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Douglas Sorrells Clerk Superior Ct  
BK 2876 PG 548-554

After recording, return to:  
T. Matthew Mashburn, Esq.  
Stites and Harbison  
Suite 1700 Riverwood  
3350 Riverwood Parkway  
Atlanta, Georgia 30339

Note to Clerk:  
Please cross reference to  
Deed Book 1538 Page 0769  
Forsyth County, Georgia Records

**AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR HIGH GABLES SUBDIVISION**

This Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for High Gables Subdivision is made this 23rd day of June, 2003 pursuant to the terms and conditions and in accordance with all requirements as set out in the original Declaration of Covenants, Conditions, Restrictions and Easements for High Gables Subdivision recorded at Deed Book 1538, Page 0769, Forsyth County, Georgia Records (hereinafter the "Covenants").

**WITNESSETH**

WHEREAS, High Gables, Inc., the original Declarant did declare and set forth certain covenants, conditions, restrictions and easements for the development of a tract of real property known as High Gables Subdivision in Land Lots 248, 301, 302, 347, 348 and 395 of the 14<sup>th</sup> District, 1<sup>st</sup> Section, Forsyth County, Georgia, which subdivision development provided for the development of subdivided lots, open spaces and other common areas; and

WHEREAS, the original Declarant in the Covenants established an Architectural Control Committee; and

WHEREAS, the original Declarant established that the Property Owner<sup>1</sup> of a Lot subject to the Covenants, upon the purchase and closing of a Lot in High Gables Subdivision automatically becomes a member of the Association with the obligation to pay assessments and subject to lien for nonpayment and the privilege for both the Property Owner and the Family Unit of such Property Owner to use and enjoy the Common Property; and

WHEREAS, the original Declarant further provided in the Covenants that each Lot shall have one vote interest in the Association; and

<sup>1</sup> Words which are underlined herein are defined in the Covenants and shall have the same meaning herein as in the Covenants.

WHEREAS, the original Declarant did not establish any fee to be paid upon the entry of the Property Owner into the Association; and

WHEREAS, the Association acting by and through the requisite number of its Property Owners desires to amend the Covenants to establish and provide for the charge and payment of an initiation fee in the amount as set forth herein to be paid in accordance with the terms of the Covenants as amended hereby; and

WHEREAS, in order to provide for the charge and payment of the Initiation Fee and to inform future purchasers of Lots within the Subdivision and all others of the amount and terms of the Initiation Fee, it has become necessary to amend the Covenants; and

WHEREAS, the original Declarant provided that the Association had the right to suspend the privileges to use and enjoy the common properties in respect to any Lot for which any assessment was delinquent and for the infraction of Association rules and regulations but did not provide any financial or pecuniary remedy to the Association; and

WHEREAS, the original Declarant did provide for the institution of separate and additional fees and charges for the maintenance and operation of the common properties but did not provide for the institution of separate and additional fees and charges for the infraction of Association rules and regulations; and

WHEREAS, the original Declarant did provide for the enforcement of the any covenant or restriction contained in the Covenants by any appropriate proceeding at law or in equity but did not provide for any remedy other than by suspension or by an action at law or in equity; and

WHEREAS, in the best judgment of a requisite number of owners of Lots, it is desirable and prudent to have a remedy available to the Association in the event of an infraction of Association rules and regulations other than and in addition to suspension or by an action at law or in equity; and

WHEREAS, in the best judgment of a requisite number of owners of Lots, it is desirable and prudent that the Association have the option to establish a systems of fines or financial penalties for an infraction of Association rules and regulations; and

WHEREAS, the Property Owner of a Lot shall be subject to said fines and financial penalties in the event of an infraction in the same manner that Each Lot is subject to a lien and permanent charge for the assessment as set forth in Article IV of the Covenants; and

WHEREAS, the Association acting by and through its Property Owners desires to amend the Covenants to establish and provide for the institution of a system of fines and financial penalties in the event of an infraction of Association rules and regulations; and

WHEREAS, in order to inform future purchasers of Lots within the Subdivision and all others of the institution of a system of fines and financial penalties in the event of an infraction of Association rules and regulations, it has become necessary to amend the Covenants; and

WHEREAS, the original Declarant established and provided for an Architectural Control Committee in the Covenants for the purpose of insuring that the Subdivision was developed with compatible architectural styles and a homogeneous atmosphere; and

WHEREAS, the original Declarant established that the Architectural Control Committee was to review all proposals submitted and respond within ten (10) days after receipt of each proposal submitted; and

WHEREAS, in the best judgment of a requisite number of owners of Lots, it is desirable and prudent that the Architectural Control Committee be provided with a period of time not to exceed thirty (30) days within which to respond to proposals submitted to the Architectural Control Committee; and

WHEREAS, in order to inform future purchasers of Lots within the Subdivision and all others of the amendment and modification of the length of time within which the Architectural Control Committee has within which to respond to proposals submitted to the Architectural Control Committee, it has become necessary to amend the Covenants; and

WHEREAS, the original Declarant provided in the Covenants that any assessment or portion thereof, not paid when due as provided in Article IV of the Covenants bore interest from the due date at a rate of interest of one and one-half percent (1 ½ %) per month until paid; and

WHEREAS, in the best judgment of a requisite number of owners of Lots, the accrual of interest alone does not recoup to the Association the cost and expense related to the failure of a Property Owner to pay assessments when due; and

WHEREAS, in the best judgment of a requisite number of owners of Lots, it is desirable and prudent to establish a late fee or charge that would be assessed against any Lot for which assessments or any portion thereof are not paid when due in the amount of \$20.00 or 5 % of the amount not paid when due, whichever is less; and

WHEREAS, in the best judgment of a requisite number of owners of Lots, it is desirable and prudent to submit the Property Owners' association to the provisions of the Georgia Property Owners' Association Act as set forth in Official Code of Georgia Section 44-3-220, et seq.; and

WHEREAS, in order to inform future purchasers of Lots within the Subdivision and all others of the establishment of a late fee or charge when assessments or any

portion thereof are not paid when due, it has become necessary to amend the Covenants; and

WHEREAS, the original Declarant provided in the Covenants that Covenants could be amended at any time and from time to time by the Property Owners with certain limitations as to the effectiveness of such amendments upon the Declarant and the owner of any portion of the common properties; and

WHEREAS, the requisite number of Property Owners has joined in the adoption of the amendments to the Covenants contained and set forth herein in this Amendment; and

WHEREAS, the original Declarant provided in the Covenants that any amendment to the Covenants would not be effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Forsyth County, Georgia.

NOW, THEREFORE, the requisite number of Property Owners in the Subdivision hereby amend the Covenants and direct that a copy of this Amendment be recorded in the real property records of the Office of the Clerk of the Superior Court of Forsyth County, Georgia, as follows:

1. A new paragraph, paragraph (1) shall be inserted in Article I, Section 1 as follows:
  - (1) INITIATION FEE shall mean and refer to a one time fee in the amount of \$395.00 that shall be due and payable by the purchaser of a Lot at the closing of the Lot and the transfer of the fee simple title to the Lot by the former Property Owner to the purchaser of the Lot whether such transfer is accomplished by Warranty Deed or Quit Claim Deed, provided that the Initiation Fee shall not be payable upon a transfer of a Lot when the purchaser acquires title to the Lot through a deed under power or other deed arising out of the foreclosure of a Deed to Secure Debt.
2. Article III, Section 3 is deleted in its entirety and replaced with the following:

#### SECTION 3 – USE AND ENJOYMENT

The Property Owner of a Lot now or hereinafter subjected to the assessments and lien for nonpayment thereof set forth in Article IV hereof, upon the purchase and closing of a Lot in HIGH GABLES SUBDIVISION and the payment of the Initiation Fee in the amount of \$395.00 per Lot, shall automatically become a member of HIGH GABLES HOMEOWNERS ASSOCIATION, INC. and such Property Owner and the Family Unit of such Property Owner shall have the privilege to use and enjoy the common property. Each Lot shall have one vote interest in the Association.

