

Jay C. Stephenson

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

mail
After recording, please return to:

Rachel E. Conrad
Dorough & Dorough, LLC
Attorneys at Law
160 Clairemont Avenue, Suite 650
Decatur, Georgia 30030

CROSS REFERENCE: Deed Book: 13549
Page: 2061

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS
AND EASEMENTS FOR ALLATOONA SPRINGS**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR ALLATOONA SPRINGS (hereinafter referred to as
"First Amendment") is made this 2nd day of September, 2011 by **ALLATOONA
SPRINGS HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation
(hereinafter referred to as "Association").

WITNESSETH

WHEREAS, Venture Homes, Inc., a Georgia corporation, as "Declarant", executed that
certain Declaration of Covenants, Restrictions and Easements for Allatoona Springs, which was
recorded June 14, 2002 at Deed Book 13549, Page 2061, *et seq.*, Cobb County, Georgia records
(hereinafter as supplemented and/or amended from time to time referred to as 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, pursuant to Article 9, Section 9.3 of the Declaration, amendments to the
Declaration shall be proposed and adopted in the following manner: (a) notice of the subject
matter of the proposed amendment shall be included in the notice of the meeting of the
Association at which such proposed amendment is to be considered and shall be delivered to
each Member of the Association; and (b) at such meeting, a resolution adopting a proposed
amendment may be proposed by either the Board or Members of the Association and such

THIS INSTRUMENT SUBJECTS THE MANDATORY MEMBERSHIP HOMEOWNERS
ASSOCIATION PROVIDED FOR HEREIN TO THE PROVISIONS OF THE GEORGIA
PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, *ET SEQ.*

amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee; and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant; and

WHEREAS, Article 12, Section 12.6 of the Declaration provides that as long as the Declarant has the option to unilaterally subject property to this Declaration, any material amendment to the Declaration shall require the approval of the Department of Housing and Urban Development and/or the Veterans Administration; and

WHEREAS, the Board has proposed a resolution to the Members regarding the foregoing First Amendment; and

WHEREAS, pursuant to Section 14-3-708 of the Georgia Nonprofit Corporation Code, any action that may be taken at an annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter and such action is approved by the requisite number of members of the corporation required by law for such action to be taken; and

WHEREAS, Members holding at least two-thirds (2/3) of the total votes in the Association agreed by written ballot to amend the Declaration as hereinafter provided, which written ballots are incorporated by reference; and

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the President of the Association, which sworn statement states unequivocally that the vote of Members holding at least two-thirds (2/3) of the total votes in the Association was lawfully obtained; and

WHEREAS, attached hereto as Exhibit "B" and incorporated herein by reference is the sworn statement of the Secretary of the Association, which sworn statement states unequivocally that the vote of Members holding at least two-thirds (2/3) of the total votes in the Association was lawfully obtained; and

WHEREAS, this First Amendment does not materially and adversely affect the security title and interest of any mortgagee; provided, however, in the event a court of competent jurisdiction determines that this First Amendment does materially and adversely affect the security title and interest of any mortgagee without such mortgage holder's consent in writing to this First Amendment, then this First Amendment shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this First Amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this First Amendment shall control with respect to the affected mortgage holder; and

WHEREAS, Declarant no longer has the right to appoint and remove the officers and directors of the Association; and

WHEREAS, this First Amendment is not material and the Declarant no longer has the right to unilaterally annex additional property to the provisions of the Declaration; and

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

NOW THEREFORE, the undersigned hereby adopt this First Amendment to the Declaration of Covenants, Restrictions and Easements for Allatoona Springs, hereby declaring that all of 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.

The Declaration is hereby amended by deleting Article 4, Section 4.1 of the Declaration, entitled "Covenant for Assessments and Creation of Lien and Personal Obligation", in its entirety and replacing it with a new Section 4.1 to read as follows:

4.1 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Lot jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows: (a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to the Declaration against all Lots owned by him; (b) to pay to the Association any special assessments for capital improvements; and (c) to pay to the Association other charges which may or shall be levied by the Association pursuant to this Declaration, including, without limitation specific assessments as provided in Section 4.6 hereof and individual assessments as provided in Section 4.7 hereof.

All sums lawfully assessed by the Association against any Lot Owner or Lot, whether for the share of the common expenses pertaining to that Lot or otherwise, including without limitation, late charges, interest, costs of collection, reasonable attorneys' fees actually incurred and, if the Board so elects, the fair rental value of the Lot, and all reasonable charges made to any Lot Owner or Lot for materials furnished or services rendered by the Association at the Owner's request to or on behalf of the Lot Owner or Lot, shall, from the time the same become due and payable, be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due and constitute a continuing lien in favor of the Association on the Lot prior and superior to all other liens whatsoever except: (i) liens for ad valorem taxes on the Lot; (ii) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (iii) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot.

Pursuant to the Act, the recording of this First Amendment shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. As provided in O.C.G.A. Section 44-3-232, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot or non-use of the Common Property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

2.

The Declaration is hereby amended by deleting Article 4, Section 4.11 of the Declaration, entitled "Effect of Nonpayment of Assessments", in its entirety and replacing it with a new Section 4.11 to read as follows:

4.11 Effect of Nonpayment of Assessments. Any assessments or installments thereof which are not paid on or before the Due Date shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and as provided in the Act, such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. In the event that any Member of the Association shall fail to pay, on or before the Due Date, any annual, special, specific or individual assessment, or any installment of any annual, special, specific or individual assessment, or any other charge to the Association which is payable by him to the Association, the entire amount of such assessment or charge, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so

declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent Member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns.

Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (not in excess of the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount due, or such higher amount as may be authorized by the Act from time to time) and interest (at a rate not in excess of ten percent (10%) per annum on the principal amount due, or such higher amount as may be authorized by the Act from time to time). As provided in O.C.G.A. Section 44-3-232, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the Due Date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Cobb County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and the right to receive and enjoy such services and other benefits as may then be provided by the Association, if any. Any such suspension shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

3.

The Declaration is hereby amended by deleting Article 4, Section 4.12, entitled "Certificate of Payment," in its entirety and replacing it with a new Section 4.12 to read as follows:

4.12 Certificate of Payment. Any Owner, mortgagee, or a person or entity 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 or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Lot. Such request shall be delivered to the registered

office of the Association, and shall state an address to which the statement is to be directed. The Association shall respond in writing within five (5) business days of receipt of the request for a statement, or such longer period as may be permitted by the Act; provided, however, the Association may require the payment of a reasonable fee not to exceed Ten and No/100 Dollars (\$10.00), or such higher amount as may be authorized by 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.

4.

The Declaration is hereby amended by adding a new Article 13 to the end of the Declaration, entitled "Submission to Georgia Property Owners' Association Act: Conflict", to read as follows:

13. 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"). 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.

5.

Unless otherwise defined herein, the words used in this First Amendment shall have the same meaning as set forth in the Declaration.

6.

This First Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Cobb County, Georgia and shall be enforceable against all Owners of Lots in the community.

7.

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

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

ASSOCIATION: **ALLATOONA SPRINGS
HOMEOWNERS ASSOCIATION, INC.,**
a Georgia nonprofit corporation

By: Murl M. McCoy
Print Name: Murl M. McCoy
President
Attest: Daniel Ohman
Print Name: Daniel Ohman
Secretary

Signed, sealed and delivered
in the presence of

Licki McCreed
Witness

Wendy T. Davis
Notary Public

[AFFIX NOTARY SEAL]

[AFFIX CORPORATE SEAL]

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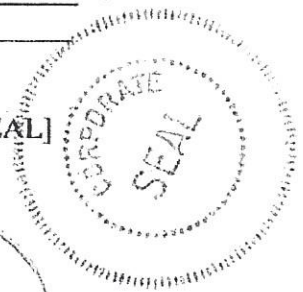


EXHIBIT "A"

Sworn Statement of President of
Allatoona Springs Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF COBB

Re: Allatoona Springs Homeowners Association, Inc.

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

1. Deponent is the President of Allatoona Springs 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 First Amendment to the Declaration of Covenants, Restrictions and Easements for Allatoona Springs was approved by Members holding at least two-thirds (2/3) of the total votes in the Association.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20 and Article 9, Section 9.3 of the Declaration.

This the 26 day of Aug, 2011.

By:
Name:

Muriel M. McCoy
Muriel M. McCoy

Sworn to and Subscribed
before me this 26 day of Aug, 2011

Wendy Davis
Notary Public

[AFFIX NOTARY SEAL]

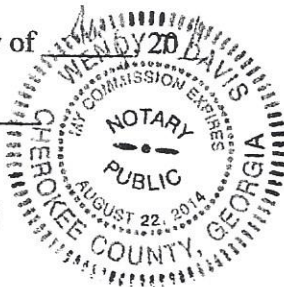


EXHIBIT "B"

Sworn Statement of Secretary of
Allatoona Springs Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF COBB

Re: Allatoona Springs 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 Allatoona Springs 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 First Amendment to the Declaration of Covenants, Restrictions and Easements for Allatoona Springs was approved by Members holding at least two-thirds (2/3) of the total votes in the Association.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20 and Article 9, Section 9.3 of the Declaration.

This the 26 day of Aug, 2011.

By:
Name:

Daniel Ohmann
Daniel Ohmann

Sworn to and Subscribed
before me this 26 day of August, 2011.

Wendy T. Davis
Notary Public

[AFFIX NOTARY SEAL]

