

Deed Book 56985 Pg 97
Filed and Recorded Dec-14-2016 08:30am
2016-0350275
Real Estate Transfer Tax \$0.00
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

SPACE ABOVE RESERVED FOR RECORDING DATA

After recording, please return to:

Coulter & Sierra, LLC
2800 Century Parkway, Suite 275
Atlanta, GA 30345
Attn.: KMK

STATE OF GEORGIA
COUNTY OF FULTON

Cross Reference: Deed Book: 18301
Page: 233

**AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR
CRABAPPLE WOODS SUBDIVISION**

This AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR CRABAPPLE WOODS SUBDIVISION (hereinafter referred to as the "Amendment") is made as of the 14th day of November, 2016 by CRABAPPLE WOODS HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation (hereinafter referred to as the "Association").

WITNESSETH:

WHEREAS, Capital Design & Development, Inc., as Declarant, recorded that certain Declaration of Protective Covenants for Crabapple Woods Subdivision on May 25, 1994 in Deed Book 18301, Page 233, *et seq.*, of the Fulton County, Georgia land records (hereinafter, as may be amended and/or supplemented from time to time, the "Declaration"); and

WHEREAS, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code to be the Association named in the Declaration to have the power and authority set forth therein; and

WHEREAS, Section 36 of the Declaration provides that the Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of

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 FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.

Owners of a majority of the Lots subject to the Declaration and the consent of the Declarant, so long as the Declarant owns any property subject to the Declaration; and

WHEREAS, the Declarant no longer owns any property subject to the Declaration; and

WHEREAS, Owners of a majority of the Lots have agreed to amend the Declaration to submit the Association to the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*; and

WHEREAS, Owners of Lots to which two-thirds (2/3) of the votes in the Association pertain have agreed to amend the Declaration to revise the Association's Enforcement provision; and

WHEREAS, the Association and the members thereof desire to amend the Declaration as set forth herein and intend for this Amendment to be prospective only; and

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the Secretary of the Association, which sworn statement certifies that approval by Owners of the Lots was lawfully obtained.

NOW, THEREFORE, the undersigned hereby adopt this Amendment to the Declaration, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

Section 1 of the Declaration is hereby amended by adding the following new subsections to the end thereof:

(e) "Act" shall mean 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.

(f) "Association" shall mean Crabapple Woods Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

(g) "Board of Directors" or "Board" shall mean the body responsible for administration of the Association, selected as provided in the Georgia Nonprofit Corporate Code and/or the Bylaws.

(h) "Bylaws" shall mean the Bylaws of Crabapple Woods Homeowners Association, Inc., attached hereto as Exhibit "A" and incorporated by reference, as they may be amended from time to time.

(i) "Declaration" shall mean the Declaration of Protective Covenants for Crabapple Woods Subdivision, recorded in Deed Book 18301, Page 233, *et seq.*, of the Fulton County, Georgia land records, as may be amended from time to time.

(j) "Design Standards" shall mean the written design guidelines and procedures applicable to the Properties promulgated and administered pursuant to Section 3 hereof.

2.

Section 34 of the Declaration, entitled "Enforcement," is hereby amended by deleting that Section in its entirety and substituting the following new Section 34 therefor:

Section 34. Enforcement. All Owners, occupants and their guests shall comply with the Declaration, Bylaws and Design Standards. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Declaration, Bylaws and Design Standards directly against all violators. However, if an Owner's family member, guest or occupant violates the Declaration, Bylaws or Design Standards, the Association, in its sole discretion, is permitted to enforce the terms of the Declaration, Bylaws or Design Standards against: (1) only the Owner; (2) only the violating family member, guest or occupant; or (3) both the Owner and the violating family member, guest or occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, occupants and guests of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or occupant to proceed independently for relief from interference with his or her personal or property rights against any person violating the Declaration, Bylaws or Design Standards. The Board of Directors may, in its discretion, require the aggrieved Owner or occupant to independently pursue all available remedies under Georgia law against the violator before the Association intervenes and commences enforcement action against such violator.

(a) Types of Enforcement Actions. In the event of a violation of the Declaration, Bylaws or Design Standards, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:

- (i) Suspend all violators' rights to use the common property;
- (ii) Suspend the voting rights of a violating Owner;
- (iii) Impose reasonable fines against all violators, which shall constitute a lien on the violating Owner's Lot and be collected as specific assessments pursuant to Section 42 of this Declaration;
- (iv) Use self-help to remedy the violation;
- (v) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the violator to cease and/or correct the violation; and

(vi) Record in the Fulton County land records a notice of violation identifying any uncured violation of the Declaration, Bylaws or Design Standards regarding the Lot.

(b) Suspension and Fining Procedure. Except as provided below, before imposing fines or suspending right to use the common property or the right to vote, the Association shall give a written violation notice to the violator as provided below:

(i) Violation Notice. The written violation notice to the violator shall:

(A) Identify the violation, suspension(s) and/or fines being imposed; and

(B) Advise the violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of the suspension(s) or the fine(s).

(ii) Violation Hearing. If the violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a violator fails to timely request a violation hearing, such violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a violator timely requests a violation hearing, the violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(iii) No Violation Notice and Hearing Required. No violation notice or violation hearing shall be required to;

(A) Impose late charges on delinquent assessments;

(B) Suspend a violating Owner's voting rights if the violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;

(C) Suspend a violator's right to use the common property if the violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violator's right to use the

common property shall be automatic (which shall also allow the Association to tow and/or boot a violator's vehicle located on the common property without complying with the suspension and fining procedures described above);

(D) Suspend any services paid for as a common expense if the violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or other charge;

(E) Engage in self-help in an emergency;

(F) Impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the violator; or

(G) Impose fines if the same violation occurs again on the same Lot within 12 months of the original notice, in which case fine(s) may be imposed on a per diem basis without any further notice to the violator.

(c) Self-Help. In addition to all other enforcement rights granted herein, including, but not limited to Section 31 of the Declaration, the Board of Directors may elect to enforce any provision of the Declaration, Bylaws and Design Standards by self-help without the necessity for compliance with the suspension and fining procedures described above.

By way of example and not limitation, the Association or its duly authorized agent shall have the authority to tow vehicles that are in violation of parking regulations and enter any portion of the common property to abate or remove any structure, thing or condition that violates the Declaration, Bylaws or Design Standards. Unless an emergency exists, before exercising self-help, the Association shall give the violator at least ten (10) days' prior written notice. Such notice shall request that the violator remove and abate the violation and restore the Lot to substantially the same condition that existed prior to the structure, thing or condition being placed on the Lot and causing the violation. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the same violation occurs again on the same Lot, the Association may exercise self-help without any further notice to the violator.

(d) Injunctions and Other Suits at Law or in Equity. All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Declaration, Bylaws or Design Standards. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a violator to cease and desist and/or correct any violation.

(e) Costs and Attorney's Fees for Enforcement Actions. In any action taken by the Association to enforce the Declaration, Bylaws or Design Standards,

the Association shall be entitled to recover from the violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

(f) Failure to Enforce. The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each violator. The failure of the Board to enforce any provision of the Declaration, Bylaws or Design Standards shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

(i) The Association's position is not strong enough to justify taking enforcement action;

(ii) A particular violation is not of such a material nature as to be objectionable to a reasonable person;

(iii) A particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;

(iv) The aggrieved Owner or occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or

(v) The Association enforces only against an Owner for the violation of the Owner's family member, guest or occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest or occupant.

3.

The Declaration is hereby amended by adding a new Section 45, entitled Submission to Georgia Property Owners' Association Act: Conflict," to the end thereof:

Section 45. Submission to Georgia Property Owners' Association Act: Conflict. The property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, *et seq.*, (the "Act") as the Act may be amended from time to time. In the event of a conflict between the provisions of this Declaration and the provisions of the Act, then to the extent that the provisions of the Act cannot be waived by agreement, the Act shall control.

4.

In the event of any conflict or inconsistency between the provisions of this Amendment and the terms of the Declaration, the terms of this Amendment shall control.

5.

Except as herein modified and amended, the Declaration shall remain in full force and effect.

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6.

This Amendment shall be effective upon recordation in the Fulton County, Georgia land records.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

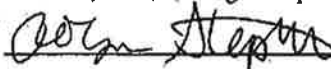
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IN WITNESS WHEREOF, the Association has caused this Amendment to be executed under seal, as of the day and year first above written.

ASSOCIATION: **CRABAPPLE WOODS HOMEOWNERS ASSOCIATION, INC.,** a Georgia nonprofit corporation

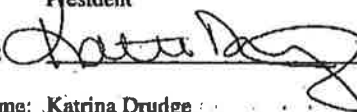
By:



Name: Robyn Stephens

Its: President

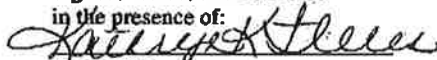
By:



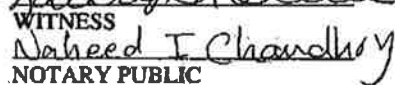
Name: Katrina Drudge

Its: Secretary

Signed, sealed, and delivered
in the presence of:



WITNESS



NOTARY PUBLIC

My Commission Expires: 12-02-2018

[AFFIX NOTARY SEAL]



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Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

EXHIBIT "A"

Sworn Statement of the Secretary of
Crabapple Woods Homeowners Association, Inc.

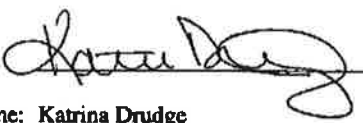
STATE OF GEORGIA
COUNTY OF FULTON

Re: Crabapple Woods Homeowners Association, Inc.

Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

1. Deponent is the Secretary of Crabapple Woods Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his or her own personal knowledge.
3. The foregoing Amendment to the Declaration of Protective Covenants for Crabapple Woods Subdivision was approved by those Owners of Lots to which to which two-thirds (2/3) of the votes in the Association pertain.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20 and the Declaration of Protective Covenants for Crabapple Woods Subdivision.

This 7th day of December, 2016.

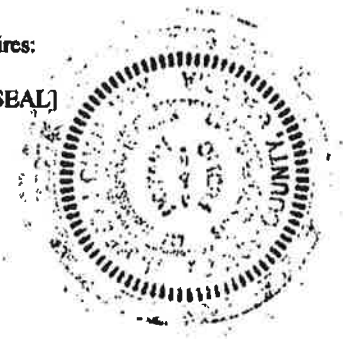
By: 
Name: Katrina Drudge

Sworn to and Subscribed before me this
7th day of December, 2016:

Nahced I Chaudhry
NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]



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