

Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

ParticipantIDs: 1358594985 SubmitterID: 7067927936

After recording, please return to:
Skip Breeden
Dorough & Dorough, LLC
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Decatur, Georgia 30030
(404) 687-9977

CROSS REFERENCE: Deed Book: 9141
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**FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HALEY FARM**

THIS AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HALEY FARM ("Amendment") is
made this 10th day of September, 2023 by **HALEY FARM COMMUNITY
ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter called the "Association").

WITNESSETH:

WHEREAS, NEWMAN HOMES, INC., as Declarant, and LSI-HALEY FARM, LLC, as Developer, executed that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Haley Farm, dated October 10, 2006, recorded October 18, 2006 and filed at Deed Book 9141, Page 1, *et seq.*, Cherokee County, Georgia land records; aforesaid records (hereinafter as may be supplemented and/or amended from time to time collectively referred to as the "Declaration"); and

WHEREAS, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code to be the Association named in the Declaration to have the power and authority set forth therein; and

WHEREAS, pursuant to Article 11, Section 11.6 of the Declaration, the Board of Directors, with the written consent of the Declarant, and without the vote of the members, may
THIS INSTRUMENT SUBJECTS THE MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION PROVIDED FOR HEREIN TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

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amend the Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*; and

WHEREAS, Declarant no longer owns any property in the Community or that can be annexed to the Community and no longer maintains any rights under the Declaration; and

WHEREAS, the Board of Directors desires to submit the Association to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, *et seq.* (the "Act"), as the same is in effect on the date hereof and as may be amended from time to time, pursuant to the terms and conditions hereinafter set forth and desire to amend the Declaration as set forth herein;

NOW THEREFORE, the Association, acting through the Board, hereby submits the Property to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, *et seq.*, and adopts this Amendment to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Haley Farm, hereby declaring that all of the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Act and the Declaration, amended as follows:

1.

The Declaration is hereby amended by deleting Article 4, Section 4.2, entitled "Creation of the Lien and Personal Obligation of Assessments," it in its entirety and replacing it with a new Article 4, Section 4.2 to read as follows:

4.2. Creation of the Lien and Personal Obligation for Assessments.
Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All assessments, together with late charges (not in excess of the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount due, or such higher amount as may be authorized by the Act from time to time), interest (at a rate not in excess of ten percent (10%) per annum on the principal amount due, or such higher amount as may be authorized by the Act from time to time), and costs of collection including, without limitation, reasonable attorney's fees actually incurred, and, if the Board so elects, the fair rental value of the Lot, and all reasonable charges made to any Lot Owner or Lot for materials furnished or services rendered by the Association at the Owner's request to or on behalf of the Lot Owner or Lot, shall, from the time the sums become due and payable, be a charge on the land and a continuing lien in favor of the Association on the Lot against which each assessment is made. As provided in O.C.G.A. Section 44-3-232, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

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Pursuant to the Act, the recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each assessment, together with late charges, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise be exempt from liability for the assessments provided for herein for any reason, including, by way of illustration and not limitation, the following: (a) abandonment of the Lot; (b) nonuse of the Common Property, including, without limitation, nonuse of the Community recreational facilities; (c) the Association's failure to perform its obligations required under the Declaration; or (d) inconvenience or discomfort arising out of the Association's performance of its duties. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

2.

The Declaration is hereby amended by deleting Article 4, Section 4.6, entitled "Subordination of Liens to Mortgages," in its entirety and replacing it with a new Article 4, Section 4.6 to read as follows:

4.6. Subordination of Liens to Mortgages. The lien of assessments provided herein shall be prior and superior to all other liens whatsoever except: (a) liens for ad valorem taxes on the Lot; (b) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (c) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments or payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for assessments thereafter become due from the lien thereof.

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The Declaration is hereby amended by deleting Article 4, Section 4.7, entitled "Remedies of the Association," in its entirety and replacing it with a new Article 4, Section 7 to read as follows:

4.7. Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (not in excess of the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount due, or such higher amount as may be authorized by the Act from time to time), interest (at a rate not in excess of ten percent (10%) per annum on the principal amount due, or such higher amount as may be authorized by the Act from time to time), and costs of collection including, without limitation, reasonable attorney's fees actually incurred. As provided in O.C.G.A. Section 44-3-232, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Cherokee County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments.

Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of use and enjoyment in and to the Common Property, including, without limitation, the right to use and enjoy the Community recreational facilities, and the right to receive and enjoy such services and other benefits as may then be provided by the Association. Any suspension shall not affect an Owner's obligation to pay

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assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

4.

The Declaration is hereby amended by deleting Article 4, Section 4.11, entitled "Estoppel Letter," in its entirety and replacing it with a new Article 4, Section 4.11 to read as follows:

4.11. Estoppel Letter. 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 or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Lot. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall respond in writing within five (5) business days of receipt of the request for a statement, or such longer period as may be permitted by the Act; provided, however, the Association may require the payment of a reasonable fee not to exceed Ten and No/100 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.

5.

The Declaration is hereby amended by adding a new Article 12 to the end of the Declaration, entitled "Submission to Georgia Property Owners' Association Act; Conflict," to read as follows:

ARTICLE 12
SUBMISSION TO GEORGIA PROPERTY OWNERS' ASSOCIATION ACT;
CONFLICT

The property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, *et seq.* (as amended from time to time, the "Act"). In the event of a conflict between the provisions of this Declaration and the provisions of the Act then to the extent that the provisions of the Act cannot be waived by agreement, the Act shall control.

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6.

Unless otherwise defined herein, the words used in this Amendment shall have the same meaning as set forth in the Declaration.

7.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Cherokee County, Georgia and shall be enforceable against the current Owner of any Lot subject to the Declaration.

8.

Except as herein modified, the Declaration shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Association, acting through the Board of Directors has caused this Amendment to be executed under seal the day and year first above written.

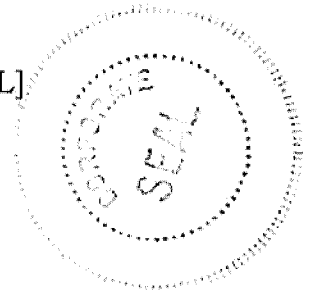
**BOARD OF DIRECTORS OF HALEY
FARM COMMUNITY ASSOCIATION,
INC., a Georgia nonprofit corporation**

By: J. Scott Dilbeck
Print Name: J. Scott Dilbeck
Director

By: W. B. Fuentes
Print Name: William B. Fuentes
Director

By: Ronald C Hammock
Print Name: Ronald C Hammock
Director

[CORPORATE SEAL]



Signed, sealed and delivered
in the presence of:

Brittany Crow
Witness

Chante Jackson
Notary Public

My Commission Expires: 06/08/25

[AFFIX NOTARY SEAL]

