

Patty Baker
Clerk of Superior Court Cherokee Cty, GA

COPY

10
B-1

After recording, please return to:
Rachel E. Conrad
Dorough & Dorough, LLC
Attorneys at Law
160 Clairemont Avenue, Suite 650
Decatur, Georgia 30030
(404) 687-9977

CROSS REFERENCE: Deed Book: 9841
Page: 389

**THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS FOR STONEY CREEK**

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR STONEY CREEK (hereinafter
referred to as the "Amendment") is made this 30th day of July, 2013 by **STONEY
CREEK COMMUNITY ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter
referred to as "Association") and **ASHTON ATLANTA RESIDENTIAL, L.L.C.**, a Georgia
limited liability company (hereinafter referred to as "Ashton Atlanta Residential" or "Declarant");

WITNESSETH

WHEREAS, McBride & Son Homes Land Development, Inc., a Missouri corporation
("McBride & Sons Homes Land Development"), as Declarant, executed that certain Declaration
of Covenants, Conditions, Restrictions, and Easements for Stoney Creek, which was recorded on
September 17, 2007 in Deed Book 9841, Page 389, *et seq.*, Cherokee County, Georgia land
records, as amended by that certain Amendment to Declaration of Covenants, Conditions,
Restrictions, and Easements for Stoney Creek, recorded May 18, 2010, at Deed Book 11017,
Page 124, *et seq.*, aforesaid records; and as amended by that certain Second Amendment to
Declaration of Covenants, Conditions, Restrictions, and Easements for Stoney Creek, recorded
October 30, 2012, at Deed Book 12069, Page 71, *et seq.*, aforesaid records (as amended and/or
supplemented from time to time hereinafter collectively referred to as, the "Declaration"); and

WHEREAS, on November 20, 2007, McBride & Sons Homes Land Development
conveyed fee title to multiple Lots in the Community to McBride & Son Homes Atlanta, L.L.C., a
Missouri limited liability company ("McBride & Son Homes Atlanta"), and McBride & Son

Homes Atlanta automatically succeeded to all rights and privileges as Declarant under the Declaration pursuant to Article I, Section 1.8 of the Declaration; and

WHEREAS, McBride & Sons Land Development and McBride & Son Homes Atlanta assigned all rights and interest as the Declarant under the Declaration to MSH Syndicated Holdings, LLC, a Georgia limited liability company ("MSH Syndicated Holdings") pursuant to that certain Assignment and Transfer of Declarant Rights, recorded October 30, 2012 at Deed Book 12069, Page 80, *et seq.*, aforesaid records; and

WHEREAS, MSH Syndicated Holdings assigned all of its right, title and interest as Declarant under the Declaration to Ashton Atlanta Residential pursuant to that certain Quitclaim Assignment of Declarant's Rights Under the Declaration of Covenants, Conditions, Restrictions, and Easements for Stoney Creek, recorded April 26, 2013, at Deed Book 12359, Page 365, *et seq.*, aforesaid records; 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 XVII, Section 17.1 of the Declaration, the Declaration may be amended by the affirmative vote, written consent or any combination of affirmative vote and written consent, of the Association members holding at least two-thirds (2/3) of the total vote of the Association; and

WHEREAS, Article XVII, Section 17.2 of the Declaration provides that until one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed from Declarant to any other Person, any amendment to the Declaration must be approved in writing by the Declarant prior to becoming effective; and

WHEREAS, Association members holding at least two-thirds (2/3) of the total vote of the Association agreed by the affirmative vote, written consent or any combination thereof to amend the Declaration as provided herein; and

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the incumbent President of the Association, which sworn statement states that Association members holding at least two-thirds (2/3) of the total vote of the Association approved the foregoing Amendment and that such consents were lawfully obtained; and

WHEREAS, attached hereto as Exhibit "B" and incorporated herein by reference is the sworn statement of the incumbent Secretary of the Association, which sworn statement states that Association members holding at least two-thirds (2/3) of the total vote of the Association approved the foregoing Amendment and that such consents were lawfully obtained; and

WHEREAS, the Declarant consents to this Amendment, as evidenced by the signatures attached hereto and by this reference incorporated herein;

NOW THEREFORE, the undersigned hereby adopt this Third Amendment to the Declaration of Covenants, Conditions, Restrictions, and Easements for Stoney Creek hereby declaring that all of the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject of the Declaration, amended as follows:

1.

The Declaration is hereby amended by deleting Article X, Section 10.5, entitled "Fences," in its entirety and replacing it with a new Section 10.5 to read as follows:

10.5. Fences. No chain link or cyclone fences may be placed in the Community, except by the Declarant. Fences must first be approved by the ACC prior to the commencement of the installation thereof.

(a) Detached House Lots. The initial approved fence guidelines for Detached Lots in the Community are set forth on Exhibit "D" attached hereto and by this reference incorporated herein, as the same may be amended or revised by the Declarant as provided therein.

(b) Townhouse Lots. No fence or screening of any kind whatsoever, including an electric fence or "invisible fence" for the confinement of pets, shall be allowed to be erected or maintained on any Townhouse Lot, except for privacy fences approved by the ACC as provided in Article IX hereof.

2.

The Declaration is hereby amended by adding a new Exhibit "D" thereto, entitled "Approved Fence Guidelines – Stoney Creek Community Association, Inc.", as the same is attached hereto and incorporated herein by reference.

3.

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

4.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Cherokee County, Georgia and shall be enforceable against current Owners of Lots subject to the Declaration.

5.

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

IN WITNESS WHEREOF, the Association hereby executes this Amendment under seal the day and year first above written.

ASSOCIATION: STONEY CREEK COMMUNITY ASSOCIATION, INC., a Georgia nonprofit corporation

By: Megan M. Woodruff
Print Name: Megan M. Woodruff
President

Attest: Josephine Indovina
Print Name: Josephine Indovina
Secretary

Signed, sealed, and delivered in the presence of:

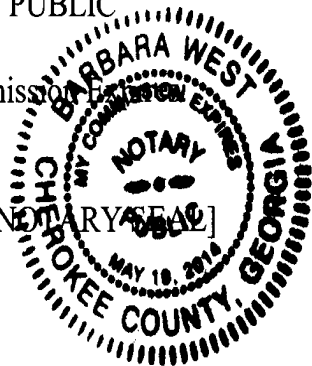
[AFFIX CORPORATE SEAL]

[Signature]
WITNESS

Barbara West
NOTARY PUBLIC

My Commission Expires

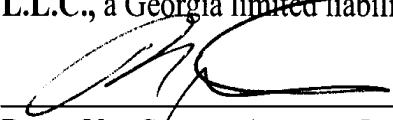
[AFFIX NOTARY SEAL]



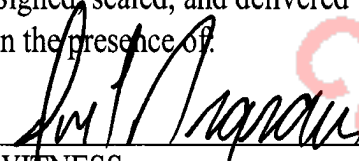
[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant hereby consents to this Amendment this
30th day of July, 2013.

DECLARANT: **ASHTON ATLANTA RESIDENTIAL,
L.L.C., a Georgia limited liability company**

By: 
Bruce Van Stee, as Attorney-In-Fact
Pursuant to the Limited Power of Attorney
recorded at Deed Book 10799, page 351,
Cherokee County, Georgia records

Signed, sealed, and delivered
in the presence of.


WITNESS


NOTARY PUBLIC

My Commission Expires

[AFFIX NOTARY SEAL]

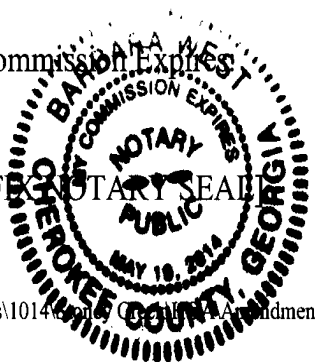


EXHIBIT "A"
Sworn Statement of President of
Stoney Creek Community Association, Inc.

STATE OF GEORGIA
COUNTY OF CHEROKEE

Re: Stoney Creek

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

1. Deponent is the President of Stoney Creek Community 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 Third Amendment to the Declaration of Covenants, Conditions, Restrictions, and Easements for Stoney Creek was approved by Association members holding at least two-thirds (2/3) of the total vote of the Association.
4. The consent of Association members holding at least two-thirds (2/3) of the total vote of the Association was lawfully obtained.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 30th day of July, 2013.

By:
Print Name:

Megan M. Woodruff
Megan M. Woodruff

Sworn to and Subscribed
before me this 30th day
of July, 2013.

Barbara West
Notary Public
[AFFIX NOTARY SEAL]

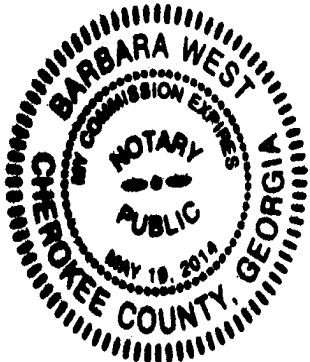


EXHIBIT "B"
Sworn Statement of Secretary of
Stoney Creek Community Association, Inc.

STATE OF GEORGIA
COUNTY OF CHEROKEE

Re: Stoney Creek

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

1. Deponent is the Secretary of Stoney Creek Community 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 Third Amendment to the Declaration of Covenants, Conditions, Restrictions, and Easements for Stoney Creek was approved by Association members holding at least two-thirds (2/3) of the total vote of the Association.
4. The consent of Association members holding at least two-thirds (2/3) of the total vote of the Association was lawfully obtained.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 30th day of July, 2013.

