

eFiled & eRecorded
DATE: 6/15/2017
TIME: 1:30 PM
DEED BOOK: 01644
PAGE: 00400 - 00414
RECORDING FEE: 42.00
PARTICIPANT ID: 8886200174
CLERK: Dena M. Adams
White County, GA
Cross-References: 2

Cross-Reference:

Deed Book 396, page 249

Deed Book 751, page 356

State Of Georgia
County of White

Return: Chad Knott
670 East Kyle Street
Cleveland, GA 30528

**Amended Declaration of Protective Covenants
for Sky Mountain Estates, Phases I, II, III, and IV**

THIS AMENDED DECLARATION OF PROTECTIVE COVENANTS (the "Declaration") is made as of this 31 day of MAY, 2016, by the SKY MOUNTAIN HOMEOWNERS ASSOCIATION, INC. (hereinafter the "HOA"), and the HOA declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (the "Covenants" or "the Declaration").

WHEREAS, the property known as SKY MOUNTAIN ESTATES consists of four phases, known respectively as Phases I, II, III, and IV, the four phases have different Plat Book references and Protective Covenant references as will be shown herein; and

WHEREAS, the various Phases of SKY MOUNTAIN ESTATES were developed at different times causing two different enactments of Protective Covenants, the first generally applicable to Phases I, II, and III, dated November 1st, 1993, and recorded on May 4, 1994, in Deed Book 396, pages 249-251 of the records of the Clerk of Superior Court of White County, Georgia, and the second enactment of Protective Covenants covering Phase IV, dated March 7, 2002, and recorded on March 13, 2002, in Deed Book 751, Pages 356-358, of the records of the Clerk of Superior Court of White County, Georgia; and

WHEREAS, the Developer of the properties identified herein, has released and relinquished all interest in the development and management of the properties to the HOA by virtue of the conveyance of Association assets to the HOA in those deeds recorded in deed book 538, page 505, and that deed book 559, page 118; and

WHEREAS, the HOA desires to establish and enforce uniform and consistent standards of development and construction quality and to provide for the effective preservation of the appearance, value, and amenities of real property herein described and for the maintenance and administration of certain areas thereof which benefit all owners of property therein through a single enactment of consistent Protective Covenants for all phases of the properties and to effect certain changes and amendments to the pre-existing Protective Covenants, the HOA to this end, desires to subject said real property, together with all such additions thereto as may hereafter be made to these Covenants which amend the previously recorded Protective Covenants; and

WHEREAS, pursuant to the aforementioned Protective Covenants, the Protective Covenants can be amended by a majority of the owners of the respective lots through an instrument signed by a majority and recorded among the deed records of White County, Georgia; and

WHEREAS, this Amendment and the ratifications executed by the majority of the owners of the lots subject to the aforementioned Protective Covenants have been executed and recorded such that the Owners of the Lots of Phases I, II, III, and IV, are bound by this single, consistent set of Protective Covenants as contained herein;

NOW THEREFORE, the HOA declares that the real property described in Section 2.01 hereof, and such additions thereto as may hereafter be made pursuant to 2.02 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to these Amended Covenants, which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title, or interest in the said real property, as well as their grantees, heirs, successors and assigns.

ARTICLE I DEFINITIONS

The following words, when used in this Amended Declaration shall have the following meanings:

1.01 "HOA" shall mean the Sky Mountain Estates Homeowners Association, Inc., a not for profit corporation, as well as its successors or assigns.

1.02 "Common Area or Common Areas" shall mean and refer to all real and/or personal property, including property that the HOA owns, leases, holds an easement, or otherwise maintains for the use or enjoyment of the members of the HOA, including, without limitation, a right of use, such as but not limited to, easements for ingress and egress to and within the Property and easements for surface water collection and retention or detention. The permitted uses of the Common Areas shall be limited to parks, playground, landscaping, entry features, drainage, roads, and retention or detention, medians, sidewalks, pedestrian and bicycle paths, lighting, or any other use which the Board of Directors or other governing body of the HOA may allow.

1.03 "Lot" or "Lots" shall mean individual residential lots within the Property as reflected in and on the recorded subdivision plat(s) of the Property as such may be recorded in the Office of the Clerk of Superior Court of White County, Georgia, as the same may be amended from time to time.

1.04 "Owner" or "Owners" shall mean those persons or entities who or which have a fee simple title, or a life estate or remainder interest, in or to any Lot or Lots, but excluding those having such interest merely as security for the performance of an obligation.

1.05 "Property" shall mean all real property which is presently or may hereafter be subject to this Amended Declaration pursuant to Article II below.

1.06 "Home business" shall mean usage for any enterprise, occupation, activity, or profession conducted in a dwelling, which is incidental and subordinate to the use of the dwelling for residential purposes. Such non-residential uses shall be confined to the principal structures, and only the residents shall be engaged in such occupation. There shall be no changes to the outside appearance of the Property.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, DELETIONS THEREFROM

2.01 Legal Description. The real property which presently is and shall be held, transferred, sold conveyed and occupied subject to this Amended Declaration is located in White County, Georgia, and is described in the records of the Clerk of Superior Court of White County, Georgia, and is fully incorporated herein by reference, and the previously filed Protective Covenants that are amended by the present Declaration are as follows:

All those parcels of land lying and being in Land Lots 105 & 106 of the 3rd Land District of White County, Georgia, and being all of the lots of Sky Mountain Estates Subdivision shown on a plat of survey prepared by Eddie Hood & Associates, RLS, dated April 11, 1994, recorded in Plat Book 31, Page 185, White County, Georgia Records, said plat being incorporated herein by reference for a more particular description.

AND

All those parcels of land lying and being in Land Lot 106 of the 3rd Land District of White County, Georgia, and being all of the lots of Sky Mountain Estates Phase II shown on a plat of survey prepared by London Land Surveying, Roger N. London, RLS, dated April 28, 1995, recorded in Plat Book 39, Page 36, White County, Georgia Records, said plat being incorporated herein by reference for a more particular description.

