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TOM LAWLER, CLERK

UPON RECORDING RETURN TO:
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CROSS REFERENCE:
Deed Book 12627, Page 0132

FIRST AMENDMENT TO DECLARATION
OF COVENANTS, RESTRICTIONS, AND
EASEMENTS FOR MAGNOLIA PLACE

THIS DECLARATION is made by the Magnolia Place Homeowners Association, Inc., a Georgia non-profit corporation (hereinafter called the "Association").

WITNESSETH:

WHEREAS, the Association executed that certain Declaration of Covenants, Restrictions, and Easements for Magnolia Place, which was recorded on or about April 29, 1996, in Deed Book 12627, Page 0132, *et seq.*, Gwinnett County, Georgia records; aforesaid records (collectively hereinafter as amended the "Declaration"); and

WHEREAS, the Association is a non-profit organization organized under the Georgia Nonprofit Code to be the Association named in the Declaration to have the power and authority set forth therein; and

WHEREAS, the Association and the Owners (as defined in the Declaration) desire to amend the Declaration as set forth herein;

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WHEREAS, pursuant to Section 9.03 of the Declaration, the Declaration may be amended by the Members holding at least two-thirds (2/3) of the total votes in the Association which are eligible to be cast,

WHEREAS, this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place does not alter, modify, change or rescind any right, title, interest or privilege held by any mortgage holder of any Residence or Lot (each as defined in the Declaration); provided, however, in the event a court of competent jurisdiction determines that this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place does alter, modify, change or rescind any right, title, interest or privilege held by such mortgage holder without such mortgage holder's consent in writing to this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place, then this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place; and if such consent is not forthcoming, then the provisions of the Declaration prior to this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place shall control with respect to the affected mortgage holder.

NOW THEREFORE, the undersigned hereby adopt this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, as follows:

1. **Section 3.09** of the Declaration is hereby deleted in its entirety.
2. **Section 6.21** is hereby added to the Declaration as follows:

6.21 Seasonal/Holiday Decorations: No Owner, Tenant (as defined in Article XIII) or other Occupant of any Residence shall display or permit to be displayed on such Owner's, Tenant's or Occupant's respective Residence any seasonal or holiday decorations, lighting, display or the like for a period in excess of forty-five (45) days prior to such holiday or the commencement of such season or thirty (30) days following the passing of such holiday or the expiration of such season. For purposes of this Section 6.21, "season" shall be deemed to include Spring, Summer, Winter and Fall, and "holiday" shall be deemed to include all secular and national holidays, as well as religious holidays of all denominations. In the event of a dispute as to whether a decoration is deemed to be "seasonal", "holiday" or either, a majority decision of the ACC shall be final and binding upon the Owner and/or Occupant, such decision to be issued by the ACC in its reasonable discretion.

3. **Section 6.13, Subsection (ii)** of the Declaration is hereby rewritten so as to read "the seeding, edging, watering and mowing of all lawns..."

4. **Section 4.12(c)** of the Declaration is hereby amended as follows:

Remove the period at the conclusion of the final sentence, replace with a semicolon, and add the following language: "including, without limitation, fines of no less than Fifty Dollars (\$50.00) for each violation by any Owner or Occupant of any terms or provisions of Article VI of this Declaration."

5. **Section 6.22** is hereby added to the Declaration as follows:

6.22. Garage/Yard Sales: Each Owner shall be entitled to conduct up to two (2) garage/yard sales in any twelve (12) month period, so long as (i) no less than seven (7) days written notice is provided to the Board of such Owner's intent to conduct such sale, (ii) such garage/yard sale is conducted in full compliance with all governmental laws, rules, ordinances, regulations, and also with all other terms of these Declarations; and (iii) such garage/yard sale does not, in the reasonable discretion of the Board, cause or have reason to cause interference with any other Owner's use of such Owner's Residence. No Tenant (as defined in Article XIII) or other Occupants of a Residence shall be permitted to conduct any garage/yard sales whatsoever. If any Owner desires to conduct more than two (2) garage/yard sales in any twelve (12) month period, pre-approval of the Board is required, such approval to be issued or declined in the Board's sole and absolute discretion. For purposes of this section a "garage sale" or a "yard sale" shall be defined as the occasional, non-business public sale of secondhand household goods incidental to household uses of an Owner.

6. **Section 6.23** is hereby added to the Declaration as follows:

6.23. Window Treatments of Residences: All window treatments used in any Residence which can be reasonably viewed from (i) a public road, or (ii) another Owner's Residence, shall (x) be in conformity and in harmony with the general quality of the neighborhood and the standards of the Development, and (y) not consist of bed linens, newspapers or other household items not primarily designed for use as a window treatment.

7. **Section 6.14** of the Declaration is hereby amended so as to add the following sentence at the conclusion thereof:

"Additionally, no operative or inoperative motorized vehicles, commercial, recreational or otherwise, shall be permitted to park at any location on a Residence other than on the driveway, garage or other paved portion of such Residence generally intended for the parking of motorized vehicles, whether such motorized vehicle belongs to or is owned by the Owner/Occupant or is parked on the Residence by a third party with the express or implied permission of Owner/Occupant."

8. **Article XIII** is hereby added to the Declaration as follows:

ARTICLE XIII

RESTRICTIONS ON THE LEASING OF RESIDENCES

13.01 Purposes. In order to protect the equity of the individual Owners, to preserve the character of the Development as a homogeneous residential community of predominantly owner-occupied homes and by preventing the Development from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the Development be substantially owner-occupied, leasing of Residences shall be governed by the restrictions imposed by this Article. Except as provided herein, the leasing of Residences shall be prohibited. For purposes of this Article, "Tenant" shall be defined as one who holds or possesses a Residence pursuant to a written lease agreement and is not otherwise the Owner of such Residence.

13.02 Applicability – Grandfathered Residence. Those Owners who are leasing their Residences as of November 2, 2002 ("Grandfathered Residence") may continue to lease their Residences, and any such lease for a Grandfathered Residence shall expire according to its own terms, upon expiration of which the Grandfathered Residence shall be subject to all terms and conditions of this Article XIII. All leases, or assignments, extensions, renewals or modifications thereof, executed after November 2, 2002 shall be subject to the provisions of this Article XIII. Any Grandfathered Residence must file with the Board a copy of the lease agreement in effect as of November 2, 2002 on or before November 30, 2002; otherwise, such Owner shall be subject to a specific assessment of no less than One Hundred Dollars (\$100.00) per month, pursuant to Section 4.12(c) hereof. This Section shall not apply to any leasing transaction entered into by the holder of any first mortgage on a Residence who becomes an Owner through foreclosures or any other means pursuant to the satisfaction of indebtedness secured by such mortgage.

13.03 Undue Hardship. Notwithstanding the provisions above, leasing by an Owner in the event of undue hardship (an "Undue Hardship Lease") shall be permitted in the circumstances set forth in this Section 13.03. To qualify for an Undue Hardship Lease, an Owner must submit (w) a copy of the proposed lease, (x) the name of the proposed Tenant, (y) Owner's anticipated address and telephone number following Owner's vacation of the Residence, and (z) written notice to the Board including reference to either subparagraph (i), (ii) or (iii) below and certifying Owner's full compliance with the terms thereof (collectively, (w), (x), (y) and (z) constituting the "Undue Hardship Notice"). Following receipt of the Undue Hardship Notice from Owner, the Board shall have fourteen (14) days to determine Owner's compliance with this Section 13.03. Should the Board determine the Owner has complied with this Section 13.03, the Undue Hardship Lease shall be permitted for a term not to exceed six (6) months; otherwise, the Undue Hardship Lease shall be denied and the proposed lease shall be subject to Section 13.04 hereof. The circumstances under which an Undue Hardship Lease will be permitted are as follows:

- (i) Receipt by the Board of written certification from an Owner, such certification including a representation and warranty from such Owner that he/she must

relocate his residence more than fifty (50) miles from the Development, and that he/she has not, within six (6) months from the date the Residence was placed on the market, received offers to purchase the Residence except at a price below the current appraised market value as set forth in a certified appraisal, after having made reasonable efforts to so. Owner's appraisal shall be presented to the Board simultaneously with the certification referenced above ("Owner's Appraisal"), and shall be provided at Owner's expense. The Board shall have ten (10) days to review the Owner's certification and Owner's Appraisal. Should the Board deem the Owner's Appraisal inaccurate in the Board's reasonable discretion, the Board shall, at the Association's expense, notify the Owner of the Board's decision to challenge Owner's Appraisal and the Board shall obtain another certified appraisal from an appraiser of the Board's choosing (the "Board's Appraisal"). Should the Board not challenge Owner's Appraisal within such ten (10) day period, Owner's Appraisal shall be deemed accepted by the Board, and presuming Owner's certification referenced above is acceptable to the Board, the Undue Hardship Lease shall be deemed approved. Should the Board opt to obtain the Board's Appraisal, and should the Board's Appraisal be in excess of, equal to, or five percent (5%) or less in variance from Owner's Application, then Owner's Appraisal shall be deemed accepted by the Board, and presuming Owner's certification referenced above is received by the Board, the Undue Hardship Lease shall be deemed approved. Should the Board's Appraisal be less than the Owner's Appraisal by more than five percent (5%), then the Board and Owner shall obtain a third, independent certified appraisal as conducted by an appraiser mutually agreed upon between the Board and the Owner (the "Third Appraisal"), and the Association and the Owner shall split the costs of such Third Appraisal. Should the Third Appraisal be more than five percent (5%) less than Owner's Appraisal, then Owner's Undue Hardship Lease proposal shall be deemed deficient, and Owner cannot reapply to the Board for an Undue Hardship Lease for at least six (6) months from the date of the Third Appraisal. Should the Third Appraisal be higher than, equal to or less than five percent (5%) in variance of Owner's Appraisal, then presuming Owner's certifications are received by the Board, Owner's Undue Hardship Lease shall be approved. In any event, so long as the Board and the Owner are disputing the appraised value of the Residence, an Undue Hardship Lease shall be deemed disapproved for purposes of this Section 13.03.

- (ii) Where the Owner died and the Residence is currently being administered by his or her estate; or
- (iii) Receipt by the Board of a certification from the Owner, such certification containing a representation and warranty from Owner that (x) the Owner is temporarily relocating to a location specified in the certification, and (y) that the Owner intends to return to reside in the Residence within six (6) months.

In all instances, after the conclusion of the initial term of the Undue Hardship Lease, Owner shall have the right to request an extension of such Undue Hardship Lease for one (1) term of up to six (6) additional months by resubmitting to the Board a request for an Undue Hardship Lease pursuant to the terms and conditions set forth above in this Section 13.03,

provided, however, in addition to the terms and conditions set forth above, the renewal of an Undue Hardship Lease shall be subject to general review by the Board and shall require the Board's prior written approval. Any transaction that does not comply with this Section shall be voidable at the Board's option.

13.04 Permitted Leasing. Leasing which is permitted other than Grandfathered Residences or Undue Hardship Leases shall be governed by this Section 13.04. In the event an Owner seeks to lease his/her Residence, the Owner shall provide the Board with a copy of the proposed written lease agreement, the name of the proposed Tenant, and Owner's anticipated address and telephone number following Owner's vacation of the Residence. The Board shall have two (2) weeks to review the proposed lease agreement, with the Board's approval of such lease agreement not to be unreasonably withheld. Should the Board not respond to Owner's request within such two (2) week period, Owner's proposed lease shall be deemed accepted by the Board. Any lease proposal shall be subject to and comply with, without limitation, the following provisions:

- (a) A non-refundable deposit submitted by Owner to the Board in an amount determined by the Board to be sufficient to cover the Board's legal expenses in reviewing said lease (but in any event, not less than Five Hundred Dollars (\$500.00)). Until such non-refundable deposit is paid by Owner, the two (2) week Board review period for the proposed lease as referenced above shall not commence;
- (b) A refundable deposit submitted by Owner equal to the greater of (i) the security deposit set forth in the proposed lease, or (ii) One Thousand Dollars (\$1,000.00); such deposit to be held by the Association throughout the term of said lease for purposes of ensuring the Owner's and Tenant's compliance with the Declaration and other rules and regulations established by the Board pursuant to Section 2.03(a) of the Declarations (the "Rules and Regulations"). If Owner fails to pay any charges when due pursuant to the Declaration after the expiration of all cure periods, if any, or fails to perform any other obligations hereunder, the Association may use or apply all or any portion of Owner's deposit for the payment of any amount then due and unpaid, for the payment of any other sum for which the Association may become obligated by reason of Owner or the Tenant's noncompliance, or for any loss or damage sustained by the Association as a result of Owner or the Tenant's noncompliance. If the Association so uses or applies any portion of Owner's deposit, Owner shall, within five (5) days after written demand by the Association, restore Owner's deposit to the full amount originally deposited, and Owner's failure to do so shall constitute a violation of this Article and shall be subject to fines from the Association as set forth in Section 4.12(c). The Association shall keep Owner's deposit in a non-interest bearing account used exclusively for purposes of holding deposits by Owners pursuant to this Section 13.04(a), unless otherwise required by law. Within thirty (30) days after the lease has expired, or the Tenant has vacated the Residence, whichever shall last occur, and provided the Owner and Tenant has remained in compliance with these Declarations and all Rules and Regulations promulgated by the Board, then Owner's deposit, or so much thereof which has not been previously applied by the Association, shall be returned to Owner;

- (c) Residences may be leased only in their entirety; no fraction or portion of a Residence may be leased without prior written Board approval, to be approved in the Board's sole discretion;
- (d) As of November 2, 2002, no Owner may lease his Residence during the first year of record ownership of the Residence;
- (e) There shall be no subleasing of Residences or assignment of a lease without the Board's written approval, to be approved in the Board's sole discretion;
- (f) No Transient Tenants may be accommodated in a Residence. For purposes of this Section 13.04(f), "Transient Tenant" shall mean a Tenant who intends to occupy the Residence as a Tenant for less than the entire term of the proposed Lease;
- (g) All leases must be for an initial term of not less than twelve (12) months, except as set forth in Section 13.03 hereof;
- (h) The Owner must provide the Tenant copies of the Declaration, By-laws and the Rules and Regulations; and
- (i) All leases must contain the language of Sections 13.05, 13.06, 13.07 and 13.08 below.

Within ten (10) days after executing a lease agreement for the lease of a Residence, the Owner shall provide the Board with a copy of the fully-executed lease. Nothing herein shall be construed as giving the Association the right to approve or disapprove of the proposed Tenant; the Board's approval or disapproval shall be limited to the lease.

13.05 Compliance with Declaration, By-laws, and Rules and Regulations. The Tenant shall comply with all provisions of the Declaration, By-laws and Rules and Regulations adopted pursuant thereto and shall control the conduct of all other Tenants and/or Occupants and guests of the Residence in order to ensure such compliance. The Owner shall cause all Tenants and/or Occupants of his or her Residence to comply with the Declaration, the By-laws and Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations and losses caused by such Tenants and/or Occupants, notwithstanding the fact that such Tenants and/or Occupants of the Residence are fully liable and may be sanctioned for any such violation. If the Tenant, or any Occupant, violates the Declaration, By-laws or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the Tenant from the Association, and such fine may be assessed against the Owner or Tenant in accordance with Article 4.12 of the Declaration. If such fine is assessed to the Tenant and the Tenant does not pay the fine within the time period set by the Board, the Owner shall pay the fine in a time specified by the Board upon notice from the Association of the Tenant's failure to pay the fine. Unpaid fines shall constitute a lien against the Residence, and shall also be a personal obligation of Owner and the Tenant, jointly and severally.

13.06 Lease Termination. Any violation of the Declaration, the By-laws, or Rules and Regulations adopted pursuant thereto by the Tenant, any Occupant, or any guest of Tenant, 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 Tenant 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 Tenant for breaches resulting from the violation of the Declaration, By-laws, and the Rules and Regulations adopted pursuant thereto, including (upon written notice being sent by the Association to the Owner of the Association's intent to proceed with eviction) the power and authority to evict the Tenant as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association chooses, in its sole discretion, to evict the Tenant, any costs, including attorneys' fees and court costs, associated with the eviction shall be a specific assessment and lien against the Residence, as well as a personal obligation of Owner and Tenant, jointly and severally.

13.07 Use of Common Property. The Owner transfers and assigns to the Tenant, for the term of the lease, any and all rights and privileges that the Owner has to use the recreational facilities and other amenities.

13.08. Liability for Assessments. When an Owner who is leasing his or her Residence fails to pay any annual, special, Parcel or specific assessment or any other charge for a period of more than thirty (30) days after it is due and payable following any applicable notice and cure period, then the delinquent Owner hereby consents to the assignment of any rent due from the Tenant during the period of delinquency. Upon written request by the Board to the Tenant (in the Board's sole discretion), Tenant shall pay to the Association all rent due under Tenant's lease with Owner for such period specified by the Board, and the Association shall be authorized to deduct from the rent payment received by the Tenant all unpaid annual, special, Parcel and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the Tenant. All such payments made by Tenant shall reduce, by the same amount, Tenant's obligation to make rental payment to Owner. Following such deductions, any and all remaining rent retained by the Association shall be forwarded to Owner as soon as reasonably possible. This provision shall not be construed to release the Owner from any obligation, including the obligation for annual, special, Parcel and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the Tenant, for which he or she would otherwise be responsible. In addition to any other remedies, the Board may fine an Owner and/or Occupant for a violation of the Declaration, By-laws or rules or regulations.

13.09. Mortgage Exception. The provisions of this Article shall not apply to any mortgagee in possession of a Residence through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority mortgage on a Residence.

IN WITNESS WHEREOF, the Association has executed this First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place under seal, this ___ day of November, 2002.

[SIGNATURES TO FOLLOW ON SUCCEEDING PAGE]

ASSOCIATION: **MAGNOLIA PLACE
HOMEOWNERS ASSOCIATION, INC.,**
a Georgia nonprofit corporation

By: *Anthony Etkow*
Name: Anthony Etkow
Title: President

[AFFIX CORPORATE SEAL]

Signed, sealed and delivered
in the presence of:

[Signature]
UNOFFICIAL WITNESS

[Signature]
NOTARY PUBLIC

My commission expires:

[AFFIX NOTARY SEAL]

SOLANSE SOLTZ
NOTARY PUBLIC, State of New York
No. 01808576188
Qualified in Kings County
Commission Expires Aug. 8, 2008

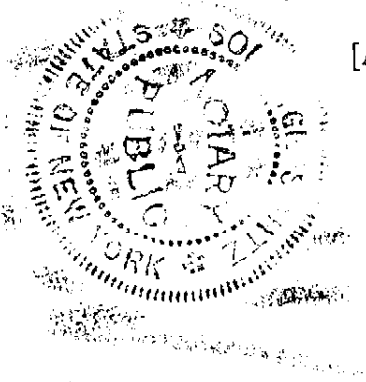


EXHIBIT "A"

Sworn Statement of President Of
Magnolia Place Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF GWINNETT

Re: Magnolia Place Subdivision

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

1. Deponent is the President of Magnolia Place Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein of his own personal knowledge.
3. The foregoing First Amendment to the Declaration, Restrictions, and Easements for Magnolia Place, was approved by the required vote of Members of the Association to which two-thirds (2/3) of the votes in the Association appertain as provided by law and the original Declaration.
4. All proper notices required by the original Declaration, the By-laws of the Association and by law were delivered to the Owners.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated 44-3-226(d).

This 25 day of November, 2002.

By: *Anthony W. Enlow*
Anthony Enlow, President

Signed, sealed and delivered
in the presence of:

Solange Schitz
Notary Public

[AFFIX NOTARY SEAL]

SOLANGE SCHITZ
NOTARY PUBLIC, State of New York
No. 0180897488
Qualified in Kings County
Commission Expires Aug. 6, 2008

