

<b>GLEN ELLEN PROPERTY OWNERS ASSOCIATION</b>
---

PROTECTIVE COVENANTS

STATE OF GEORGIA  
COUNTY OF HABERSHAM

THIS INDENTURE OF PROTECTIVE COVENANTS made and published this 12th day of March, 1990, by Daybreak, Inc.

WITNESSETH:

WHEREAS, Daybreak, Inc., a Georgia Corporation, is the owner of the following property, to wit:

ALL THAT TRACT or parcel of land lying and being in Land Lots 47 and 48 of the 3rd Land District of Habersham County, Georgia; and being designated as Lots 1 through 13 of GLEN ELLEN, as shown by Plat of Survey prepared by Max Lewallen, licensed engineer and surveyor, dated February 27, 1990, containing an aggregate of 33.12 ACRES, more or less, said Plat being incorporated herein by reference for a more particular description.

WHEREAS, it is to the interest and advantage of said owner and to each and every person who shall hereinafter purchase a tract from it that certain Protective Covenants governing and regulating the use and occupancy of the above property (hereinafter the "Covenanted Property") be established, set forth and declared to be covenants running with the land.

NOW THEREFORE, for and in consideration of the premises and of the benefits to be derived by said owner and each and every subsequent owner of any of the Covenanted Property, said owner does hereby set up, establish, promulgate and declare the following Protective Covenants to apply to all of the Covenanted Property, or a part thereof, these Protective Covenants shall become effective immediately and run with the land and shall be binding on all persons claiming under and through said owner for a period as set forth in Item 15 herein:

**1. OWNERS AND ASSOCIATION.**

A. DEFINITIONS:

- (1) "Association" shall mean and refer to the association created hereby which shall be know as "GLEN ELLEN Property Owners Association", its successors, and assigns. Said association may be incorporated by Declarant at any time or upon a two-thirds vote of the members. Notice and Conditions are the same as those stated in subparagraph C (4) of this Item.
- (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 part of the above-described properties but excluding those having such interest merely as security for the performance of an obligation.
- (3) "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by Declarant.

(4) "Common Area" shall mean all real property owned by the Association or in trust for the association for the common use and enjoyment of the Owners, including but not limited to any water system, roads and greenbelts as more accurately described in the above plat and shown on survey for Glen Ellen, plus the entrance road to Glen Ellen from Georgia Highway 255-A.

(5) "Lot" shall mean and refer to all of the thirteen (13) tracts as appearing on the above-referenced plat plus any other property made subject to these covenants by proper instrument.

(6) "Declarant" shall mean and refer to Daybreak, Inc., its successors and assigns.

(7) "Short periods of time," as used in Section 9.D, shall mean any time period less than six (6) months  
 [Editorial Note: This amendment was adopted by a vote of more than two-thirds of the lot owners in February 2004]

## B. PROPERTY RIGHTS.

The forty (40) foot private road shown on said Plat and any and all other easements shown on said Plat shall be used solely and exclusively at the pleasure of Owners, (specifically including Declarant). Declarant shall maintain the forty (40) foot private road easement until February 27, 1991 and thereafter shall have the right, but not the duty to maintain same, although after such date the Owners, (or any landowner's association of them), shall have the right and the duty to maintain same pro rated by the number of Lots served by said forty (40) foot private road easement.

Declarant specifically reserves the right of ingress and egress over, upon and through all easements (private or otherwise) to serve other property of Declarant, and said right shall be a Covenant and appurtenance running with the land, freely alienable by Declarant and shall not be defeated for lack of use or maintenance. Declarant reserves the non-exclusive right to dedicate to any governmental body any road easements, (private or otherwise), without the assent or consent of any purchases/

(1) Every owner shall have a right of passage across the roads which roads shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions: The right of the Declarant or Association to dedicate or transfer all or any part of the Common Area or Roads to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to be the members. No such dedication or transfer shall be effective unless an instrument signed by the owners of two-thirds (2/3) of the lots agreeing to such dedication of transfer has been recorded.

(2) Any owner may delegate, in accordance with any Bylaws that might be adopted by the Declarant or the Association, rights of ingress and egress across the Roads to the members of his family, his tenants, his guests or contract purchasers who reside on a lot.

