

Return to:

Weissman, Nowack, Curry & Wilco, P.C.
1349 West Peachtree Street, 15th Floor
Atlanta, Georgia 30309

STATE OF GEORGIA

CROSS REFERENCE: Deed Book 5299

Page 132

COUNTY OF COBB

Deed Book 5457

Page 193

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR CHADDS RIDGE,
UNIT I, UNIT II-A, UNIT II-B AND UNIT II-C
AND TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR CHADDS RIDGE, UNIT III**

WHEREAS, Chadds Ridge, Inc., a Georgia corporation, recorded the Declaration of Covenants, Conditions, Restrictions and Easements for Chadds Ridge, Unit I and Unit II-A on April 10, 1989, in Deed Book 5299, Page 132, et seq., Cobb County, Georgia Records (hereinafter the "First Declaration"); and

WHEREAS, the First Declaration has been previously amended by amendments recorded on September 7, 1990, in Deed Book 5857, Page 78, et seq., on September 16, 1991, in Deed Book 6270, Page 241, et seq., aforesaid records, which, respectively, submitted Units II-B and II-C to the Declaration; and

WHEREAS, Cotton States Properties, Ltd., a Georgia corporation, recorded the Declaration of Covenants, Conditions, Restrictions and Easements for Chadds Ridge, Unit III on September 1, 1989, in Deed Book 5457, Page 193, et seq., Cobb County, Georgia Records (hereinafter the "Second Declaration"); and

WHEREAS, Article V, Section 7(d) of the First Declaration provides for amendment of the First Declaration by an agreement signed by at least seventy-five (75%) percent of the owners of lots in Units I, II-A and II-B at Chadds Ridge; and

WHEREAS, at least seventy-five (75%) percent of the owners of lots in Units I, II-A, II-B and II-C at Chadds Ridge have approved and executed this amendment; and

WHEREAS, Article V, Section 7(d) of the Second Declaration provides for amendment of the Second Declaration by an agreement signed by at least seventy-five (75%) percent of the owners of lots in Unit III at Chadds Ridge; and

WHEREAS, at least seventy-five (75%) percent of the owners of lots in Unit III at Chadds Ridge have approved and executed this amendment; and

WHEREAS, this amendment does not alter, modify, change or rescind any right, title, interest or privilege held by the holder of any mortgage on a lot at Chadds Ridge; provided, however, in the event a court of competent jurisdiction determines that this amendment does alter, modify, change or rescind any right, title, interest or privilege 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 prior to this amendment shall control with respect to the affected mortgage holder;

NOW THEREFORE, both the Declaration of Covenants, Conditions, Restrictions and Easements for Chadds Ridge, Unit I, II-A, II-B and II-C, and the Declaration of Covenants, Conditions, Restrictions and Easements for Chadds Ridge, Unit III, are hereby amended as follows:

1.

Article I of each Declaration is hereby amended by adding the following Sections 9, 10, 11, 12, 13 and 14 thereto:

Section 9. "Association" shall mean Chadds Ridge Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

Section 10. "Board" or "Board of Directors" shall mean the elected body responsible for management and operation of the Association.

Section 11. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Members.

Section 12. "Mandatory Member" shall mean a member of the Association whose Lot has been subjected to mandatory membership in the Association by written consent recorded in the Cobb County, Georgia land records, as provided in Article VI hereof.

Section 13. "Mandatory Member Lot" shall mean a Lot subjected to mandatory membership in the Association hereunder.

Section 14. "Member" shall mean a member of the Association, including Mandatory Members and Non-Mandatory Members.

Article III of each Declaration is hereby amended by adding the following Section 2 thereto:

Section 2. Easements for Use and Enjoyment. Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Area, to limit the number of guests of Lot Owners and tenants who may use the Common Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Member, his or her family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of a Member and the right of a Member to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.) ; and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association.

3.

Article V, Section I of each Declaration is hereby amended by deleting all references to "Architectural Control Committee" therefrom and substituting "Association, acting through the Board" therefor.

4.

Each Declaration is hereby amended by adding the following Articles VI, VII and VIII thereto:

ARTICLE VI
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each Person who is the record owner of a fee or undivided fee interest in any Lot subject to this Declaration, and whose Lot is

submitted to mandatory membership in the Association by written consent recorded in the Cobb County, Georgia land records, shall be a Mandatory Member of the Association and shall be entitled to vote as set forth herein and in the By-Laws of the Association. Membership shall be mandatory for all Owners whose Lots are submitted to mandatory membership by such written consent, and such membership shall be appurtenant to and may not be separated from ownership of any Lot.

Membership also may be offered by the Association on a non-mandatory basis for owners whose Lots have not been submitted to mandatory membership in the Association by recorded written consent, which non-mandatory membership shall be contingent upon payment of dues and compliance with the Declaration, Bylaws and rules and regulations of the Association.

The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section 1. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

ARTICLE VII ASSESSMENTS

Section 1. General. The Association shall have the power to levy assessments or dues against all Members as provided herein. 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 in the Property and the Members as may be more specifically authorized from time to time by the Board. Except as otherwise provided herein, each Lot subject to assessments hereunder is hereby allocated equal liability for common expenses.

Section 2. Creation of the Lien and Personal Obligation For Assessments for Mandatory Members of the Association. Each Owner of a Mandatory Membership 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, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed for violations of this Declaration, the By-Laws or the rules and regulations of the Association.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted under Georgia law, shall be a charge on such 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 of a Mandatory Membership Lot 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. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which

may include acceleration of the unpaid portion of any annual assessment for delinquent Owners upon ten (10) days written notice.