AND

All those parcels of land, together with all improvements thereon, lying and being in Land Lot 106 of the 3rd Land District of White County, Georgia, being those lots of Sky Mountain Estates Phase III shown on that plat of survey prepared for Sky Mountain Estates, Phase 3, by A. Darin Cain, G.R.L.S., dated January 30, 1997, recorded in Plat Book 39, Page 123, of the White County, Georgia Plat Records, said plat is incorporated herein by reference for a more complete description.

AND

All those parcels of land, together with all improvements thereon, lying and being in Land Lots 105 & 106 of the 3rd Land District of White County, Georgia, being those lots of Sky Mountain Estates Phase IV shown on that plat of survey prepared for Sky Mountain Estates, Phase 4, by Roger N. London, G.R.L.S., dated February 13, 2002, recorded in Plat Book 51, Page 83, of the

White County, Georgia Plat Records, said plat is incorporated herein by reference for a more complete description.

2.02 Effect of the Amended Declaration. All language appearing in the Amended Declaration not found in the previously recorded Covenants shall be an addition to the previously recorded Covenants. All language appearing in the Amended Declaration in conflict with the previously recorded Covenants shall supersede and replace the conflicting language in the previously recorded Covenants.

2.03 Additions, Deletions, Subdivision, and Replatting of the Property. The HOA may supplement this Amended Declaration, by filing in the Office of the Clerk of Superior Court of White County, Georgia, any additional property to be subject to this Declaration, any deletions from the existing property, or any subdivision of the existing property. Any action taken under this provision shall result in replatting of the property, which shall be filed in the record of the Office of the Clerk of Superior Court of White County, Georgia.

ARTICLE III TERM

3.01 Term of Amended Declaration. The Amended Declaration shall be effective _____, 2016. The amended Declaration shall automatically be extended for successive periods of twenty (20) years, unless an instrument approved by a majority of the property owners, exclusive of parties who may hold title or lien to secure indebtedness, has been recorded among the deed records of White County, Georgia, agree to change said Protective Covenants in whole or in part.

ARTICLE IV GEORGIA PROPERTY OWNERS ASSOCIATION ACT O.C.G.A. §44-3-220, et. seq.

4.01 The HOA through its officers, and by virtue of the approval of a majority of the owners of lots subject to the aforementioned Protective Covenants do hereby subject the Property and the operation of the HOA to the Georgia Property Owner's Association Act as set forth in O.C.G.A. §44-3-220, et. seq., and amended from time to time. The HOA shall have all of the rights, duties, benefits, and burdens as set forth in O.C.G.A. §44-3-220, et. seq.

ARTICLE V CONSTRUCTION PROCEDURES

5.01 Exclusive Residential Use. All Lots in the property shall be known, used, and described as residential Lots and shall be used for single family residential purposes exclusively, and for no other purpose, with the exception of in home businesses so long as the home business usage does not cause excessive traffic, noise, odors, or endangerment to the community or the inhabitants thereof. Should an issue arise concerning home business usage, the HOA Board will review all information concerning the usage and make a determination concerning approval. Said determination may be appealed to the HOA Board for re-consideration. The determination of the HOA Board is final.

Leasing or rental for a term of fewer than six months is expressly forbidden. Leases or rental for terms of six (6) months or more to the same tenants is allowed. Subleasing is expressly forbidden or

other short term arrangement is prohibited. Weekend or other short term visitation or use by family members and non-paying guests is not prohibited. Maximum occupancy of homes is limited to two (2) people per bedroom based on state regulations regarding sizing of septic systems and the safety of the community water system.

5.02 Plans for, Construction of, and Location of Building on Site.

All plans for new homes, major expansions, and/or out buildings shall be submitted to the Board of the Homeowners Association for approval to insure the plans are in compliance with the requirements of these Covenants and any amendments hereto. Such approval shall not be unreasonably withheld.

5.03 Structures. Except as otherwise provided, no mobile homes, whether single or double wide, trailers, camper tents, shacks or lean-tos, modular homes, portable storage units, metal buildings, or other similar structures shall be erected, moved, or placed upon said premises, or used as a dwelling, except a motor home or fifth wheel or travel trailer may be parked on the Lot to be used as the residence of the Owner while the permanent dwelling is under construction for a maximum of six months. No motor homes or fifth wheels or travel trailers shall be permitted to be parked on any street.

No type of building shall be erected, altered, placed or permitted to remain on the property within the boundaries of Sky Mountain Estates, other than residential, however, each owner shall be allowed to construct out buildings for use in connection with the occupancy of the property which shall include, but not be limited to, pools, and bath houses, green houses, gazebos, and utility buildings to conform to the existing structure.

5.04 Building Specifications.

- (a) No more than one single family dwelling shall be allowed on any one lot.
- (b) All dwellings shall be kept in good condition, with no peeling paint.
- (c) No dwelling shall be constructed containing less than twelve hundred (1,200) square feet of main floor heated area, exclusive of porches and carports, basements, patios, and similar items of construction.
- (d) All building exteriors must be completed within six (6) months from the day the construction begins.
- (e) Materials used on exteriors must meet or exceed minimum property standards of FHA.
- (f) All dwellings must be constructed of wood, brick, vinyl siding, or hardy plank on the outside and painted in an earth tone or wood tone color. Concrete block or poured walls must be covered in brick, stone, stucco, or painted like the structure. Exceptions may be granted by the HOA Board on the terms and conditions that the HOA Board in their sole discretion may establish.
- (g) The set back for any structure shall be twenty five (25) feet from the front line, fifteen (15) feet from the sides, and twenty (20) feet from the back line.

(h) No fences, stand alone walls, or similar improvements shall be constructed without the prior written approval of the HOA Board and they shall not extend beyond the front of any home.

(i) All lots with homes under construction shall install a temporary driveway for use during construction; said driveway shall be covered with gravel sufficient to prevent mud and debris from being tracked and carried off the lot into the subdivision. Compliance with all state and local environmental ordinances or rules and regulations regarding water run-off into the subdivision or onto adjoining lots is required. The builder or owner is responsible for installing silt fences, hay bales, and any other measures necessary to insure control of any environmental disturbance.

(j) All outdoor lighting shall be shaded or directed so that the light will fall only on the same Lot where the light source is located.

(k) No fuel tanks or similar storage receptacles may be exposed to view from the road, and they may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground.

(l) Any freshly graded or exposed land shall be planted or covered as quickly as possible in accordance with White County, Georgia requirements, and in no event shall bare land be exposed for more than thirty (30) days. Property owners shall make every effort to protect trees and natural plant life in compliance with White County, Georgia requirements and HOA requirements. Removal of vegetation prohibited by state or local law also is prohibited by this Declaration. Environmental screening is required for erosion and sediment control.

(m) No construction, including tree removal or clearing of the Lot, can begin without the posting, at the job site, of a White County Building permit.

(n) All construction and clearing of the Lot must comply with all White County ordinances, local laws, and with White County Mountain Protection laws.

(o) A portable toilet will be installed on the Lot prior to any construction start up and will remain throughout the entire construction period.

(p) Construction will be limited to the following hours: Monday through Friday from 7:00 AM to 6:00 PM and Saturday 9:00 AM to 6:00 PM. No construction will be permitted on Sunday.

(q) Concrete and dump trucks entering Sky Mountain Estates will be limited to a load of four (4) cubic yards, and all trucks will be limited to a gross weight of 44,500 pounds. Manifests may be inspected by the HOA.

(r) All concrete trucks must be cleaned within the building site and are not allowed to dump on roadway right-of-ways or common areas.

(s) Builders and contractors will cause no destruction of any adjoining property or landscaping.

(t) Construction vehicles or equipment may not be parked overnight upon community streets. All such vehicles will be towed within 24 hours at the owner's expense in addition to any fine that may be imposed.

(u) All new and additional utilities will be underground and meet applicable codes and regulations.

5.05 Limitation of Liability. The scope of review by the HOA Board shall be limited to aesthetic characteristics, appearance, and compliance with paragraph **5.04 Building Specifications**, above, only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other similar matter. Neither the HOA, nor any member thereof, nor the HOA Board, nor any member thereof, shall be liable to any Owner for any action taken or omitted to be taken, by the HOA, the HOA Board, or their respective individual members, in the performance of their duties hereunder.

ARTICLE VI GRANDFATHER PROVISION

6.01 Recognizing that the original developer of Sky Mountain Estates and some current or past homeowners were not vigilant with placement of driveways, retaining walls, building setbacks and other requirements of the original and these revised covenants, all such construction issues that were in existence at the date of this revised document will be deemed by the Sky Mountain HOA as acceptable and not to be in violation of these covenants. State and county regulations will supersede this document and will be handled by the appropriate agency/agencies. In any claim(s) made by homeowner(s) based on state or county regulations this document will have no effect on the matter and is not to be used as a basis for cause of action or for defense of said action.

ARTICLE VII EASEMENTS

7.01 Owner's Easement With Respect to Common Areas. Every Owner shall have a right and easement of enjoyment in and to all Common Areas subject to any limitation set forth in this Declaration.

7.02 Drainage Easement. Drainage flow shall not be obstructed or diverted from drainage swales, storm sewers and/or utility easements as reflected on any HOA map or on any applicable plat of record. The HOA may locate and construct drainways for surface water wherever and whenever such action may appear to the HOA to be necessary to order to maintain reasonable standards of health, safety, environmental standards, and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. Except as provided herein, existing drainage shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot or Lots or Common Areas. The provisions hereof shall not be construed to impose any obligation upon the HOA to locate or construct

such drainway. It is the responsibility of each lot owner to keep their culverts and drainage ditches free of debris and not impacting the roads or other properties.

No permanent structure or fencing may be constructed or placed in such flowage easement area. Each Owner also agrees, upon conveyance of a Lot and by acceptance of a Lot deed, to assume all the risks and hazards of ownership or occupancy attendant to such Lots, including but not limited to proximity to water or waterways.

7.03 Utility Easement. The HOA reserves for itself the right to use, dedicate, and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use utilities, wires, cables, cable television, conduits, storm sewers, sanitary sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the applicable plat of record of any property subject to this Declaration.

7.04 Additional Documents. All Owners agree, upon the request of the HOA, to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article.

7.05 Limitations. Any easements which may be created pursuant to this Article shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot affected thereby and are further subject to the following limitations: All provisions of this Declaration, the Articles and Bylaws of the HOA, the rules and regulations of the HOA, and all restrictions contained on any applicable plat of the affected property.

No Owner shall grant any easement to any person or entity for any purpose that will permit access to any adjacent property which is not a part of Sky Mountain Estates.

ARTICLE VIII OTHER COMMUNITY RESTRICTIONS

8.01 Commercial limitation. No commercial building is to be built, nor is any commercial business to be operated on any lot that does not fall within any exception set forth in this Declaration.

8.02 Signs. No commercial signs shall be erected or maintained on any Lot except for Real Estate For Sale signs and Home Security System signs.

8.03 Noxious Activities. No noxious trade, business, manufacturing, or industrial use or activity shall be permitted on any Lot, nor shall any annoyance or nuisance to the community be permitted. No activity shall be carried out upon a Lot which would constitute an unreasonable and substantial interference with the use and enjoyment of the land by other Owners. Lot owners will not have excessive statues, lawn furniture, lawn art, etc. visible from the street. The HOA Board will take action to eliminate the noxious activity upon receipt of five respectfully written independent Lot owner complaints.

8.04 Animals. No animals, livestock, insects, or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs, cats, or other domesticated animals may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Household pets may not run loose or create any nuisance to the community. Pets must not be allowed to create a noise nuisance. Pet owners are responsible for cleaning up after their pets in front of lots not their own.

