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Attn: Brendan R. Hunter

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Gwinnet County, Georgia Records  
  
Deed Book 556, Page 451  
Barrow County, Georgia Records

STATE OF GEORGIA

COUNTY OF BARROW

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE WOODLANDS AT CHÂTEAU ÉLAN AND BY-LAWS OF WOODLANDS AT CHATEAU ELAN OWNERS ASSOCIATION, INC.**

This Amendment to the Declaration of Covenants, Conditions and Restrictions for the Woodlands at Château Élan and By-Laws of Woodlands at Chateau Elan Owners Association, Inc. (hereafter referred to as "Amendment") is made on the date set below.

WITNESSETH:

WHEREAS, Fountainhead Development Corp., Inc. (hereafter referred to as "Fountainhead Development"), recorded that certain Declaration of Covenants, Conditions and Restrictions for the Woodlands at Château Élan in Deed Book 20808, Page 88, *et seq.* of the Gwinnett County, Georgia real property records and in Deed Book 556, Page 451, *et seq.* of the Barrow County, Georgia real property records (hereafter referred to as "Declaration");

WHEREAS, Fountainhead Development recorded that certain Assignment and Acceptance Agreement (The Woodlands at Château Élan) in Deed Book 41003, Page 72, *et seq.* of the Gwinnett County, Georgia real property records and in Deed Book 1029, Page 246, *et seq.* of the Barrow County, Georgia real property records assigning all of its rights, interest and responsibilities as "Declarant" described in the Declaration to Fountainhead Residential Development, LLC (hereafter referred to as "Declarant")

WHEREAS, Woodlands at Chateau Elan Owners Association, Inc. (hereafter referred to as "Association") is the homeowners association referred to and identified in the Declaration;

WHEREAS, the By-Laws of Woodlands at Chateau Elan Owners Association, Inc. (hereafter referred to as "By-Laws") are the bylaws of the Association;

WHEREAS, pursuant to Article 15, Section 15.2(a) of the Declaration, during the Development Period, Declarant may unilaterally amend the Declaration for any purpose, provided the amendment has no material adverse effect upon any right of any Owner;

WHEREAS, pursuant to Article 6, Section 6.6(a) of the By-Laws, during the Development Period, Declarant may unilaterally amend the By-Laws for any purpose, provided the amendment has no material adverse effect upon any right of any Member;

WHEREAS, as of the date of this Amendment, the Development Period has not terminated pursuant to the terms of the Declaration;

WHEREAS, this amendment has no material adverse effect upon any right of any Owner and/or Member;

WHEREAS, the Declarant has approved this Amendment, which is evidenced by its execution of this Amendment; and

NOW, THEREFORE, the Declaration and By-Laws are hereby amended as follows:

1.

**Article 2, Section 2.1 of the Declaration is amended by adding thereto the following as subsection (k):**

(k) No Owner, or such Owner's guests, family members, licensees, or invitees, may conduct any business or commercial activities on any portion of the Common Area, including any Exclusive Common Area, without the prior, written approval of the Board of Directors.

2.

**Article 2, Section 2.1 of the Declaration is amended by adding thereto the following as subsection (l):**

(l) No Owner, or such Owner's guests, family members, licensees, or invitees, may use any portion of the Common Area, including any Exclusive Common Area, in any way that will block or impede the flow of traffic on the streets within the Properties.

3.

**Article 4, Section 4.3(d) of the Declaration is amended by striking same in its entirety and substituting therefore the following:**

(d) suspending any Person's right to use any recreational facilities within the Common Area, including any Exclusive Common Area; provided, however, nothing herein shall authorize the Board to prohibit ingress or egress to or from a Lot.

4.

**Article 5, Section 5.1(a)(ii) of the Declaration is amended by striking same in its entirety and substituting therefore the following:**

(ii) except as specifically provided below in Section 5.2, all street trees, landscaping and other flora, parks, ponds, trails, structures, and improvements, including entry features, gates, private streets, sidewalks, parking areas and recreational facilities situated upon the Common Area;

5.

**Article 5, Section 5.1(a)(iv) of the Declaration is amended by striking same in its entirety and substituting therefore the following:**

(iv) except as specifically provided below in Section 5.2, any street trees, landscaping and other flora, buffers, trails, sidewalks, entry features, gates, structures and improvements within public or private rights-of-ways within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

6.

**Article 5, Section 5.2 of the Declaration is amended by adding thereto:**

In addition, except for street trees and sidewalks, which shall be the responsibility of the Association until acceptable by a governmental authority, agency, or municipality, each Owner of a Lot shall maintain any right-of-way and/or Common Area located between the Owner's Lot and the curb of the street(s) bordering such Lot, including, but not limited to, the landscaping and other flora located thereon.

7.

