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1349 West Peachtree Street, 15th Floor
Atlanta, Georgia 30309
Attention: George E. Nowack, Jr.

STATE OF GEORGIA
COUNTY OF FULTON

Reference: Deed Book 8515
Page 148

**AMENDMENT TO DECLARATION AND BYLAWS OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DEFOORS SQUARE II HOMEOWNERS ASSOCIATION, INC.**

CROSS REFERENCE

WHEREAS, JOHN WEILAND HOMES, INC., a Georgia corporation, filed a Declaration of Covenants, Conditions and Restrictions for DeFoods Square II Homeowners Association on June 14, 1983 ("Declaration" and "Bylaws"); and

WHEREAS, Bylaws of the DeFoods Square II Homeowners Association, Inc. were also filed on June 14, 1983 ("Bylaws"); and

Deed Book 30014 Pg 298
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WHEREAS Article XII, Section 5 of the Declaration permits the Declaration to be amended by the affirmative vote or written consent of not less than three-fourths of the Class A and Class B vote; and

WHEREAS the Class B votes expired; and

WHEREAS Article VI, Section 7 of the Bylaws permit the Bylaws to be amended upon the affirmative vote or written consent of members representing a majority of the total eligible votes of the Association; and

WHEREAS at least three-fourths of the Class A votes have approved the following amendment to the Declaration, and

WHEREAS at least a majority of the total Association vote have approved the following amendment to the Bylaws;

NOW, THEREFORE, the Declaration and Bylaws of the DeFours Square II Homeowners Association, Inc. are hereby amended as follows:

1.

Article II, Section 5 of the Declaration is amended by deleting the first sentence in its entirety.

2.

5(a): Article II, Section 5 of the Declaration is amended by adding the following Section

(a) Business Use of Lots and Residences

Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the documents and the Association's rules and regulations. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests,

Jeed Book 30014 Pg 299
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tenants or Occupants, as a result of such person's violation of the documents, the Association may take action hereunder against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

In addition to the following use restrictions, the Board may adopt rules and regulations in accordance with the terms hereof and of the Bylaws.

(i) Use of Residences

(1) Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, except that the Owner or Occupant residing in a residence may conduct ancillary business activities within the residence so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the residence;
- (b) the business activity does not involve visitation of the residence by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residence without business activity; no more than one vehicle per Lot may be parked on the common area by a person visiting that Lot for business purposes;
- (c) the business activity conforms to all zoning requirements for the Property;
- (d) the business activity does not increase traffic in the Property in excess of what would normally be expected for residences without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in Board's discretion; and
- (g) the business activity does not result in a materially greater use of common element facilities or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to

Deed Book 30014 Pg 300
 A PUBLIC DOCUMENT IN THE PUBLIC DOMAIN AND NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.

persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

3.

Article II, Section 5 of the Declaration is amended by deleting the second and third sentences of that section and substituting the following:

In order to protect the equity of the individual Owners at DeFours Square II, to carry out the purpose for which the Association was formed by preserving the character of the Property as a homogenous residential community of predominantly owner-occupied homes and by preventing the Property from assuming the character of a renter-occupied apartment complex, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of residences shall be governed by the restrictions imposed by this Paragraph. Except as provided herein, the leasing of Units shall be prohibited.

(a) Definitions.

(i) Leasing shall mean the regular, exclusive occupancy of a residence by any person(s) other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity or emolument. For purposes hereof, occupancy by a roommate of an Owner Occupant shall not constitute leasing.

(ii) Open Leasing Status shall authorize a residence to be leased at any time. Each residence at DeFours Square II shall have Open Leasing Status until such time as title is conveyed to any Person other than the Person holding record title on the Effective Date hereof, after which conveyance the Unit shall automatically be converted to Restricted Leasing Status. Open Leasing Status may also be conferred upon a Unit as provided in subparagraph (b) below.

(iii) Restricted Leasing Status shall subject a residence to the restrictions on leasing contained in subparagraph (b) below.

(b) General. No Owner of a Unit in Restricted Leasing Status may lease his or her residence if three (3) or more of the residences in the Property are in Open Leasing Status, except as provided in subparagraph (c) below for cases of undue hardship. Any Owner of a residence in Restricted Leasing Status may apply in writing to the Board for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board. Upon receipt of such written application, the residence shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than three (3) of the residences are in Open Leasing Status, the Board shall notify the Owner of the residence at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall

Deed Book 30014 Pg 301
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have ninety (90) days within which to lease the residence or it shall automatically revert to Restricted Leasing Status.

(c) **Undue Hardship.** Notwithstanding the provisions of subparagraph (b) above, the Board shall be empowered to allow reasonable leasing of a Unit upon application in accordance with this Paragraph to avoid undue hardship, including, but not limited to the following situations: (1) an Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the residence, in which case the Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph, have demonstrated that the inability to lease their residence would result in undue hardship, and have obtained the requisite written Board approval may lease their residence for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her residence to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. Any transaction which does not comply with this Paragraph shall be voidable at the Board's option.

(d) **Leasing Provisions.** Leasing which is authorized hereunder shall be governed by the following provisions:

(i) **Notice.** At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) **General.** Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a residence, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the residence. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the

Deed Book 30014 Pg 302

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Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a residence shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the residence, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(1) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased residence in order to ensure such compliance. The Owner shall cause all Occupants of his or her residence to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the residence are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Section 23 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot.

(2) Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, but not limited to, the use of any and all recreational facilities and other amenities.

(3) Liability for Assessments. When an Owner who is leasing his or her residence fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of

Deed book 30014 Pg 303
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Paragraph 5. Those owners who are leasing residences upon the Effective Date hereof may continue to lease their residences and shall not be required to demonstrate undue hardship as a prerequisite to the leasing of their units, notwithstanding the three residence limitation in subparagraph (b) herein; however, such owners shall count toward the three residences for determining whether owners in Restricted Leasing Status can be converted to Open Leasing Status. However, upon any conveyance or transfer of the Lot, any grantee thereof shall be subject to the provisions of subparagraph (b), in addition to all other provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

Additionally, all leases executed after the Effective Date hereof shall be subject to subparagraph (d) hereof. Additionally, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with subparagraph (d). Any Owner of a residence which is leased on the Effective Date hereof shall file with the Board a copy of the lease agreement in effect within thirty (30) days of the Effective Date hereof.

This Paragraph 5 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

4.

Article VII of the Declaration is amended by adding a new Section 9 as follows:

Section 9. Capital Budget and Limitation on Spending

The Board of Directors shall annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital

Deed Book 30014 Pg 304

needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in sub-section 3 of this paragraph.

Capital Reserve Funds shall not be used to fund deficits of the operating account or be used to pay operating expenses of the Association unless approved by at least two-thirds of the total eligible votes of the Association.

5.

Article II, Section 10 of the Declaration is amended by adding the following thereto:

The Association shall have the right, but not the obligation, to the extent required by law, to install a backflow-prevention system and utility meters on the Lots and residences and common elements pursuant to an installation design and plan approved by the Board of Directors. The Association shall have an easement, including the right of access, ingress and egress to and from each Lot and residence for the purpose of installing the backflow-prevention system and utility meters. Each Owner shall afford to the Association such access through a Lot and residence as may be reasonably necessary to enable the Association to discharge its duty. In the event an Owner refuses to allow such access, the Association shall, after twenty-four hours written notice, have the right to enter a Lot or residence to install the backflow-prevention system and utility meters and the Association's Board of Directors, its agents, contractors, and sub-contractors, shall not be deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions.

In the event it is determined that the Association is not responsible for installing backflow-prevention systems or utility meters for each Lot or residence, then each Owner shall be responsible for installing a backflow-prevention system or utility meters to the extent required by law.

6.

Article IV, Section 1 of the Declaration is amended by adding the following thereto:

For purposes of windows and doors, hardware shall include the window sash and sash mechanism, including rails, stiles, sash balance, sash stop and spring bolts; check, lock or meeting rails, lift rails, ventilation latches, tilting mechanisms, latches, window sweep or other locks, insect screens, storm windows, screen doors, security doors, locks and lock sets, strikers, knobs, security viewers, door knockers, weather-stripping, fasteners, hinges and any other hardware integral and necessary for the normal operation of the window or door.

Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

IN WITNESS WHEREOF the undersigned officers of the DeFours Square II Homeowners Association, Inc. hereby certify that the above amendments to the Declaration and the Bylaws were duly adopted by the members of the Association in accordance with the terms of the Declaration and Bylaws.

This 4th day of February, 2000.

DEFOURS SQUARE II HOMEOWNERS ASSOCIATION, INC.

By: [Signature]
President

Attest: [Signature]
Secretary



[SEAL]

[SEAL]

Sworn to and subscribed before me this 4th day of February, 2000.

[Signature]
Witness

Caroline L. Black
Notary Public

[NOTARY SEAL]

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Deed Book 30014 Pg 306
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia