

Deed Book 32971 Pg 425  
 Filed and Recorded Aug-21-2002 03:21pm  
 2002-0251021  
 Real Estate Transfer Tax 10.00  
**Juanita Hicks**  
 Clerk of Superior Court  
 Fulton County, Georgia  
 11000 11000 11000 11000 11000 11000 11000 11000 11000 11000

Return to: Weissman, Nowack, Curry & Wilco, P.C.  
 1349 West Peachtree Street, Suite 1500  
 Atlanta, Georgia 30309  
 Attn: Jamie Platt Lyons, Esq.

Cross Reference:  
 Deed Book 8515  
 Page 148

STATE OF GEORGIA  
 COUNTY OF FULTON

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

WHEREAS, John Wieland Homes, Inc., a Georgia corporation, recorded a Declaration of Covenants, Conditions, and Restrictions for Defoors Square II Homeowners Association on June 14, 1983, in Deed Book 8515, Page 148, et seq., in the Fulton County, Georgia, land records (hereinafter referred to as the "Declaration"); and

WHEREAS, the Bylaws of Defoors Square II Homeowners Association, Inc., were recorded immediately following the Declaration at Deed Book 8515, Pages 179, et seq., in the Fulton County, Georgia, land records (hereinafter referred to as the "Bylaws"); and

WHEREAS, the Declaration and Bylaws have been previously amended by an amendment recorded on February 27, 2001, in Deed Book 30014, Pages 297, et seq., in the Fulton County, Georgia, land records; and

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; and

WHEREAS, this Amendment to the Declaration does not alter, modify, change or rescind any right, title, interest or privilege held by any eligible mortgage holder; provided, however, in the event a court of competent jurisdiction determine that this Amendment does alter, modify, change or rescind any right, title, interest or privilege

**THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA  
 PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.**

**CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION REGARDING  
 ASSESSMENTS/CHARGES DUE ON LOTS.**

Deed Book 32971 Pg 426  
 (RECORD THIS DEED AND ANY OTHER DEEDS OR INSTRUMENTS TO BE RECORDED IN THIS BOOK)

held by any such mortgage holder without such mortgage holder's consent in writing to this Amendment, then this Amendment shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this Amendment; and if such consent is not forthcoming, then the provisions of the Declaration in effect prior to this Amendment shall control with respect to the affected mortgage holder.

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

**I.**

Article I of the Declaration is hereby amended by deleting Article I in its entirety and replacing therewith the following new Article I:

Article I  
Definitions

The Defoors Square II subdivision constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie, 1982), as such act may be amended from time to time.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Georgia Property Owners' Association Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

- (a) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.
- (b) Area of Common Responsibility means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. Any public rights-of-way within or adjacent to the Property, may be considered by the Board to be part of the Area of Common Responsibility.
- (c) Articles or Articles of Incorporation mean the Articles of Incorporation of Defoors Square II Homeowners' Association, Inc., filed with the Secretary of State of the State of Georgia.
- (d) Association means Defoors Square II Homeowners' Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (e) Association Legal Instruments means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.
- (f) Board or Board of Directors means the elected body responsible for management and operation of the Association.
- (g) Bylaws mean the Bylaws of Defoors Square II Homeowners' Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference
- (h) Common Property or Common Area means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (i) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots. The Common Expenses shall

Deed Book 32971 Pg 427  
 I AM NOT A NOTARY PUBLIC IN THE STATE OF GEORGIA

include funds assessed for the creation and maintenance of a capital reserve account pursuant of the provisions of the Association Legal Instruments.

(j) Electronic Record means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.

(k) Electronic Signature means a signature created, transmitted received, or stored by electronic means and includes but is not limited to a secure electronic signature.

(l) Eligible Vote means a vote of the Association available to be cast on the issue at hand. A vote which is suspended for any reason is not available to be cast. A vote associated with a Lot that is shown on the records as more than thirty (30) days delinquent in the payment of any amount due to the Association is not available to be cast. The foregoing notwithstanding, the Board shall have the authority to restore the Eligible Vote of an Owner pursuant to a written payment plan established by the Board for so long as the Owner is current in all required payments thereunder. No vote, other than an Eligible Vote shall be counted to calculate any quorum, majority or super-majority requirement.

(m) Lot means a portion of the Property intended for independent ownership and use as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Fulton County, Georgia, land records. Where the context indicates or requires, the term "Lot" shall include all structures on the Lot.

(n) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(o) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(p) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(q) Occupant means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(r) Owner means the record title holder of a Lot, but shall not include a Mortgage Holder.

(s) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(t) Property means all that tract or parcel of land lying and being in Land Lot 186, 17<sup>th</sup> District, Fulton County, Georgia, and being more particularly described on the plat of Defoors Square II, recorded in Plat Book 130, Page 31, Fulton County, Georgia, land records, together with all additional property that has been annexed pursuant to Article XIV of the Declaration. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

(u) Secure Electronic Signature means an electronic or digital method executed or adopted by a party with the intent to be bound by our to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the electronic signature is invalidated.

## 2.

Article II, Section 12, of the Declaration is hereby amended by adding the following to the end thereof:

If any Owner's vehicle is parked on any portion of the Property in violation of this section or in violation of the Association's rules, regulations and policies, the Board may place a notice on the vehicle specifying the nature of

Deed Book 32971 Pg 428



the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If twenty-four (24) hours after such notice is placed on the Owner's vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Owner's vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or dwelling, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Lot, otherwise creates a hazardous condition, belongs to a visitor or guest of an Owner and is in any way improperly parked, or does not belong to an Owner or a visitor or guest of an Owner and is in any way improperly parked, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed or booted in accordance with this section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

### 3.

**Article II of the Declaration is hereby amended by adding thereto the following new Section 15:**

**Section 15. Antennas and Satellite Dishes.** No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Review Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Community, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Community, whether attached to a home or structure or otherwise, except by the Association.

### 4.

**Article VII of the Declaration is hereby amended by adding thereto the following new Section 6:**

**Section 6. Utility Equipment.** The Association shall have the right but not the obligation to install shutoff valves, individual utility meters and other similar utility equipment on any Lot (or all Lots) as necessary to comply with applicable regulations, meter individual utility use or suspend use by delinquent Owners. Such utility meter may, at the sole discretion of the Board of Directors, be installed anywhere on a Lot, including inside a residence on a Lot, pursuant to Article II, Section 10 hereof. The Association may assess the costs of such installation against each respective Lot affected as a specific assessment as provided for herein.

Deed Book 32971 Pg 429  
FULTON COUNTY RECORDS

## 5.

Article VIII of the Declaration is hereby amended by deleting Article VIII in its entirety and replacing therewith the following new Article VIII:

Article VIII  
Assessments

Section 1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for common expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized by the Board.

Section 2 Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines which may be imposed by the Board hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Fulton County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

Section 3 Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Community during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least twenty-one (21) days prior to the due date for such assessment, or the first installment thereof. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least twenty-one (21) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the members.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of common expenses on which the Board may base the annual assessments.



Deed Book 32971 Pg 431  
 (RECORDING INFORMATION)

(iii) If the Board permits payment of the annual assessments in installments, and assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment with ten (10) days written notice.

(iv) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property.

(v) If any assessment or other charge is delinquent for ninety (90) days or more then, in addition to all other rights provided herein, the Association shall have the right to suspend water, cable or other utility services to the Lot paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Lot. The water or other utility services shall not be required to be restored until all outstanding judgments are paid in full, at which time the Association shall make arrangements for restoration of the service. A Lot Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under OCGA Section 16-8-5.

Section 9. Statement of Account. Any Owner, Mortgagee, or a Person 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 setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under 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.

Section 10. Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Association common expenses. Any surplus funds remaining thereafter shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

## 6.

Article XII, Section 5, of the Declaration is hereby amended by deleting that Section in its entirety and replacing therewith the following new Section 5:

Section 5. Amendment. Except where a higher vote is required for action under any other provisions of this Declaration, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the Fulton County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by first Mortgage Holders who request in writing to participate in such action ("Eligible Mortgage Holders") who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal

Deed Book 32971 Pg 432



for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"). If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Fulton County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

7.

Article XII, Section 7, of the Declaration is hereby amended by deleting that Section in its entirety and replacing therewith the following new Section 7:

Section 7. Duration. The covenants and conditions of this Declaration shall run with and bind the Community perpetually to the extent provided in the Act.

8.

Article XII, of the Declaration is hereby amended by adding thereto the following new Section 8:

Section 8. Conflicts. The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, the Bylaws, and the Articles of Incorporation, (as all are amended from time to time) together with those reasonably implied to affect the purposes of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Act, the Georgia Nonprofit Corporation Code (as may be applicable), the Declaration, the Articles of Incorporation and the Bylaws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

9.

Article II, Section 4, of the Bylaws is hereby amended by deleting that Section in its entirety and replacing therewith the following new Section 4:

Section 4. Notice of Meetings. It shall be the duty of the Secretary to convey or deliver to each Owner a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. Notices shall be given in accordance with Article VII, Section 5, of these Bylaws.

10.

Article III, Section 20, Subsection (b)(1) of the Bylaws is hereby amended by deleting the word, "accrual" therefrom.

11.

Article VI, Section 3, of the Bylaws is hereby amended by deleting that Section in its entirety and replacing therewith the following new Section 3:

Section 3. Conflicts. The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those





Deed Book 32971 Pg 434  
Juanita Hicks  
Clerk of Superior Court  
Fulton County, Georgia

IN WITNESS WHEREOF, the undersigned officers of Defoors Square II Homeowners' Association, Inc., hereby certify that the above amendment to the Declaration was duly adopted by the required majority of the Association and its membership.

This 1<sup>st</sup> day of August, 2002.

Sworn to and subscribed to before me this 1<sup>st</sup> day of August 2002.

DEFOORS SQUARE II HOMEOWNERS ASSOCIATION, INC.

[Signature]  
Witness

By: [Signature] (Seal)  
President

[Signature]  
Notary Public

Attest: [Signature]  
Secretary

[Notary Seal]

[Corporate Seal]

LG:\MHP\TOWN\_NT4\DRIVE\DCOS\07359\002\Documents\POA Amendment.doc

