot is begun. In the event of such consolidation, the combined Lot shall be treated as one Lot for voting purposes.

Any assessments not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge of 10% of the amount due. Said amount together with the late charge shall accrue interest at the maximum allowable rate. In the event the

assessment remains unpaid after sixty (60) days, the Association may, as the board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by his or her acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien herein shall be subject to any security interest securing a bona fide purchase money loan or refinancing thereof made previous to the date of attachment of said lien.

15.

a. This Declaration shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as he is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

b. In the event of a violation or breach of any restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association (or the Declarant, acting on its behalf during the period of developer control) shall have the Right of Abatement.

c. The Right of Abatement means the right of the Association, through its agents and employees, to enter at all reasonable times upon any lot or structure thereon, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this article, and with the cost thereof including the costs of collection including reasonable attorneys' fees. Nothing herein shall be deemed to affect or limit the rights of Declarant, the Association or any Owner to enforce the terms and provisions hereof by appropriate judicial proceedings in the form of injunctive relief or otherwise. Any invalidation of one or more of the terms and provisions herein shall not affect the enforceability of the remaining terms and provisions.

16.

This Declaration may be amended at any time by a two-thirds (2/3) majority of the Lot owners, provided however that no amendment shall adversely effect any existing use of a Lot by an owner.

17.

An invalidation of one or more of these covenants or restrictions shall in no way effect any of the remaining provisions herein, which shall thereafter remain in full force and effect.

IN WITNESS WHEREOF, the undersigned does set hand and seal.

THE OAKS OF ELLIJAY, INC.

By: Dad J. Price, President