(3) Bylaws of the Association would have to be voted and approved by at least two-thirds (2/3) of those entitled to vote to become binding.

## C. MEMBERSHIP AND VOTING RIGHTS

(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.

(2) The Association shall allow voting privileges of one vote for each lot owned. When more than one person holds an interest in any lot, the vote of such lot shall be exercised as they among themselves determine, but in

no event shall more than one (1) vote be cast with respect to any lot, and no vote shall be divisible. Therefore, at the execution of this instrument, there will be a total of thirteen (13) possible votes.

(3) The members of the Association shall create and maintain a Board of Directors to govern its affairs, the number, term and composition of which shall be determined from time to time by a majority of the members.

(4) The Board of Directors shall be responsible for conducting a meeting in which all individuals entitled to vote are notified at least 30 days prior to such meeting on an annual basis. At this annual meeting the Board of Directors shall be elected. Individuals entitled to vote may appoint some other persons to vote by proxy; provided, that such appointment must be in writing.

(5) Title to the common area, if any, shall be held by the Glenn Ellen Property Owners Association.

#### D. COVENANT FOR MAINTENANCE ASSESSMENTS.

(1) Each Owner of any lot by acceptance of a deed and by agreeing hereto, 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. In addition, 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.

(2) 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, or for such other purposes as agreed upon by a majority of those individuals entitled to vote.

(3) In addition to the assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Roads or any capital improvement upon the Common Area, provided that any such assessment shall have the assent of the Owners of two-thirds (2/3) of the lots voting either in person or by proxy at a meeting duly called for this purpose. Any action authorized under this paragraph for the special assessment shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. Votes may be cast in person or by written proxy.

(4) Both annual and special assessments must be fixed at a uniform rate for all lots and must be collected on a yearly basis or monthly basis as determined by the Board of Directors.

(5) Any assessment not paid within thirty (30) days after its due date shall bear interest from the due date at the rate of eighteen percent (18%) 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 of that Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Roads or Common Area or abandonment of his lot. It being to the mutual advantage of Declarant herein and any subsequent owners or purchasers of any of the above-described property to further allow and authorize collection of said amounts, Declarant and subsequent owners hereby authorize and agree that a lien shall be placed among the deed records of Habersham County, Georgia, against the offending property or owners until said sum shall be paid in full.

(6) It is understood that Declarant shall retain all maintenance obligations relating to the property until such time as the Association is formed, and that the Association, once formed shall succeed to all rights and obligations of Declarant hereunder.

#### E. GENERAL PROVISIONS.

(1) Additional residential property and Common Area may be annexed to the Properties described herein and made subject to all terms and conditions of these covenants by the dedication of such additional property by its lawful owner, but only with consent of at least two-thirds (2/3) of the Members.

(2) The Association shall have the power to set rules and regulations for the use of the Common Area. Such rules shall be drafted by the Board of Directors and must be approved by a majority of the Owners.

### 2. LAND USE RESTRICTIONS.

During construction of dwellings, owners may park and use a motor home or camper for a period not to exceed 20 weeks.

A. USE FOR RESIDENTIAL PURPOSES ONLY. The Covenanted property shall be used for residential purposes only.

B. Only one single family shall be allowed on each lot, or on two acres of lot.

C. Only one detached dwelling not to exceed two stories, exclusive of basement, may be placed on each lot. Garage or carport, attached or unattached to the resident structure, shall not exceed a size of a three car capacity.

D. UNATTACHED BUILDINGS. Any building not directly attached to the dwelling either by a common wall or by a continuation of the roof of the building, shall be defined herein as an unattached building. No unattached building shall be constructed, placed, or used prior to the starting of the construction of the dwelling. A shelter, carport or any structure with a roof and no walls or partially enclosed walls shall be considered as an unattached building. All unattached buildings shall be in harmony with the design, workmanship, and materials of the dwelling and topography conditions of the lot. Unattached structures shall be placed, erected, altered, or used for the sole purpose of the residence occupants and their guests only. Only one guest house not exceeding 800 sq. ft. will be permitted on each lot.