3. Article III, Section 4 is deleted in its entirety and replaced with the following:

#### SECTION 4 -- DURATION OF MEMBERSHIP

Any person, who becomes a member of the Association by whatever means, shall not thereby acquire any ownership interest in the common properties. Further, membership in the Association shall run with the title to the Lot and in the event of the conveyance of the Lot to another Property Owner and the payment of the Initiation Fee, the membership of the former Property Owner in the Association by virtue of the ownership of such Lot shall pass to the new Property Owner upon written notice of such event to the Association by the new Property Owner. The Association shall not be required to honor such written notice unless and until the new Property Owners shall furnish to the Association a copy of his deed or other conveyance, as the same appears of record, evidencing his ownership of such Lot. Upon the transfer of title of any Lot, all fees, dues and assessments owed the Association shall be paid in full. Upon request, the Association shall furnish a statement of all sums due.

4. Article III, Section 5 is deleted in its entirety and replaced with the following:

#### SECTION 5 -- SUSPENSION OF MEMBERSHIP, FINES AND PENALTIES

The Association shall have the right to suspend the privilege to use and enjoy the common properties in respect to any Lot for which any assessment, or any portion thereof, is delinquent, whether the personal obligation to pay the same is that of the present Property Owner or that of a previous Property Owner, or for the infraction of Association rules and regulations. The Association shall not suspend any of the present Property Owner's privileges to use and enjoy the common properties due to the failure of a prior Property Owner to pay the required assessment when the present Property Owner has acquired title to the Lot by or through the foreclosure of a Deed to Secure Debt. In addition to the foregoing, in the event that an infraction of the Association rules and regulations shall not have been cured, in the sole discretion of a majority of the board, within ten (10) days of written notice by the Board of Directors of the Association or the agent of the Board of Directors of the Association, then the Board of Directors shall have the right to assess against the Property Owner of a Lot a fine in the amount of \$25.00 per day or part thereof that such infraction shall continue beyond the ten (10) day cure period provided herein. The fine set forth in this Section shall be treated as any other assessment set forth in Article IV hereof.

5. The second paragraph of Article VII is deleted in its entirety and replaced with the following:

All plans and specifications for all improvements and/or alterations to be made and undertaken on each Lot shall be approved by the Architectural Control Committee in writing, prior to the commencement of any construction. The Architectural Control Committee shall review all proposals submitted and respond no later than thirty (30) days after receipt of each proposal. The decisions and comments of the Architectural Control Committee shall be final and binding upon all parties to this Declaration unless any such decision is patently arbitrary and malicious, applying reasonable commercial standards.

6. The first paragraph of Article IV, Section 4 is deleted in its entirety and replaced with the following:

If all or any portion of an assessment is not paid on the date when due as herein above provided, then such unpaid amount, together with such interest thereon and collection cost thereof as hereinafter provided plus a delinquency or late fee in the amount of \$25.00 or 10% of the amount not paid, whichever is less, shall be a charge and continuing lien on the Lot to which it relates, and shall bind such property in the hands of the then Property Owner, his heirs, successors in title and assigns. Each Property Owner shall be liable for such portion of each assessment coming due while he is the Property Owner, and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore.

IN WITNESS WHEREOF, the Association by and through its authorized representatives has executed and delivered this instrument under seal as of the day and year first above written.

HIGH GABLES HOMEOWNERS  
ASSOCIATION, INC.,  
A Georgia corporation

By: [Signature]

Its: President

Attest: [Signature]

Its: Treasurer

[Corporate Seal]

Signed, sealed and  
delivered in the presence  
of:

[Signature: Nita Adams]  
Unofficial Witness

[Signature: Mary Lou Gray]  
Notary Public

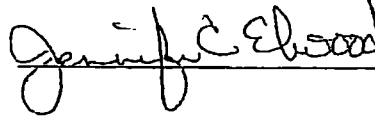
My commission expires



ATTESTATION

We hereby attest that the requisite number of Property Owners have indicated their assent in writing to this **AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HIGH GABLES SUBDIVISION** and acknowledge and agree that this attestation is made with the intention and expectation that it will be reasonably relied upon by persons examining the records of the Office of the Superior Court of Forsyth County in determining whether such Amendment is binding. It is the express intent of the undersigned that such persons may rely on the representations contained in this Attestation.

Executed this the 23<sup>rd</sup> day of June, 2003 under seal, by the Secretary of High Gables Homeowners Association, Inc.

 \_\_\_\_\_ (SEAL)