**The first paragraph of Article 8, Section 8.8 of the Declaration is amended by striking same in its entirety and substituting therefore the following:**

8.8 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of assessments and other charges, as well as interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto from the date the same was first due and payable at the rate of ten percent (10%) per annum or such higher amount as may be authorized by law, late charges equal to the greater of ten dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment thereof not paid when due or such higher amount as may be authorized by law, costs of collection and reasonable attorney's fees actually incurred. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

8.

**Article 8, Section 8.12 of the Declaration is amended by striking same in its entirety and substituting therefore the following:**

8.12. Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, and upon each subsequent transfer of record title to a Lot, other than by foreclosure or deed in lieu of foreclosure to any mortgagee of such Lot, or upon occupancy of a Lot by a Person other than a Builder or Declarant, a contribution shall be made by or on behalf of the purchaser or occupant to the working capital of the Association in an amount equal to the amount of the annual General Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot, or if the obligation to make the capital contribution arises by virtue of occupancy of a Lot by a Person other than a Builder or Declarant, the capital contribution shall be paid immediately upon demand by the Association. Capital contributions shall be used by the Association in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

9.

**Article 10, Section 10.10 of the Declaration is amended by adding thereto:**

The term "Trash Collection Services" means the commercial collection of trash, garbage, debris, refuse, landscaping refuse, yard waste, recyclables, such as newspaper, plastic and glass, and other items and materials as may be determined by the Board of Directors to be included as trash. The Association may, but shall not be required to, provide Trash Collection Services for the Lots. The Board of Directors shall have the right, but not the obligation, to negotiate with, contract with, and supervise, providers of Trash Collection Services. In the event the Association does provide Trash Collection Services, the costs of Trash Collection Services shall be a Common Expense of the Association and be assessed against the Owners as a General Assessment, Neighborhood Assessment, and/or Special Assessment. If any Owner creates any condition or disposes of any item which increases the expense of Trash Collection Services to the Association, then the increased expense may be assessed against the Owner creating the additional expense as a Specific Assessment.

10.

**Article 6 of the By-Laws is amended by adding thereto the following as Section 6.7:**

6.7. Notices.

(a) Method of Giving Notice. All notices, demands, bills, statements, or other communications shall be in writing and shall be given:

- (1) Personal delivery to the addressee;
- (2) Via United States mail, first class, postage prepaid;
- (3) Via electronic mail; or
- (4) Via any other legal means.

(b) Addressee. Notice sent by one of the methods described herein shall be deemed to have been duly given:

(1) If to an Owner, to the electronic mail address which the Owner has designated in writing to the Association, or if no such electronic mail address has been designated, at the address of the Owner's Lot or such other address the Owner has designated to the Association;

(2) If to an Occupant, to the electronic mail address which the Occupant has designated in writing to the Association, or if no such electronic mail address has been designated, at the address of the Lot occupied; or

(3) If to the Association, the Board or the managing agent, if any, at the postal address, facsimile, or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Owners.

(c) Electronic Mail Address. Each Owner and Occupant shall designate an electronic mail address to the Association to receive notices from the Association. In the event an Owner or Occupant fails to provide the Association an electronic mail address, any costs the Association incurs in sending notices to the Owner and/or Occupant may be assessed against the Owner and/or Occupant as a Specific Assessment.

11.

**Article 6 of the By-Laws is amended by adding thereto the following as Section 6.8:**

6.8. Electronic Communications.

(a) Records and Signatures. Whenever the Declaration or the Bylaws require that a document, record or instrument be written or in writing, the requirement is deemed satisfied by an electronic record pursuant to the Georgia Uniform Electronic Transactions Act. Whenever the Declaration or the Bylaws require a signature on a document, record or instrument, an electronic signature, in accordance with the Georgia Uniform Electronic Transactions Act, satisfies that requirement.

(b) Verification and Liability for Falsification. The Board of Directors may require reasonable verification of any electronic signature, document, record, or instrument. Absent or pending verification, the Board of Directors may refuse to accept any electronic signature or electronic record that, in the Board's sole discretion, is not authentic. Neither the Board of Directors nor the Association shall be liable to any Owner or any other Person for accepting or acting in reliance upon an electronic signature or electronic record that the Board of Directors reasonably believes to be authentic, or rejecting any such item which the Board of Directors reasonably believes not to be authentic. Any Owner or Person who negligently, recklessly or intentionally submits any falsified electronic record or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees actually incurred and expenses incurred as a result of such acts.

IN WITNESS WHEREOF, the undersigned hereby certify that this Amendment was properly approved.

Dated this 14<sup>th</sup> day of October, 2022.

Signed, sealed and delivered  
in the presence of:

Witness: Jan Gibson  
ELH  
Notary Public

**DECLARANT:**

FOUNTAINHEAD RESIDENTIAL  
DEVELOPMENT, LLC, a Georgia limited  
liability company

By: [Signature] (Seal)

Its: Declarant / CEO