E. LOCATION OF BUILDING SITE. No building or structure of any type shall be located on any building site nearer to the front line than 30 feet, nor nearer to a side or rear lot than 25 feet, nor nearer to any structure on any adjacent lot or building site than 50 feet. Such structures must be made of natural stained or painted woods, aluminum or fiberglass simulating wood, brick or stone and blend harmoniously with the landscape.

F. REPLACEMENT OF DESTROYED BUILDINGS. Any dwelling or outbuilding on any lot which may be destroyed in whole or in part by fire, windstorm, or for any cause or act of God must be rebuilt or all debris removed and the lot restored to a sightly condition with reasonable promptness; provided, however, that in no event shall such debris remain longer than six (6) months. If not so removed, such debris shall be deemed a nuisance and forthwith removed at the cost of the Owner, to the satisfaction of the Board of Directors of the Owners Association.

G. REMOVAL OR COMPLETION OF UNFINISHED STRUCTURES. The exterior of all new buildings, enclosures, or structures or of existing structures undergoing restoration shall be completed within one (1)

year after construction of same shall have commenced except where completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency, or natural calamities. If not so completed, or if construction shall cease for a continuous period of ninety (90) days without written permission of the Glen Ellen Property Owners Association, the unfinished structure or unfinished portion hereof shall be deemed a nuisance and upon thirty (30) days written notice, removed or completed at the cost of the Owner, to the satisfaction of the Board.

H. SUBDIVIDING LOTS. No lot shall be subdivided into lots containing less than 2.0 acres, exclusive of original lots.

I. TEMPORARY BUILDING. No temporary building, trailer, mobile home, modular or manufactured home, basement, tent, shack, or any other type of temporary or partly finished building or structure shall be placed upon the covenanted property, or used as dwelling thereon.

### **3. BUILDING RESTRICTIONS**

A. SIZE OF DWELLING. No one-story dwelling shall be erected on any lot where the enclosed ground floor area thereof shall be less than 1,200 square feet. No two-story dwelling shall be erected on any lot where the ground floor area thereof shall be less than 800 square feet and the second story less than 1,200 square feet minus the square footage of the first floor. These minimum requirements of square footage shall be exclusive of porches, carports, patios and similar construction.

B. MATERIALS OF DWELLING AND STRUCTURES. All buildings or structures shall be constructed of such natural building materials as stone, logs, woods with stained natural wood tones, painted wood, vinyl or fiberglass, with the roofs finished with cedar or asphalt shingles, tile or facsimiles thereof.

C. NON-BUILDING STRUCTURES. No walls, fences, walks, drives or drainage or utility structure, nor recreation structure shall be placed, erected or used which are not in harmony with the external design of existing structures or topography. Property lines, fences and walls shall be of a quality to be in harmony with the residence. No fence of a farm nature, such as wood post and chicken or barb wire, shall be permitted, but only a recognized residential type fence shall be permitted. Said fence shall be of a design in harmony with the residence, but must comply with other provisions herein contained as to materials, harmony or design with existing structures and as to location on the ground. No exterior flood lights shall be placed, erected, or used which will be directed onto an adjoining dwelling, nor shall an automatic lawn sprinkling system be so constructed as to spray beyond the owner's property line.

D. GRADING, LANDSCAPING AND SURFACE DRAINAGE. No grading, excavation, or filling shall be permitted which will result in a vertical bank at or near any property line including street right-of-way lines, unless a masonry or concrete retaining wall is built. No retaining wall shall be required for a slope bank of a one to two slope or less. Any cleared area on a sloped bank which would allow surface drainage to erode soil onto another lot or street shall be seeded and/or other means taken to provide erosion control. No shrubs, trees, hedges or other vegetation shall be placed on the street right-of-way except grass. No hedges or shrubs shall be permitted to exceed a three (3) foot height when planted along a side property line between the minimum building line and the street right-of-way; or along a driveway entering into a street. Trees shall be planted at a minimum distance of five (5) feet from any property line.

