

Deed Book 37901 Pg 446
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Real Estate Transfer Tax 10.00
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

Return to: Weisman, Nowack, Curry & Wilco, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
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STATE OF GEORGIA
COUNTY OF FULTON

Cross Reference: Deed Book 8515
Page 148

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR DEFOORS SQUARE II HOMEOWNERS
ASSOCIATION AND AMENDMENT TO THE BY-LAWS 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 ("Declaration") on June 14, 1983, in Deed Book 8515, Page 148, *et. seq.*, in the Fulton County, Georgia, land records, as amended ; and

WHEREAS, Bylaws of the Defoors Square II Homeowners Association, Inc. ("By-Laws"), were recorded concurrently with the Declaration on June 14, 1983 in Deed Book 85815, Page 179 *et. seq.*, Fulton County land records; and

WHEREAS, Article XII, Section 5 of the Declaration provides that the Declaration may be amended by the affirmative vote, written consent or any combination of affirmative vote or written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote, provided, however, that material amendments to the 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.

WHEREAS, these Amendments to the Declaration are not material amendments requiring the approval of first Mortgage Holders representing at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders, provided, however, in the event a court of competent jurisdiction determine that these Amendments are material with respect to the interests of such Eligible Mortgage Holders, without the requisite approval having been obtained, then this Amendment shall not be binding on the Eligible Mortgage Holder so involved, unless such Eligible Mortgage Holder consents to this Amendment; and if such consent is not forthcoming, then the provisions of the Declaration in

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effect prior to this Amendment shall control with respect to the affected Eligible Mortgage Holder; and

WHEREAS, members of the Association holding at least sixty-six and two-thirds (66-2/3%) percent of the total eligible votes of the Association have voted to approve these amendments to the Declaration; 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 eligible votes of the Association; and

WHEREAS, members of the Association representing a majority of the eligible votes of the Association have voted to approve these amendments to the By-Laws.

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

1.

Article II, Section 4 of the Declaration (Easements of Encroachment) is hereby deleted in its entirety and the following is substituted therefor:

There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the un-willful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of the restrictions) to a distance no greater than would block the passage through or accessibility of fire trucks or equipment through Defoors Drive, a private way and driveway, including the turning radii of such fire trucks or equipment around turns in the driveway, as required by all applicable building codes and fire codes in effect at the time of construction and as based on the master plat and as measured from any point on the common boundary between each Lot and the adjacent portion or the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Each Lot shall have an easement on the Common Area appurtenant to the Lot for the purposes of placing a maximum of 3 (three) structural post supports for decks constructed in a manner consistent with the Architectural Guidelines; provided, however that such support posts shall not block ingress or egress to garages by passenger vehicles. Such posts are not to be considered an alteration to the garage under Article II.

3.

Article IV, Section 2 of the Declaration (Association's Responsibility) is hereby amended by adding the following thereto:

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The Association may also improve or alter the Area of Common Responsibility as it deems necessary from time to time.

Exterior building surfaces (other than roof surfaces, roof systems, gutters and downspouts) on each Lot, for which the Association is responsible to paint, stain, repair, replace and care for, are defined as follows: siding, soffits and associated fascia boards and trim; exposed foundation and party walls, stone chimneys and mortar; and shutters and trim. Structural framing and studs are not to be considered exterior building surfaces, nor are front entryway doors, including sidelights and all other structural, support and other building components of the entryway doors.

The Association hereby reserves the right to improve and alter the exterior surface of the decks appurtenant to each Lot. Specifically, the Association may, in its discretion, replace the walls and siding enclosing each deck with wood railings or other materials. Upon the date of completion of such improvement to each deck, the deck shall no longer be considered an Area of Common Responsibility, but rather shall be the maintenance responsibility of the individual Lot Owner ("Owner Responsibility"). Each Owner shall be responsible for the repair, replacement, and maintenance of the entire deck, including all railings, flooring, and support structures thereto.

With regard to the Association's responsibility to maintain and paint exterior building surfaces, the term "painting" shall include "caulking".

This Amendment shall 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 VIII, Section 7 of the Declaration is hereby amended by deleting the words "three times the monthly assessment then in effect" therefrom and substituting the words "twenty-five (25%) percent of the annual assessment then in effect; provided, however that such annual assessment amount used to calculate the Capital Contribution Assessment shall not include the specific assessment for water or for any other utilities charged as a specific assessment hereunder." therefor.

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

This 15th day of March, 2004.

(SIGNATURES ON FOLLOWING PAGE)

**DEFOORS SQUARE II HOMEOWNERS ASSOCIATION,
INC.**

By:

[Signature]
President

Attest:

[Signature]
Secretary

(CORPORATE SEAL)

Sworn to and subscribed before me this
15th day of March, 2004

[Signature]
Witness

Mary C. Carroll
Notary Public *Commission expires 7/27/06*
(NOTARY SEAL)

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Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia