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STATE OF GEORGIA  
COUNTY OF COBB

Rebecca Keaton  
Clerk of Superior Court Cobb Cty. Ga.

Return To:  
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Cross Reference: Deed Book 14188, Page 5778.

(Space Above Reserved for Recording Data)

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR KIRK POINTE**

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This AMENDMENT is made on the date hereinafter set forth by the Owners of Lots in Kirk Pointe (referred to herein as "Owners") through Kirk Pointe Homeowners Association, Inc. (referred to herein as "Association"):

**WITNESSETH:**

**WHEREAS**, that certain Declaration of Covenants, Conditions and Restrictions for Kirk Pointe was recorded on the 20th day of July, 2005 in Deed Book 14188, Page 5778 et seq., Superior Court Records, Cobb County, Georgia, and as may have been previously amended (hereinafter referred to as "Declaration");

**WHEREAS**, Section 15 of the Declaration provides that it may be amended upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots;

**WHEREAS**, Owners desire to amend various provisions of the Declaration and submit the Declaration to the Georgia Property Owners Association Act, O.C.G.A. §44-3-220, et seq.;

**WHEREAS**, the following amendments are not material with respect to first mortgagees in that the amendments do not materially and adversely affect the security title or interest of any first mortgagee; provided, however, in the event a court of competent jurisdiction determines the amendments or a portion of the amendments materially and adversely affect the security title or interest of any first mortgagee without such first mortgagee's consent to the amendments, then the amendments so determined by the court shall not be binding on the first mortgagee so involved, unless such first mortgagee consents to this amendment; and if such consent is not forthcoming, then for those amendments so determined by the court the corresponding provisions of the Original Declaration prior to this amendment shall control with respect to the affected first mortgagees; and

**WHEREAS**, Owners of at least two-thirds (2/3) of the Lots affirmatively voted in favor of the Amendment, as certified to by the attached signature of the Association's representative(s).

**NOW, THEREFORE**, for and in consideration of the premises, said Declaration is hereby amended as follows:

**THIS AMENDMENT TO THE DECLARATION HERBY SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTIONS 44-3-220, ET. SEQ. CLOSING ATTORNEYS AND TITLE EXAMINERS MUST CONTACT THE ASSOCIATION FOR INFORMATION REGARDING LIENS, DELINQUENCIES, AND OTHER COVENANT VIOLATIONS.**

## 1.

Paragraph (nn) entitled "Leasing" of Section 7 regarding USE RESTRICTIONS is deleted in its entirety and the following is substituted in its place:

(nn) Leasing Restrictions. In order to preserve the character of Kirk Pointe subdivision as predominantly owner-occupied and thus protect the value of Lots within the Community, and ensure that Lots qualify for eligibility of mortgage financing insofar as the criteria is based upon percentage of owner-occupied Lots, the leasing of Lots is prohibited, other than as otherwise provided herein. Leasing of Lots is permitted only by: (1) a Grandfathered Owner (2) an Owner who has first exclusively occupied the Lot as their principal or secondary residence for a period of at least thirty-six (36) months from date of purchase; (2) an Owner who has exclusively occupied the Lot as their principal or secondary residence for a period of at least twelve (12) months, but less than thirty-six (36) months, from date of purchase, but has received a written Hardship Leasing Permit from the Board as provided in this Paragraph; or (3) the Association for any Lots owned by the Association. The Board shall have the power to make reasonable rules and regulations in order to enforce the provisions of this Paragraph, including the right to impose fines constituting a lien upon the Lot being leased.

(I) Definitions.

(i) Assessments as used in this Article shall include (1.) annual assessments as defined in this Declaration. (2.) special assessments as that term is defined in this Declaration; and (3.) specific assessments, which are charges against a particular Lot that are established pursuant to the terms of the Declaration.

(ii) Effective Date is the date on which this Amendment to the Declaration of Covenants, Conditions and Restrictions for Kirk Pointe is recorded in the County Records.

(iii) Leasing for the purposes of this Declaration is defined as the regular, exclusive occupancy of a Lot by any person other than the Owner or a spouse, child or parent of an Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, or gratuity.

(iv) Grandfathered Owner means an Owner of a Lot who is lawfully leasing his or her Lot on the Effective Date, and who has provided the Board, within thirty (30) days of the Effective Date, with a copy of the lease in effect on the Effective Date. Any Owner leasing a Lot on the Effective Date who does not provide a copy of the lease shall not be entitled to Grandfathered status and shall be considered in violation of the Declaration.

A Grandfathered Owner status shall continue only until the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's Spouse or through inheritance).

In order for a Grandfathered Owner to maintain the Grandfathered status of the Lot the Owner and Tenant must maintain compliance with all Covenants, By-Laws, and Rules of the Association, including timely payment of any Assessments, fines or other charges.

(II) Hardship Leasing Permits. If the failure to lease a Lot prior to a period of at least thirty-six (36) months from date of purchase will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. In order for a Lot to qualify for a Hardship Leasing Permit it must first be owner-occupied for a minimum period of twelve (12) months.

The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the number of Hardship Leasing Permits which have been issued to other Owners, (iii) the Owner's ability to cure the hardship, and (iv) whether previous Hardship Leasing Permits have been issued to this Owner. The Board shall not consider any hardship that pre-exists the Owner's purchase of their Lot.

Hardship Leasing Permits shall be valid for a term as set by the Board not to exceed one (1) year. Hardship Leasing Permits are renewable at the discretion of the Board.

**(III) Leasing Provisions.** All leases shall be governed by the following provisions:

(i) Notice. At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed written lease agreement. The Board shall approve or disapprove the form of said lease. If the form of the lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) General. Lots may be leased only in their entirety; no rooms, basements or fractions of Lots may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. Within ten (10) business days after executing a lease agreement, the Owner shall provide the Board with a copy of the lease, and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, Architectural Standards, and Rules and Regulations of the Association.

(iii) Required Provisions. Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant, and incorporation of the following language contained in Subsections (A) and (B) into the lease:

(A) Liability for Assessments and Other Charges. Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Lot which become due during the term of the lease, including, but not limited to, fines which become due as a consequence of lessee's activities which violate provisions of the Declaration, Bylaws, Architectural Standards, or the rules and regulations of the Association. When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided that lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request.

All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

(B) Compliance with the Governing Documents and Enforcement Powers of the Association. If a Lot is leased or occupied in violation of this Section, the Association may bring an action against the lessee and/or the Owner for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or in equity, including, but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

The Lessee shall comply with all provisions of the Declaration, Bylaws, Architectural Standards, and rules and regulations of the Association, and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance, and shall indemnify and hold the Association harmless for any such person's failure to comply.

The Owner shall cause all occupants of the Lot to comply with the Declaration, Bylaws, Architectural Standards and the rules and regulations, and shall be responsible for all violations and

losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are also liable for any such violation or loss.

If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, Architectural Standards or a rule and regulation of the Association, fines may be levied against the lessee and/or the Owner; and such a violation is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability, and to evict the lessee in accordance with Georgia law. The Owner and Lessee hereby further agree to hold harmless the Association, its Board of Directors, employees and agents if the Association exercises any of the enforcement power granted in this Article.

(IV) **Rights of First Mortgagees.** Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first Mortgagee to:

- (a) foreclose or take title to the Lot pursuant to remedies contained in any Mortgage;
- (b) take a deed or assignment in lieu of foreclosure; or
- (c) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

2.

The following sentence is deleted from the bottom of the first three pages of the Declaration: **"THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE PROPERTY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. §44-3-220, ET SEQ."** and the following is substituted in its place:

**THE COMMUNITY CONSTITUTES A RESIDENTIAL PROPERTY OWNERS DEVELOPMENT WHICH HEREBY SUBMITS TO THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ., AS SUCH ACT MAY BE AMENDED FROM TIME TO TIME.**

3.

A new paragraph (ee) is added to Section 1 regarding DEFINITIONS as follows:

(ee) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.

4.

Paragraph (h) entitled "Creation of the Lien and Personal Obligations for Assessments" in Section 4 regarding ASSESSMENTS is deleted in its entirety, and the following is substituted in its place:

(b) **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association for each Lot owned: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) 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 in accordance with the terms of this Declaration or Bylaws. The Association, in the Board's discretion, may, but shall not be obligated to record a Statement of Delinquent Assessments & Notice of Statutory Lien on the County lien records. The lien provided for herein shall have priority as provided in the Act.

All such assessments, together with late charges, interest, costs, and reasonable attorney fees actually incurred (including post-judgment attorney fees, costs & expenses) in the maximum amount

permitted under the Act, shall be a charge on the 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. Other than provided below, the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the Association as provided in Paragraph k, Section 4 such grantee and his or her successors, successors-in-title, and assigns shall not be liable for a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or in the event that any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments or under any instrument chargeable to the Lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from the grantor/prior owner, and his or her successors, successors-in-title, and assigns.

No Lot owner other than the Association shall be exempted from any liability for any assessment under any instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his or her Lot or any part 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.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided by the Board, annual assessment shall be paid on the first day of the Association's fiscal year. If the Board so elects, assessments may be paid in installments, but if any Owner is delinquent in the payment of any assessments or other charges the Board may require any unpaid installments to be paid in full immediately.

##### 5.

Paragraph (k) entitled "Statement of Account" in Section 4 regarding ASSESSMENTS is hereby deleted in its entirety and the following is substituted in its place:

(k) Statement of Account/Estoppel Letter. Any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as authorized under the Act as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any mortgage on such Lot.

If the Association does not require payment of the fee as a prerequisite to providing the statement of account, or if the statement of account is requested within a period shorter than five (5) business days, the Association, or its agent, may subsequently charge a reasonable fee in an amount larger than the

maximum amount set by the Act, including any late payment fees, or other related costs including but not limited to fax, overnight delivery, research fee, and reasonable attorney fees actually incurred. If the statement of account is requested within a period shorter than three (3) business days, the Association or its agent may also charge a rush fee.

The Association, or its agent, may charge for ancillary expenses unrelated to providing the statement of account, including but not limited to; title transfer fees, providing copies of the governing documents, and providing completed lender questionnaires. If any of the above-related fees are not paid in full the Association shall not be obligated to release any liens. The unpaid fees and costs shall be the responsibility of the Seller/Owner, shall be considered an assessment on the Lot, and may be collected as provided in these covenants for other assessments, including the filing of a Statement of Delinquent Assessments & Notice of Statutory Lien on the county records.

6.

Paragraph (g) entitled "Delinquent Assessments" in Section 4 regarding ASSESSMENTS is hereby deleted in its entirety and the following is substituted in its place:

**(g) Effect of Nonpayment of Assessments; Remedies of the Association.**

**(i) Late Charges, Interest and Other Collection fees**

Any assessments or installments thereof, which are not paid when due shall be considered delinquent, and shall incur a late charge equal to the greater of ten dollars (\$10.00) or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act. The delinquent assessments, including late charges, shall incur simple interest at the rate of ten percent (10%) per annum, or such higher amounts as may be authorized by the Act.

The Association shall also be entitled to costs of collection, including court costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees); the expenses required for the protection and preservation of the Lot, and the fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until judgment rendered in the action is otherwise satisfied. The Association may levy other fees provided or permitted by law, including charges for returned check.

**(ii) Partial Payments.**

Partial payments shall not constitute payment in full, unless agreed to in writing by the Association. Any partial payments shall be applied in the following order of priority: post-judgment reasonable attorney's fees, costs, and expenses actually incurred, then to reasonable attorney's fees and costs actually incurred not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments, and then to current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges. All of the foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, including an offer of accord and satisfaction in settlement of a bona fide dispute. The Association may, but shall not be obligated to allow any delinquent assessments, fines, or fees to be paid in installments, and may charge a reasonable service fee thereon.

**(iii) Suit and Foreclosure of Lien.**

In the event that the assessment, fine or other charges, or any part thereof, remain unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien, and may recover all costs and reasonable attorney fees actually incurred up to the extent allowed by the Act and Georgia law.

Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, and as provided by the Act. The lien provided for in this Section

shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, or convey the same.

7.

Section 15 regarding AMENDMENTS is hereby deleted in its entirety and the following is substituted in its place:

15. AMENDMENTS.

This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration. In addition, the Board may amend the Declaration without a vote of the Owners in order to comply with the requirements of federal, state, or local law.

If legal action is not instituted to challenge the validity of any amendment to the Declaration within one (1) year of the recording thereof in the Fulton County, Georgia land records, then any such amendment shall be presumed to be validly approved and adopted. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance, hereby agrees that the Declaration may be amended as provided for in this Section.

8.

Paragraph (h) entitled "Duration" in Section 4 regarding GENERAL PROVISIONS is hereby deleted in its entirety and the following is substituted in its place:

(h) Duration.

The covenants and restrictions of this Declaration shall run with and bind the Properties perpetually to the extent provided for in the Act.

9.

A new Paragraph (m) is added to Section 4 regarding GENERAL PROVISIONS as follows:

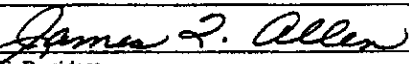
(m) Conflicts & Order of Law. If there are conflicts or inconsistencies between the provisions of the Act, other Georgia law, the Articles of Incorporation, the Declaration and the Bylaws, the provisions of the Act, other Georgia law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

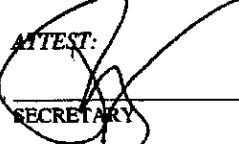
**ALL OTHER PROVISIONS OF SAID DECLARATION SHALL REMAIN UNCHANGED.**

IN WITNESS WHEREOF, the foregoing Amendment is executed by the undersigned duly authorized representative(s) of the Association on this 11 day of March, 2016, and said representative(s) hereby swear and certify that after any duly required notice, Owners of at least two-thirds (2/3) of the Lots affirmatively voted in favor of the this Amendment.

Kirk Pointe Homeowners Association, Inc.

  
WITNESS

BY:   
TITLE: President.

ATTEST:   
SECRETARY

Sworn to, signed, sealed and  
Delivered before me on the  
17 day of March, 2016

  
NOTARY PUBLIC

[SEAL]



Prepared By:  
Michael Rome, Esq.  
GA Bar #: 613945