The lien provided for herein shall be superior to all other liens and encumbrances on such Lot, except for liens of ad valorem taxes and liens for all sums unpaid on a first Mortgage only if such first Mortgage was recorded prior to the delinquent assessment or charge was first due. The sale or transfer of any Lot pursuant to foreclosure of a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien for assessments as to payments coming due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter coming due or from the lien thereof.

No Mandatory Member may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, non-use of the Common Area, 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.

Section 3. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Member shall be in default.

(a) If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Member and interest at the highest rate permitted under Georgia law shall accrue from the due date.

(b) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorney' s fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(c) For Owners whose Lots are subjected to mandatory membership in the Association hereunder, if assessments and other charges or any part thereof due from an Owner 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 By-Laws, and Georgia law and suspend the Owner's right to use the Common Area (provided, however, the Board may not limit ingress or egress to or from the Lot).

(d) For Owners whose Lots are not subject to mandatory membership in the Association hereunder, if assessments or other charges, or any part thereof, due from an owner remain unpaid more than thirty, (30) days, the Association may revoke such Owner's membership in the Association upon ten (10) days written notice.

Section 4. Computation of Operating Budget and Assessment.

(a) Mandatory Member Assessment. It shall be the duty of the Board at least thirty (30) days prior to the beginning of the Association's fiscal year to prepare a budget covering the estimated costs of operating the Property during the coming year. The budget shall include amounts to cover anticipated common expenses of operating, maintaining and repairing all Common Area owned by the Association, including landscaped areas, fences on the Common Area, tennis courts, the swimming pool, pool house and equipment, Common Area lighting, and a reserve or capital contribution related thereto. The budget also shall include amounts to cover anticipated common expenses in enforcing this Declaration, the By-Laws and the rules and regulations of the Association. The budget shall reflect anticipated income to be received from Non-Mandatory Members, and the

Mandatory Member assessment shall be determined from the budget reflecting anticipated Non-Mandatory Member contributions.

The Board shall cause the budget and notice of the assessments to be levied against each Mandatory Membership Lot for the following year to be delivered to each Mandatory Member at least fifteen (15) days prior to the Association's annual meeting or at least thirty (30) days prior to the beginning of the annual assessment period. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a majority of the total Association Mandatory Membership; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting. Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the Mandatory Members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the Mandatory Members, as provided in the By-Laws for special meetings, the new budget and assessment shall take effect without a meeting of the Members.

(b) Non-Mandatory Member Assessment. The Board also shall establish the annual assessment chargeable to Non-Mandatory Members, which shall contribute to the common expenses of maintaining and repairing only the swimming and tennis facilities and equipment, and a reserve or capital contribution related thereto. The Board shall cause the budget and notice of the assessments to be levied against each Non-Mandatory Membership Lot for the following year to be delivered to each Mandatory Member at least thirty (30) days prior to the beginning of the annual assessment period.

Section 5. Special Assessments. In addition to the annual assessment provided for in Section 2 above, the Board may at any time levy a special assessment against all Members, notice of which shall be sent to all members; provided, however, prior to becoming effective, any special assessment first shall be approved by the affirmative vote of at least two-thirds (2/3) of Members present or represented by proxy at a special or annual meeting of the members, notice of which shall specify that purpose; provided, further, Non-Mandatory Members only shall be permitted to vote upon and only shall be required to pay special assessments which relate to the swimming and tennis facilities and equipment.

Section 6. Capital Budget and Contribution. The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 4 hereof.

Section 7. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Mandatory Membership Lot, or a lender considering a loan to be secured by a Mandatory Membership 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 a Mandatory Membership Lot. The Association shall respond in writing within five (5) 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, 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 8. Specific Assessments. In the discretion of the Board, any Association common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots, including but not limited to reasonable attorneys fees actually incurred by the Association, may be specially assessed against such Lot or Lots. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

ARTICLE VIII MORTGAGEE'S RIGHTS

Section 1. Mortgagee Approval of Actions. Unless at least two-thirds (2 /3) of the first Mortgagees and Lot Owners give their consent, the Association or the membership shall not:

- (i) by act or omission seek to abandon or terminate the Property or the Association;
- (ii) change the pro rata interest or obligations of any individual Lot for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) partition or subdivide any Lot;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area (the granting of utility easements or easements for public purposes consistent with the intended use of the Common Area by the Association or architectural changes, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Area) for other than the repair, replacement, or reconstruction of such portion of the Property.

The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required hereunder for any of the actions contained in this Section.

Section 2. Mortgagee Assessments Upon Foreclosure. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

Section 3. Mortgagee Notices. Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any holder of a first mortgage secured by a Lot in the Property who has requested notice of certain items as set forth in this Declaration (hereinafter "Eligible Mortgage Holder") will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first mortgage held by such Eligible Mortgage Holder;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Declaration or By-Laws which is not cured within sixty (60) days;

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

IN WITNESS WHEREOF, the undersigned officers of the Chadds Ridge Homeowners Association, Inc., hereby certify that the above amendment to the Declarations were duly adopted by the required majority of lot owners in Units I, II-A, II-B and II-C in Chadds Ridge, and in Unit III in Chadds Ridge, as reflected by the attached consents executed by Chadds Ridge Unit I, Unit II-A, Unit II-B, Unit II-C and Unit III lot owners.

This _____ day of _____ 19_____ .

CHADDS RIDGE HOMEOWNERS ASSOCIATION, INC.

By: _____
President

Attest: _____
Secretary

[CORPORATE SEAL]

Sworn to and subscribed to
before me this. __ day of
_____, 1998.

WITNESS

NOTARY PUBLIC

[NOTARY SEAL]

JSL:docs\dec\5333mmb.com