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GEORGIA/FULTON

Cross Reference: Deed Book 9135
Page 206

**AMENDMENT TO THE
DECLARATION OF CONDOMINIUM FOR
BARRINGTON HILLS CONDOMINIUM**

WHEREAS, the Declaration of Condominium for Barrington Hills, a Condominium, was recorded on August 24, 1984, in Deed Book 9135, Page 206, *et seq.*, Fulton County, Georgia records ("Declaration"), as amended; and

WHEREAS, Paragraph 15 of the Declaration provides that the Declaration may be amended with the approval or consent of owners of units at Barrington Hills Condominium to which two-thirds (2/3) of the total eligible votes in the Barrington Hills Condominium Association, Inc. ("Association") appertain; and

WHEREAS, unit owners having at least two-thirds (2/3) of the total eligible votes of the Association desire to amend the Declaration and have approved or have been deemed to have consented to and approved this Amendment; and

WHEREAS, this Amendment is not made without the approval of any mortgagee on a unit at the Condominium who has provided notice and designated an address to the Association as provided in Article X, Section 11 of the Association's By-Laws; and this Amendment is not material with respect to any mortgagee on a unit at the Condominium in that it does not materially and adversely affect the security title or interest of any such mortgagee; provided, however, in the event a court of competent jurisdiction determines that any provision of this Amendment does so and is made without any required mortgagee consent, then the respective provision of this Amendment shall not be binding on the mortgagee so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Amendment shall control with respect to the affected mortgagee;

NOW, THEREFORE, the Declaration is hereby amended as follows:

1.

Paragraph 8 of the Declaration is hereby amended by deleting that Paragraph in its entirety and substituting the following therefor:

8. Leasing. To preserve the character of the Condominium as predominantly owner-occupied, leasing of Units is prohibited, except as provided below in this Paragraph 8. The intent of this provision is to generally limit leasing to 20 units, but to provide grandfathering to all owners who own units on the Effective Date, and to provide the Board flexibility to both allow additional leasing when it determines market conditions so warrant and allow leasing of units in certain undue hardship situations.

(a) Definitions.

(i) "Authorized Corporate Occupant" means an officer, director, shareholder, member or employee of an owner that is a corporation; a manager or member of an owner that is a limited liability company; a partner of an owner that is a partnership; or a trustee or beneficiary of an owner that is a trust; provided the owner receives no rent or other consideration for such occupancy. The name of each Authorized Corporate Occupant shall be designated in writing to the Board of Directors and may not be changed without the Board's written consent. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the unit.

(ii) "Effective Date" means the date this Amendment is recorded in the Fulton County, Georgia land records.

- (iii) "**Grandfathered Owner**" means a unit owner who is the owner of a unit on the Effective Date. Grandfathering shall apply only to the unit owned by such Grandfathered Owner on the Effective Date, and shall continue only until the date the Grandfathered Owner conveys title to the Grandfathered unit to any other person (other than the owner's spouse or former spouse). At that time, the unit shall automatically lose grandfathering status hereunder.
- (iv) "**Grandfathered Unit**" means the unit owned by a Grandfathered Owner on the Effective Date. Grandfathering lasts for such duration as provided herein.
- (v) "**Leasing**" means the regular, exclusive occupancy of a unit by any person(s) other than:
 - (A) the unit owner or a parent, child, grandparent, grandchild, spouse or former spouse of the unit owner, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate, affidavit, marriage license or similar document satisfactory to the Board; or
 - (B) an Authorized Corporate Occupant; or
 - (C) a roommate of any of the above who also occupies the unit as his or her principal and primary residence.

A lease purchase arrangement or a lease with an option to purchase, where the occupant is not the unit owner, is considered leasing.

- (vi) "**Leasing Cap**" means the maximum total number of outstanding leasing permits plus Grandfathered Units that are permitted before additional leasing permits may be issued hereunder. Except as provided herein, the Leasing Cap shall be 20 Units. Notwithstanding the above, the Board of Directors, in its sole discretion, may, but shall not be obligated to, increase the Leasing Cap to an amount up to 30 Units, for such duration as the Board determines reasonable, but not less than one year, if the Board determines that the economic environment, financial market conditions and real estate market conditions in the metropolitan-Atlanta area are such that the failure to allow additional leasing could significantly adversely affect the Association and Condominium.

(b) **Leasing Permit and Restriction.**

- (i) **Authorized Leasing.** No owner of a unit may lease his or her unit unless: (1) the owner is a Grandfathered Owner; (2) the owner is not a Grandfathered Owner but has received a written leasing permit from the Board of Directors authorizing leasing as provided below; (3) the owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below; or (4) the owner or lessee is the Association.

Non-Grandfathered Owners who want to lease their units may do so only if they have applied for and received from the Board of Directors either a "leasing permit" or a "hardship leasing permit." Such a permit will allow an owner to lease his or her unit, provided that such leasing is in strict accordance with the terms of the permit and the Declaration.

The Board of Directors has the authority to establish conditions with respect to the granting of permits as well as with respect to the duration and use of such permits, consistent with this Paragraph. All leasing permits and hardship leasing permits shall be valid only as to a specific owner and unit and shall not be transferable between either units or owners (including a subsequent owner of a unit where a permit was issued to the unit's prior owner).

- (ii) **Leasing Permits.** An owner's request for a leasing permit shall be approved if:
 - (A) the Owner has either occupied the unit as his or her principal and primary residence for more than 18 months or satisfactorily demonstrates to the Board that the unit was purchased by the owner to be used as a place of residence of the owner and/or owner's family; and
 - (B) the total number of current, outstanding leasing permits, hardship leasing permits and Grandfathered Units is less than the applicable Leasing Cap.

Notwithstanding the above; the Board may deny a leasing permit to any owner if the unit is shown on the Association's records to be more than 30 days past due in any assessment or charge, or if the owner is in violation of the Declaration, By-Laws or Association rules and regulations.

If the number of current leasing permits, hardship leasing permits and Grandfathered Units equals or exceeds the applicable Leasing Cap, then no additional leasing permits shall be issued (except for hardship leasing permits) until the number of outstanding leasing permits issued and Grandfathered Units falls below the applicable Leasing Cap.

Leasing permits shall be valid for a period of three years, after which time such leasing permits will automatically expire.

Notwithstanding the above, leasing permits shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the unit to a third-party (excluding sales or transfers to an owner's spouse or former spouse); (2) the failure of an owner to lease his or her unit within 90 days of issuance of the permit; or (3) the failure of an owner to have his or her unit leased for any consecutive 90 day period. The Board also may revoke any leasing permit or hardship leasing permit if the owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or in violation of any provision of the Declaration, By-Laws or Association rules and regulations.

Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued a permit, if they so desire, when such number falls below the applicable Leasing Cap. The issuance of a hardship leasing permit to an owner shall not cause the owner to be removed from the waiting list for a leasing permit.

- (iii) **Hardship Leasing Permits.** If the failure to lease will result in an undue hardship to a unit owner, the owner may seek to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board has the authority to issue or deny hardship leasing permits requests in its discretion after considering the facts and circumstances provided by the owner in support of the hardship situation. The Board may also consider several factors in evaluating each hardship case, including but not limited to: (1) the nature, degree and likely duration of the hardship, (2) the harm, if any, that will result to the Community if the permit is approved, (3) the number of hardship leasing permits that have been issued to other owners, (4) the owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the owner.

A "hardship" as described herein *may* include, but not be limited to, the following situations: (1) an owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the unit was placed on the market, sell the unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) an owner dies and the unit is being administered by his or her estate; or (3) an owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the unit within one (1) year.

Hardship leasing permits shall be valid only as to a specific owner and unit and shall not be transferable to other units or owners (including a subsequent owner of a unit where a permit was issued to the owner's predecessor-in-title). Hardship leasing permits shall be valid for a term of one (1) year, unless otherwise approved by the Board. Owners may apply for an additional hardship leasing permit at the expiration of a hardship leasing permit, if the circumstances warrant.

Hardship leasing permits shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the unit to a third-party (excluding sales or transfers to an owner's spouse or former spouse); (2) the failure of an owner to lease his or her unit within 90 days of the permit having been issued; or (3) the failure of an owner to have his or her unit leased for any consecutive 90 day period. The Board also may revoke any leasing permit or hardship leasing permit if the owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or in violation of any provision of the Declaration, By-Laws or Association rules and regulations.

- (c) **Leasing Provisions.** Leasing that is authorized hereunder shall be governed by the following provisions:

- (i) **Notice.** All leases shall be in writing and shall comply with this Declaration and all Association rules and regulations. Leases that do not comply with this Declaration and all Association rules and regulations shall be void. Entering into a lease that does not comply with this Declaration and all Association rules and regulations shall constitute a violation of this Declaration and may result in the imposition of fines and/or other enforcement actions authorized herein. No later than 15 business days before entering into a lease of a unit, the owner shall provide the Board with: (1) a copy of the proposed lease agreement; (2) the names, phone numbers, work locations and work phone numbers of all of the proposed occupants of the unit; (3) the owner's primary residence address and phone number, work location and work phone number; and (4) such other information required by the Board, including, but not limited to, receipts evidencing background and credit checks on the proposed tenants. Nothing herein gives the Board the right to approve or disapprove a proposed tenant or occupant.
- (ii) **General.** Units may be leased only in their entirety; no rooms or fractions of units may be separately leased without prior written Board approval. No transient tenants, transient occupants, or hotel-type guests are permitted in a unit; Units may not be leased or rented or used in a manner similar to a hotel. All leases shall be in writing and in a form approved by the Board. There shall be no subleasing of units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within 10 days after executing a lease agreement for the lease of a unit, the owner shall provide the Board with a copy of the executed lease agreement and the name and contact information of the lessee and all other people occupying the unit. The owner must provide the lessee copies of the Declaration, Bylaws, and Association rules.
- (iii) **Liability for Assessments; Compliance.** Each owner covenants and agrees that any lease of a unit 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 unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:
- (A) **Compliance with Declaration, By-Laws, and Rules and Regulations.** The owner and lessee shall comply with all provisions of the Declaration, By-Laws and rules of the Barrington Hills Condominium Association, Inc. ("Association") and shall control the conduct of all other occupants and guests of the leased unit in order to ensure such compliance. The owner shall cause all occupants of his or her unit to comply with the Declaration, By-Laws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any such violation.

If a unit is leased or occupied in violation of the Declaration or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or Association rules or regulations, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the owner, to suspend all voting and/or Condominium Common Element use privileges of the owner, lessee and unauthorized occupants or tenant(s) and to suspend parking privileges, subject to the provisions of this Declaration and the By-Laws.

If a unit is leased or occupied in violation of the Declaration, the Association may require the owner to evict the lessee or occupant. If the owner, lessee, or a person living with the lessee, violates the Declaration, By-Laws or Association rules or regulations, such violation is deemed to be a default under the terms of the lease and shall authorize the owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws and Association rules and regulations, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the owner, in accordance with the terms hereof. Alternatively, the Association may require the owner to evict the violating lessee or occupant. If the Association proceeds to evict the lessee or occupant, any costs, including

reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the unit.

- (B) **Tenant Screening.** Any Owner who is seeking to lease his or her unit must engage a Tenant Screening Service prior to entering into a lease agreement and must provide the Association with a receipt or other written documentation evidencing that the owner has performed the Tenant Screening required hereunder; provided, however, this subparagraph shall not apply where the tenant is a parent, child or sibling of the owner. An owner seeking exemption from Tenant Screening must provide written certification of the relationship to the Board. The Tenant Screening Service must, at a minimum, take the following steps:

- 1) Obtain a consumer credit report on the prospective tenant(s);
- 2) Verify the prospective tenant's employment for the last two years;
- 3) Check the prospective tenant's rental history in its database and with all landlords during the last two years, either as reported by the prospective tenant or disclosed by the Service's investigation;
- 4) Check the public records in Fulton County for bankruptcy and unlawful detainer actions involving the prospective tenant; and
- 5) Report such information as is disclosed by its investigation to the unit owner.

If any of (1) through (4) above is not a part of the screening report, the owner will separately verify this information and include it with the screening report to Board. The owner is not required to provide the Board with the results of the Tenant Screening, but the owner must provide the Board with a receipt or other documentation evidencing that the owner has performed the Tenant Screening required hereunder, which must include the name, address and telephone number of the Tenant Screening Service and the prospective tenant's name.

The Board will not evaluate the information or make any determination or recommendation as to the suitability of any prospective tenant; the sole purpose of this requirement is to ensure that owners who lease units perform at least the most basic and fundamental due diligence in selecting a tenant. The selection of a suitable and appropriate tenant shall be the sole responsibility of the unit owner. The unit owner shall treat all information received in accordance with the requirements of the Federal Fair Credit Reporting Act and any other applicable state or federal laws and not disclose the contents of any report to the Association, the prospective tenant or any other person not permitted access to such information provided by the Service.

- (C) **Tenant or Renter's Insurance.** During all times that a unit is leased, as provided in this Paragraph, the occupant or owner shall purchase and maintain customary renter's insurance, or similar insurance, in amounts sufficient to cover all personal property kept in or brought into the unit. The owner or occupant shall provide the Association with a certificate of such coverage upon request.
- (D) **Use of Common Elements.** The owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the owner has to use the Common Elements, including, but not limited to the use of recreational facilities.
- (E) **Liability for Assessments.** When an owner who is leasing his or her unit fails to pay any annual or special assessment or any other charge for a period of more than 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 request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, 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 Board'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 lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an owner. The above provision shall not be construed to release the owner from any obligation, including the obligation for assessments for which he, she or it would otherwise be responsible, nor shall it be construed to allow the owner to continue leasing his, her or its unit following the automatic revocation of that owner's leasing permit or hardship leasing permit.

(F) **Lease Administration Fee.** Any owner executing, commencing, renewing or extending a lease on a unit after the Effective Date shall be required to pay the Association a non-refundable Leasing Administration Fee in an amount to be determined by the Board, but which amount shall in no event exceed the total of three (3) months of assessments applicable to the unit. For the purposes of this Paragraph, executing or commencing a lease on a unit shall include, but not necessarily be limited to, entering into a new lease agreement, renewing an existing lease agreement, and beginning a new year under a multi-year lease agreement. The Lease Administration Fee shall constitute a specific assessment and shall be due upon the date in which the lease is executed or commences.

(d) **Applicability of this Paragraph.** Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association or by a first mortgagee holding a mortgage on a unit on the Effective Date and who becomes the owner of such unit by foreclosure of such mortgage. The Board may create such forms, applications and addendums as it deems necessary to carry out the terms of this Paragraph.

IN WITNESS WHEREOF, the undersigned officers of Barrington Hills Condominium Association, Inc., hereby certify that the above Amendment to the Declaration was duly adopted by Association members holding the required two-thirds (2/3) vote, with any required notices properly given, this 7th day of July, 2016.

Sworn to and subscribed to before me this 7th day of July, 2016.

BARRINGTON HILLS CONDOMINIUM ASSOCIATION, INC.

Kristine Heffner
Witness KRISTINE HEFFNER

By: D. Misquitta (Seal)
President DERICK S MISQUITTA

Indira Misbach
Notary Public

Attest: Marta Panon (Seal)
Signature/Title MARTA PANON
Secretary, B H C A
[Corporate Seal]

[Notary Seal]

Witnessed, signed in my presence
Derick S. Misquitta ONLY