#### **4. DRIVEWAYS, WALKS AND TERRACES.**

The lot Owner shall have exclusive right to ingress and egress for a paved drive and walk from the street curb to any right-of-way line incumbent with the Owner's lot line. Said right shall be inclusive of the area from the back of the curb to any right-of-way line and between the lines formed by a continuation of the lot's side property lines into the curb. This is in no way intended to restrict the erection, placement, alteration, or maintenance of public utilities or other public right-of-way improvements within any road right-of-way. No more than two driveway accesses shall be permitted from any road right-of-way line to the roadbed per lot. No driveway, walk, or steps shall be nearer a non street right-of-way property line than ten feet. No paved area except an entrance walk and drive or drives shall be placed nearer the road right-of-way than 30 feet. No paved area for vehicle usage such as a driveway, parking lot or turnaround shall be nearer a non-right-of-way property line than 25 feet; nor placed in such a manner that any part of a vehicle in use or parked could encroach upon another lot. No paved area such as a terrace, patio, or recreation court shall be nearer to a non-right-of-way property line than thirty-five feet.

#### **5. NATURAL PRESERVATION.**

To maintain the beauty, privacy and naturalness of the area, no clear cutting of lots is allowed, except in the case of dead or diseased trees or trees that pose a threat to structure, human life or the health of the surrounding woods. Such trees must be removed by, and at the expense of, the owner or by the Association at the expense of the owner. Trees 6" in diameter at the base and over, must remain in an area fifty feet deep along roads and forty feet on adjacent sides of lots. Clear cutting for location of the dwelling and appurtenant structure shall be allowed, in addition, an area in a radius of twenty feet around said dwelling. If a scenic view or solar heating is desired, trees may be removed to accomplish same notwithstanding the foregoing, with the express written permission of the Board of Directors of the Property Owners Association. Solar cells shall not be visible from the streets. No kudzu plant, seed, clipping or any other form of adverse vegetation shall be brought onto the property. Pine trees threatening structures may be removed provided hardwood trees no less than 10' high are planted to replace them.

#### **6. COMMERCIAL ACTIVITY.**

No business, trade, profession, religious or commercial activity of any kind except home industry approved by the Property Owners Association shall be conducted in any building or on any portion of the Covenanted Property.

#### **7. 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 use. No pet or animal may be kept which is or becomes an annoyance or nuisance to the neighborhood (such as persistent noise, odor, or annoying trespassing). Positively no pigs, swine, sheep, horses or cows of any kind will be permitted.

#### **8. GARBAGE AND REFUSE DISPOSAL.**

No part at the Covenanted Property shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in a sanitary container. All incinerators or other equipment for the

storage or disposal of such material shall be kept in a clean and sanitary condition. No solid waste, debris, litter, partially wrecked or junked vehicles or equipment shall be stored or disposed of on property.

## **9. GENERAL PROPERTY RESTRICTIONS.**

A. MECHANICAL EQUIPMENT. No mechanical equipment such as generators, motors or the like, except for water pumps or wells, shall be placed on the Covenanted Property closer to any road right-of-way than 50 feet; or nearer to any other property line than 40 feet. Any water pumps or wells must be covered by suitable materials which blend with the natural surroundings.

B. UTILITIES. No septic tank or other tanks shall be nearer any road right-of-way than 30 feet or nearer any other property line than 15 feet; No sub-surface sewage absorption system shall be nearer a road right-of-way than 15 feet nor nearer any other property line than five feet; nor nearer a stream or open ditch than 25 feet. Leaching (dry wells or cess pools) shall be no nearer any property line, stream or open ditch than 25 feet. The lot owner shall have easement to place required public utilities supply lines from and through any road right-of-way directly abutting his lot. No utility service outlet shall be nearer any property line than one foot. No satellite dishes are to be visible from the roadways or other residences. No fuel tanks or similar storage receptacles may be exposed to view. Any clotheslines or drying yards shall be located so as not to be visible from the roadways.

C. SIGNS. No signs of any kind shall be displayed to the public view on any lot except one professional sign of not more than one and one-half square feet, designating ownership, and one sign of not more than 5.5 square feet advertising the property for sale. Any such signs must be constructed with natural materials.