By: _____
Print Name: _____

Josephine Irving
Josephine Irving

Sworn to and Subscribed
before me this 30th day
of July, 2013.
Barbara West

Notary Public
[AFFIX NOTARY SEAL]

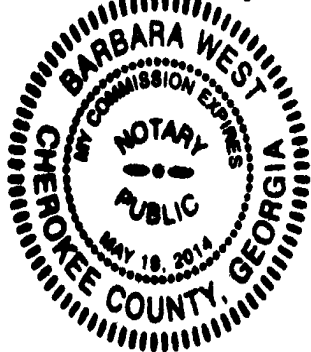


Exhibit "D"
Approved Fence Guidelines – Stoney Creek

The following approved fence guidelines ("Approved Fence Guidelines") have been adopted by Ashton Atlanta Residential, L.L.C., as Declarant under that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Stoney Creek ("Declaration"). These Approved Fence Guidelines are established to promote and maintain a cooperative, harmonious living environment for all residents of Stoney Creek and are designed to protect the value of the homes, grounds and common areas that make up the Stoney Creek Community.

All Owners, Occupants, lessees, tenants, invitees, contractors, service providers, etc. should be familiar with these guidelines and are expected to conduct themselves while in the Community in a manner compatible with the guidance provided by these Approved Fence Guidelines. Each Owner and Occupant should obtain a copy of the currently applicable Approved Fence Guidelines and is expected to be familiar with – and abide by the guidelines, processes and procedures described within such document. The Approved Fence Guidelines listed in this Exhibit "D" as may be amended, modified or supplemented by the Declarant as provided herein and in the Declaration and all provisions of the Declaration are binding upon each Owner, Occupant, lessees, tenant and invitee and shall be strictly enforced. Violations of the Approved Fence Guidelines or the Declaration are subject to sanctions as provided in the Declaration.

All Owners and Occupants of Detached Lots are hereby notified that use of their Detached Lots is limited by the Approved Fence Guidelines as they may be amended, expanded, and otherwise modified as provided in Article IX of the Declaration. Each Owner, by acceptance of a deed or entering into a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Detached Lot can be affected, that the Approved Fence Guidelines may change from time to time, and that such changed Approved Fence Guidelines may or may not be set forth in an instrument recorded in the Cherokee County, Georgia land records.

The following Approved Fence Guidelines have been developed to provide consistency and protect the overall aesthetics of the Community; provided however, the fence guidelines in this Exhibit "D" are guidelines only and Declarant reserves the right to adjust, modify and/or amend such guidelines for any reason, including, without limitation, aesthetic considerations. No fence may be erected on a Detached Lot without prior approval of the ACC pursuant to Article IX of the Declaration. This subsection is applicable to all Detached Lots except those Lots which are used for a sales office or model home by the Declarant. Fences must adhere to the following conditions:

- All fences shall be kept in good repair.
- No fence shall be erected or maintained on or within any easement area except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence.
- Fencing shall be erected only in the rear yard, and shall not extend any closer to the public street, located in front of the residence, than the line established by the horizontal

extensions of the rear elevation of the residence (the "Rear Residence Line"). Fences shall be located on the property lines to the extent practical taking into consideration topography, buffers and the existence of areas intended to remain in a natural condition.

- Corner Lots shall be deemed to have two (2) front property lines. As such, no fence shall encroach beyond the building setback line on the side of either street.
- Fences must be installed 1-2 inches above ground so as to not obstruct water drainage flow across the yard.
- All fences are required to have a gate.
- All fencing on a Lot shall be uniform in height, style, and color and must be substantially similar in material and color to one of the approved styles outlined below.

ALUMINUM/WROUGHT IRON



- POST: 2 X 2
- HORIZONTAL: 2 OR 3 MEMBERS
- VERTICAL: ½ SPEAR OR PINCH TOP
- 4 TO 6 FOOT HEIGHT ONLY
- MUST BE BLACK
- POST FINISHES LIMITED TO OVAL OR FLAT AS DEPICTED BELOW :



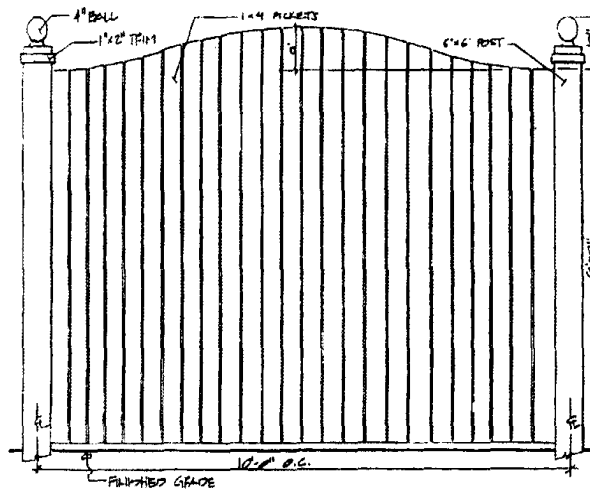
Bali



New England



External Flat



- POST: 6 X 6
- HORIZONTAL: (3) 2 X 4 X 8
- VERTICAL: 1 X 6 X 6
- 6 FOOT HEIGHT ONLY
- PRESSURE TREATED PINE OR CEDAR
- CLEAR STAIN ONLY