8.05 Clotheslines. Clotheslines must be kept out of view of the street or any other homes.

8.06 Vehicles. Boats, campers, RV's, and trailers must be located out of sight from the road, except as otherwise permitted in these covenants. No 18 wheel tractor trailers are allowed on Sky Mountain Estates roads except for deliveries. Large commercial vehicles (greater than ¾ ton) are similarly not permitted on Sky Mountain Estate roads except for deliveries.

No unregistered or inoperable car or truck shall be moved to or kept upon any Lot unless such vehicle is stored in an enclosed garage.

Use of motorbikes, dune buggies, go carts, or any other type of motorized vehicles, designed primarily for off-road, are prohibited from use on Sky Mountain Estates roads or for off road use within daylight hours except by Sky Mountain Estates lot owners. The only motorcycles and golf carts permitted on Sky Mountain Estates roads are those owned by Sky Mountain Estate property owners and these are not permitted for off-road use unless on the owner's property or with permission of another property owner and during daylight hours.

8.07 Firearms. Firearms may not be discharged within Sky Mountain Estates.

8.08 Garbage, Trash and Other Refuse. No part of any lot, easement or common area, shall be used or maintained as a dumping ground for rubbish or garbage. Trash, garbage and other wastes shall be kept in sanitary containers and shall not be permitted to be exposed. Incinerators, burn barrels, fire pits, or any open fires are not permitted. Well-tended "chimeneas" are acceptable. All waste, building scraps, or any other similar materials must be disposed of off the property and may not be buried.

Owners shall maintain the property in a neat and orderly condition and shall not permit the accumulation of offensive or unsightly trash, including piled brush or other accumulation that may endanger the community due to fire hazards. If garbage, trash, or other refuse accumulates upon a Lot, the HOA will notify the Lot owner in writing and shall be given seven (7) calendar days to remove the garbage, trash or other refuse. If, at the end of the seven (7) day period, the garbage, trash or other refuse has not been removed, the HOA reserves the right to enter upon the Lot for the purpose of removing the trash, garbage, or other refuse and to dispose of the same at the expense of the Owner.

8.09 Roads. All roads in Sky Mountain Estates shall be the property of the HOA. The HOA shall have the right of use of all Sky Mountain Estate roads, access to all easements for public utilities, water lines and well sites. Property owners are responsible for all damage done to roads, driveways or water lines caused by the property owner, their builders, sub-contractors, and those working for such property owner while in transit or by construction of any structures on the property owner's lot. Normal wear and tear of roads is exempted.

8.10 Enforcement. The provisions of this Article are to be enforced by the HOA. In case of disputes, the interpretation and application of these Covenants, including fines and liens as required, shall be within the sole discretion of the HOA Board of Directors.

ARTICLE IX WATER

9.01 Community Water System. Owners of Sky Mountain Estates, Phases I, II, and III, shall have the right to use the community water system, subject to payment of the annual assessment, or have the option of drilling their own private well on their Lot. Taps from the community water system to lots with private wells must have cut off valves in the line to the community system and back flow valves installed prior to connecting to the community water system. The locked physical disconnect valves will be installed at HOA expense for existing homes and the Owner's expense for new construction. If the Owner chooses to use the community water system, a tap on fee and an annual fee will be assessed with the amount determined by the HOA Board and approved by the majority of the HOA members. No property owner will be allowed to tap on to the community water system until the impact, water "tap on" fees, and all other fines or fees have been paid. Owners of pools and excessive water use from items such as hot tubs may be subject to increased water fees.

9.02 Phase IV Water System. The Phase IV Water System is governed by a "Shared Well Agreement" filed on the Deed Records in the Superior Court of White County in Deed Book 992, pages 295-299.

9.03 Limitation of Liability. The HOA, the HOA Board, and the HOA Board members individually shall make every reasonable effort to see that an adequate and potable supply of water is maintained. No guarantees or warranties are made regarding water shortages, intermittent failures, quality issues caused by acts of God, drought, changes in the underground water table, varying water pressure, or repairs. The HOA Board, the HOA, and the HOA Board members are not liable for damages resulting from water shortages, intermittent failures, quality issues caused by acts of God, drought, changes in the underground water table, water pressure levels, or repairs, whether foreseen or unforeseen.

ARTICLE X MAINTENANCE ASSESSMENTS

10.01 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the HOA, in the manner set forth herein, all assessments or other charges, determined in accordance with the provisions of the Declaration.

10.02 Purpose of Assessments. The Assessments levied by the HOA shall be used exclusively for the preservation of the appearance, value, and amenities of Sky Mountain Estates, utilities for the street lights, irrigation of landscaping, expenses associated with the common areas, including payment of common expenses, and of any easement in favor of the HOA, the defense of the HOA, the enforcement of this Declaration, the operation of the HOA Board of Directors as well as for other purposes properly undertaken by the HOA.

10.03 Annual Assessments. The HOA shall levy annual assessments in such amounts as are necessary to meet the expenses associated with the carrying out as the common expenses as the HOA may deem appropriate. The assessment year for the annual assessment need not be the calendar year.

10.04 Special Assessments. In addition to the annual assessments specified in Section 10.03, above, the HOA may at any time levy one or more special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair to or replacement of any of the common areas, including any fixtures and personal property related thereto.

10.05. Duties of HOA Board. The Board shall fix the amount of all assessments, the date of commencement for each assessment, and the due date of such assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which roster shall be kept in a place designated by the HOA Board. The roster shall be open to inspection by any Owner. Written notice of the amount of the assessment, the commencement and due dates shall be sent to every owner subject thereto not later than seven (7) days after fixing the date of commencement. The Board's duty pursuant to this paragraph shall only be authorized after a duly called meeting of the members with a quorum present, and a majority vote by said members approving the actions and duties of the Board in accordance therewith.