D. RENTALS. Owners shall not rent or lease dwellings for short periods of time. [Editorial Note: This was modified in February 2004 by vote of more than two-thirds of the lot owners to specify that "short periods of time, as used in Section 9.D, shall mean any time period less than six (6) months." That has been incorporated into these Covenants at Section 1.A. DEFINITIONS: (7)]

## **10. EASEMENTS.**

Easements for the installation and maintenance of public utilities and drainage facilities within the street right-of-ways are reserved. Easement for the maintenance of existing utilities and drainage facilities on any lot is reserved. Easement is reserved for the maintenance of any pipe or other surface drainage structure erected, placed, or altered, which provides conveyance of surface drainage water from a lot other than the property the structure or pipe is on.

## **11. SEWAGE DISPOSAL, DRAINAGE AND WATER SUPPLY.**

All sewage disposal, water systems and wells, placed on the Covenanted Property shall be located and constructed in accordance with these covenants and with the requirements, standards and recommendations of the Public Health Department and permits shall be obtained from the County Health Department as required. Surface drainage improvements to lots such as pipes or open ditches for the collection and conveyance of surface water shall not be permitted to outfall onto an adjoining property owner except at existing natural low points, existing ditches, or storm drain pipes. No improvement in any manner shall be permitted which results in the restriction of a natural flow of surface drainage from one lot to another. Lots with natural streams or other surface drainage ditches or pipes which serve to drain other than the owner's property may be improved and/or landscaped provided equal or better drainage is maintained. Outfall pipes or open ditches from street catch basins shall not be restricted or flow from such be diverted to outfall upon adjoining property other than at the existing point of outfall. Improvement to catch basins and drainage

ditches or extension of pipes may be made by the owner provided an equal or greater rate of flow is maintained.

#### **12. PROTECTION OF STREAMS.**

No use of any of the Covenanted Property shall be allowed which would in any way result in pollution or diminution of the flow of any stream running through the Covenanted Property.

#### **13. NUISANCES.**

No noxious or offensive activity or noises 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. No activity shall be carried on upon said land which would constitute an unreasonable and substantial interference with the use and enjoyment of the land by the residential owners thereof, and no junk, wrecked or undrivable vehicles shall be kept out of doors on the Covenanted Property at any time. No commercial trucks and buses larger than a pickup shall be allowed overnight; nor may boats, boat trailers or other trailers be parked overnight except where not visible from the streets. No motorcycles, motorbikes, trail bikes or such recreational vehicles which create noise will be permitted anywhere in Glen Ellen. Quiet ones such as golf carts and mopeds are permitted.

#### **14. RIGHT OF FIRST REFUSAL.**

Any Owner who desires to sell any such lot, either improved or unimproved, shall first offer the same for sale to Declarant. A property owner desiring to sell such lot shall give Declarant written notice via certified mail, return receipt requested, of the property owner's desire to sell.

#### **15. TERMS.**

These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them. The Covenants shall run for an initial period of twenty (20) years and for successive periods of ten (10) years unless changed by an instrument signed by the owners of two-thirds (2/3) of the lots, exclusive of parties who may hold title or lien to secure indebtedness, recorded among the deed records of Habersham County, Georgia, agreeing to change these Covenants in whole or in part.

#### **16. ENFORCEMENT.**

Enforcement shall be by the proceedings at law or in equity against any person or persons violating or attempting to violate any Covenant, either to restrain violation or to recover damages.

#### **17. EFFECT OF FORECLOSURE OF LIEN.**

It is expressly provided that a breach of any of the Protective Covenants or conditions herein set out shall not defeat or render invalid the lien of any mortgages, security deeds or deeds of trust, made in good faith and for value, as to the said premises, or any part thereof; BUT said Protective Covenants and conditions shall be



binding upon and effective against any owner of any lot or lots within the Covenanted Property whose title thereto is acquired as a result of foreclosure, sale under power, trustee's sale, or otherwise as to the ownership and use by any owner who so acquires title.

**18. SEVERABILITY.**

Invalidation of anyone of the Covenants by judgment or court shall in no wise affect any of the other provisions which shall remain in full force and effect.

**19. TIME.**

Time is of the essence in this document.