10.06. Date of Commencement and Due Date for Assessments. The liability of a Lot for any assessment shall commence of the date fixed by the HOA Board in the resolution authorizing such assessment. The due date of any such assessment shall also be fixed in the resolution authorizing such assessment. Such assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as fixed in the resolution of the HOA Board authorizing the assessments.

10.07 Allocation of Assessment. The Board shall allocate a portion of each assessment to each Lot in the proportion that each Lot bears to the total number of Lots within the Property.

10.08 Certification of Payment of Assessment. The HOA shall, upon demand at any time, furnish to any Owner liable for any assessment or to his designee or to any institutional mortgagee a certificate in writing signed by an officer of the HOA, setting forth whether said assessment has been paid. Such certification shall be conclusive evidence of payment of any assessment therein stated to have been paid.

10.09 Liability of Owners for Assessments. No Owner may exempt himself from liability for any assessment levied against his Lot by waiver of the use or enjoyment of any of the common areas, or by abandonment of the Lot.

10.10 Effect of Non-payment of Assessments.

(a) If any assessment or other charge or lien provided for herein is not paid in full on the due dates set by the Board, then such assessment, charge, or lien shall become delinquent on the thirtieth day thereafter, and together with interest thereon and costs shall be a personal obligation of its Owner, heirs, successors and/or assigns. Notice of such delinquency shall be forwarded to such Owner and to any institutional mortgagee having an interest in the Lot.

(b) If any assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest rate permitted under Georgia law, and the HOA may bring an action against the Owner personally obligated to pay the same and/or commence foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property. There shall be added to the assessment all attorneys' fees incurred in attempting to collect such assessment and in prosecuting any action for the same.

(c) Requirements concerning recording of any lien are specified in the Georgia Property Owners' Association Act, O.C.G.A. §44-3-235. The lien shall continue in effect until all sums secured by it shall have been fully paid. Such claim of lien may include a late or delinquency charge, interest, costs of collection, expenses, attorney's fees, and fair rental value of the lot, if applicable. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. No sale or transfer of a Lot shall relieve any Owner from liability for any assessment due before such sale or transfer, or from the lien of any such assessment.

(d) The lien of any assessments shall be subordinate to the lien of any institutional mortgagee bearing a recording date prior to the date of the recording of the HOA's claim of lien, liens for ad valorem taxes on the Lot, as specified in O.C.G.A §44-3-235.

(e) Any person who acquires an interest in a Lot, except an institutional mortgagee, including, but not limited to persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the common areas until such time as all unpaid assessments due and owing by the former owner have been paid in full.

(f) The HOA shall have the right to assign its claim of lien, and any other lien rights provided for herein, for the recovery of any unpaid assessments, to any Owner or to any third party.

(g) The HOA Board shall have the right to exempt any portion of the property for the assessments, charges, and liens created herein provide that the exempted portion of the property is used as an easement for public use or a common area.

ARTICLE XI MEMBERSHIP AND VOTING RIGHTS IN THE HOA

11.01 Membership. Every Owner shall at all times be a member of the HOA. Membership may not be separated from ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Clerk of Superior Court of White County, Georgia. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest or upon the ownership interest being divested in some other manner.

11.02 Voting. Subject to the restrictions set forth herein, each member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When one or more persons hold such interest, all such persons may be members, and the vote(s) for such Property shall be exercised in such manner as set forth herein or in the Bylaws, as applicable, but in no event shall more than one (1) vote be cast for any one (1) Lot. There shall be no fractional voting. The votes of an

Owner of more than one (1) Lot cannot be divided for any issue and must be voted as a whole. The affirmative vote of Owners who own a majority of the Lots which are represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner specified.

ARTICLE XII DEFAULTS AND REMEDIES

12.01 Protective Covenants Running With the Land. The foregoing Declaration shall run with the land and constitute a servitude in and upon the Property and shall inure to the benefit of and be enforceable by the HOA or any Owner.

12.02 Default. Violation or breach of any of the Protective Covenants shall constitute a default hereunder. Any person given the right to enforce the Protective Covenants herein may provide written notice to any Owner (and any institutional mortgagee who has requested same).

12.03 Remedies for Default. The existence of any default which has not been cured within thirty (30) days of the notice specified above shall give the HOA, any Owner, and any adjacent Owner, in addition to all other remedies specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them. All costs, fees and expenses, including attorneys' fees incurred by any party enforcing or attempting to enforce these Protective Covenants shall be borne by the defaulting party.

12.04 Nature of Remedies; Waiver. All rights, remedies, and privileges granted to the HOA and the Owners pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such part at law or in equity. The failure at any point in time to enforce any covenants or restrictions shall not be deemed a waiver of the right to thereafter enforce such covenant or restriction. Nothing contained herein shall be deemed or construed to require the HOA to take any action or do anything relating to the enforcement of these covenants, or the exercise of any remedy set out herein or as may be otherwise permitted by law.

ARTICLE XIII AMENDMENT OF DECLARATION

13.01 Restrictions on Amendment.

(a) No amendment shall materially adversely affect the rights and priorities of any institutional mortgagees of records or change the provision of this Declaration with respect to institutional mortgagees, unless all institutional mortgagees so adversely affected shall consent thereto.

(b) No amendment to this Declaration shall make any change in the qualifications of the membership nor diminish the voting or property rights of members, without approval in writing by all Owners and the joinder of all institutional mortgagees.

- (c) Amendment of this Declaration shall be carried out in accord with O.C.G.A. §44-3-226.

ARTICLE XIV GENERAL PROVISIONS

14.01 Notices. Any notice required to be sent to any Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed by United States mail, certified mail or statutory overnight delivery, return receipt requested, to the address of such Owner as it appears on the records of the HOA at the time of such mailing. Any notice required to be sent to the Developer or the HOA shall be deemed to be sent when mailed by United States mail, postage prepaid, to their respective registered office.

14.02 Severability. Invalidity of any provision or provisions hereof by judgment of court order shall in no way affect any other provision, all of which shall remain in full force and effect.

14.03 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Georgia. The provisions of the Georgia Property Owner's Association Act, O.C.G.A. §44-3-220, are voluntarily made applicable to this Declaration. In the event of any conflict in the provisions in this Declaration and the Georgia Property Owner's Act, the provisions of the Georgia Property Owner's Act shall control.

14.04 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

14.05 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of any provision of the Declaration, the Articles, the Bylaws or the Rules and Regulations, then the provisions of this Declaration shall prevail.

14.06. Effective Date. This Declaration shall become effective when it has been recorded in the Office of the Clerk of Superior Court of White County, Georgia.

14.07. Owner's Acceptance. Each Owner, by acceptance of a deed of other instrument of conveyance for any lot or any interest therein, or by execution of a contract for the purchase therefore, unconditionally agrees to be bound by, and to comply with, each and every term, provision, covenant and restriction contained herein.

Signatures to follow

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration as of the date first above written.

**SKY MOUNTAIN ESTATES
HOMEOWNERS ASSOCIATION, INC.**

Signed, sealed and delivered in
the presence of:

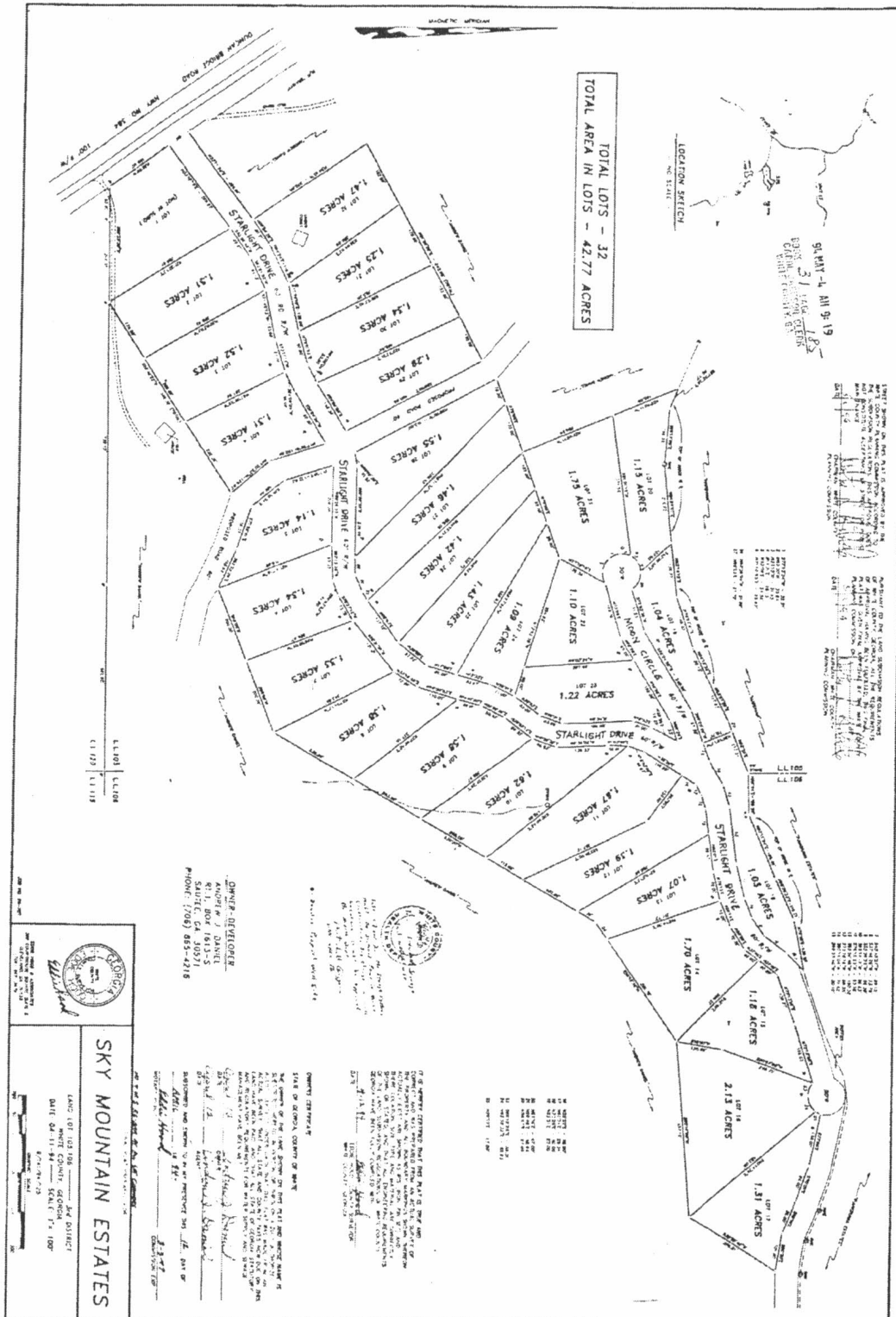
Terry D. Buffell
(Unofficial witness)

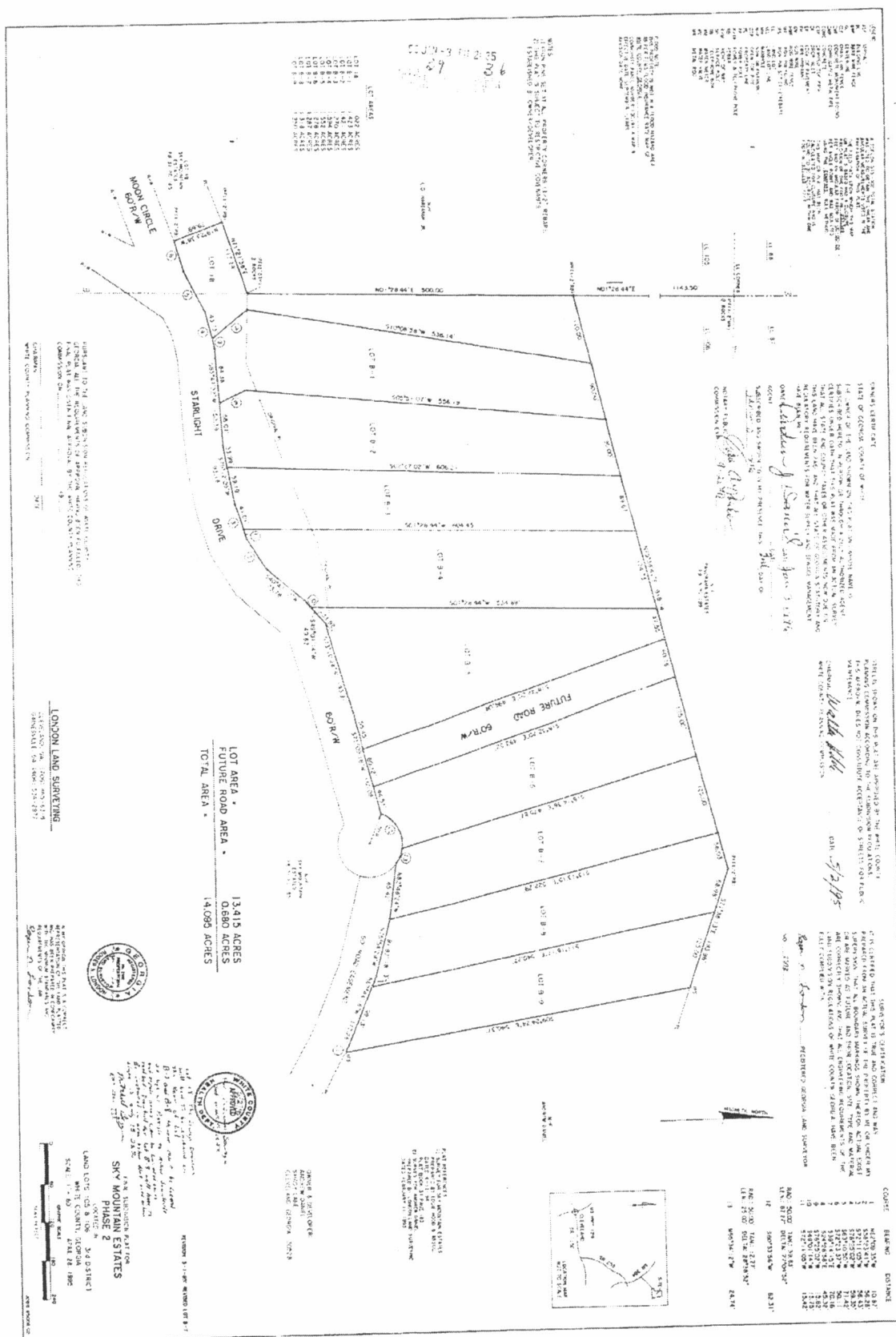
Jean Dillard Davis
(Notary Public)

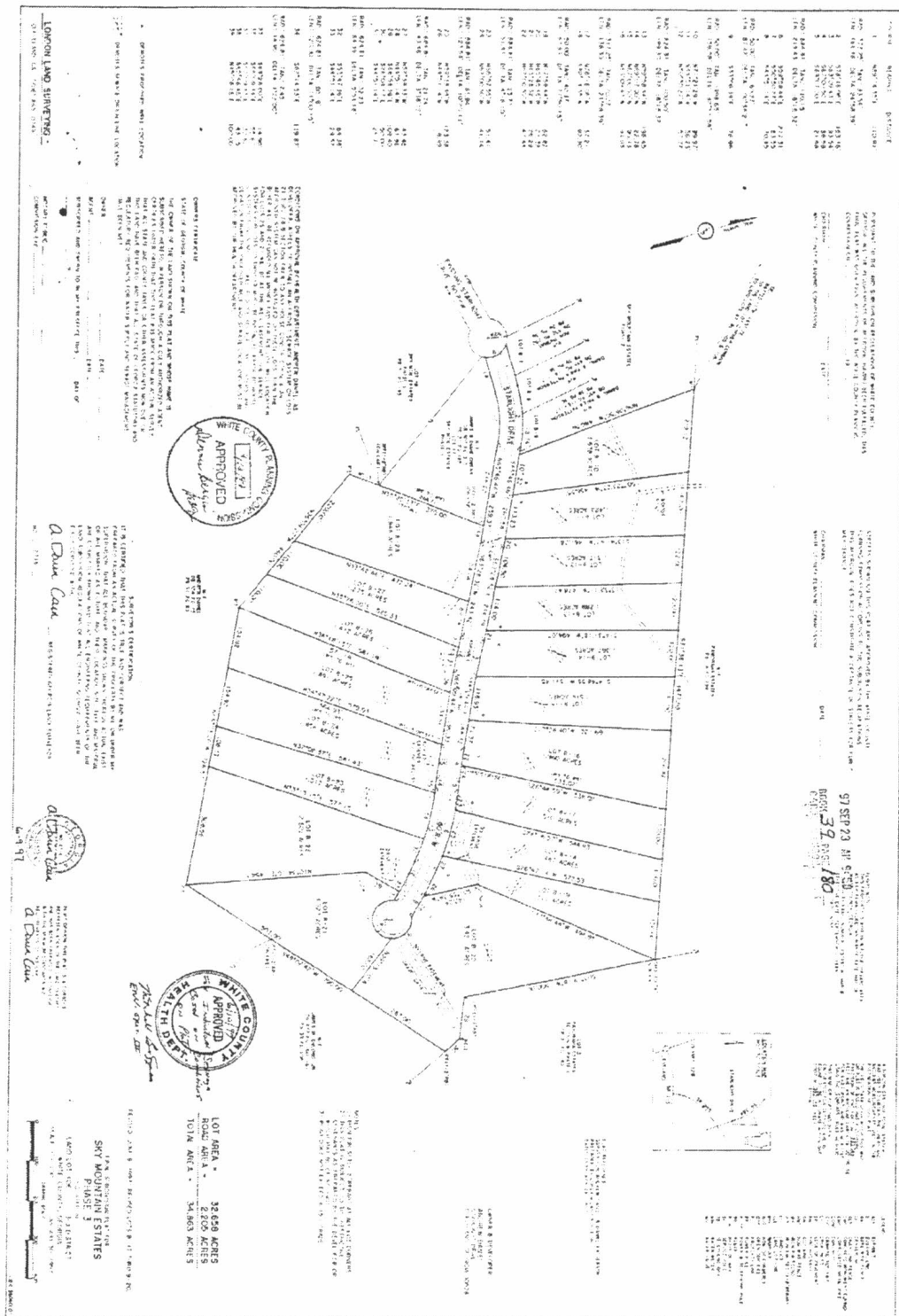
Paul L. Griffith (Seal)
By: PAUL L. GRIFFITH
Its: PRESIDENT

Glenn A. Davis (Seal)
By: GLENN A. DAVIS
Its: VICE PRESIDENT











Return Recorded Document to:
The Law Office of Chad Knott
670 East Kytile Street
Cleveland, GA 30528

Cross Reference to:
Deed Book 396, Page 249
Deed Book 751, Page 356
Deed Book 1644, Page 400

eFiled & eRecorded
DATE: 8/20/2018
TIME: 3:43 PM
DEED BOOK: 01687
PAGE: 00497 - 00498
RECORDING FEE: 18.00
PARTICIPANT ID: 8886200174
CLERK: Dena M. Adams
White County, GA
Cross-References: 3

AFFIDAVIT OF FACTS

STATE OF GEORGIA
COUNTY OF WHITE

The undersigned Deponents, after being duly sworn, depose and state on oath before the notary public that:

WHEREAS, the property known as SKY MOUNTAIN ESTATES consists of four phases, known respectively as Phases I, II, III, and IV, the four phases have different Plat Book references and Protective Covenant references as will be shown herein; and

WHEREAS, the various Phases of SKY MOUNTAIN ESTATES were developed at different times causing two different enactments of Protective Covenants, the first generally applicable to Phases I, II, and III, dated November 1st, 1993, and recorded on May 4, 1994, in Deed Book 396, pages 249-251 of the records of the Clerk of Superior Court of White County, Georgia, and the second enactment of Protective Covenants covering Phase IV, dated March 7, 2002, and recorded on March 13, 2002, in Deed Book 751, Pages 356-358, of the records of the Clerk of Superior Court of White County, Georgia; and

WHEREAS the preambles to each of the respective Protective Covenants referenced above state that said covenants may be amended by *"an instrument signed by a majority of the then owners of the respective lots.....has been recorded among the Deed Records of White County, Georgia, agree to change said Protective Covenants in whole or in part"*; and

WHEREAS the amendment recorded in deed book 1644, pages 400-414 has been approved by a majority of the then owners of the respective lots as set forth and required in the preamble of the original protective covenants recorded in deed book 396, page 249, and deed book 751, page 356; the ratifications and approvals for which are recorded in deed book 1646, pages 191-264, deed book 1648, page 584, deed book 1659, pages 91-103, deed book 1675, page 176, deed book 1677, page 122, and deed book 1684, page 199; and

WHEREAS pursuant to Article IV of the amendment recorded in deed book 1644, pages 400-414, the property of SKY MOUNTAIN ESTATES is to be governed by the Georgia Property Owner's Association Act, O.C.G.A. §44-3-220, et. seq.; and

WHEREAS pursuant to O.C.G.A. §44-3-226(a), property may be subjected to the Georgia Property Owner's Association Act upon the agreement of at least two-thirds of the property owners; and

WHEREAS the ratifications and approvals of at least two-thirds of the property owners are recorded in deed book 1646, pages 191-264, deed book 1648, page 584, deed book 1659, pages 91-103, deed book 1675, page 176, deed book 1677, page 122, and deed book 1684, page 199; and

NOW THEREFORE, The President and Treasurer of Sky Mountain Homeowners Association, Inc., the deponents herein, do hereby swear and affirm that the ratifications and approvals as set forth above establish that at least two-thirds of the property owners within the Sky Mountain Estates subdivision have approved the Amended Declaration of Protective Covenants for Sky Mountain Estates, Phases I, II, III, and IV as recorded in deed book 1644, pages 400-414, White County, Georgia deed records, and that the Sky Mountain Estates Subdivision is now governed by the Georgia Property Owner's Association Act, and that pursuant to O.C.G.A. §44-3-234, the limitations provided in O.C.G.A. §44-5-60(d)4 do not apply, and as such, the Amended Declaration of Protective Covenants for Sky Mountain Estates, Phases I, II, III, and IV as recorded in deed book 1644, pages 400-414, White County, Georgia deed records, now applies to all owners within the development known as Sky Mountain Estates.


Further, The Amended Declaration as set forth herein shall have an effective date of July 16, 2018 and said date shall be incorporated into Paragraph 3.01 of Article III of the Amended Declaration of Protective Covenants for Sky Mountain Estates, Phases I, II, III, and IV as recorded in deed book 1644, pages 400-414, White County, Georgia deed records.

The undersigned Deponents request that the clerk of court cross reference this affidavit as requested above.

Deponent's attention has been directed to the fact that the within affidavit will be relied upon and that this Affidavit is made pursuant to the provisions O.C.G.A. § 44-2-20.

Signed, sealed, and delivered this 16 day of August, 2018:


Signed, sealed and delivered in the
presence of:


(Notary Public)


(Notary Public)



Sky Mountain Homeowners Association,
Inc.,


By: Brad McCanna

Its: President


By: Michael Seitz

Its: Treasurer