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CLERK SUPERIOR COURT  
GWINNETT COUNTY, GA.

2008 APR 16 AM 8:00

After Recording Return To:  
The Lueder Law Firm, LLC  
2050 Marconi Drive, Suite 300  
Alpharetta, Georgia 30005  
Attn: BRH

TOM LAWLER, CLERK

Cross Reference:  
Deed Book 12627, Page 132

STATE OF GEORGIA

COUNTY OF GWINNETT

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

This Amendment to the Declaration of Covenants, Restrictions, and Easements for Magnolia Place (hereafter referred to as "Amendment") is made on the date set below.

WITNESSETH:

WHEREAS, Jack Brunson (hereafter referred to as "Declarant"), recorded that certain Declaration of Declaration of Covenants, Restrictions, and Easements for Magnolia Place on April 30, 1996, in Deed Book 12627, Page 132 of the Gwinnett County, Georgia land records (hereafter referred to as "Declaration");

WHEREAS, Magnolia Place Homeowners Association, Inc. (hereafter referred to as "Association") is the homeowners association referred to and identified in the Declaration;

WHEREAS, pursuant to Article IX, Section 9.03 of the Declaration, the Declaration may be amended by the approval of Members holding at least two-thirds of the total votes in the Association;

WHEREAS, this Amendment has been approved by Members holding at least two-thirds of the total votes in the Association at a duly called meeting of the Members where a resolution adopting this Amendment was proposed by the Board of Directors;

WHEREAS, as of the date of this Amendment, Declarant no longer has the right to appoint and remove officers and directors of the Association;

WHEREAS, this Amendment does not materially and adversely affect the security title and interest of any mortgagee; and

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

1.

**The Preamble of the Declaration is amended by adding the following thereto:**

THIS DECLARATION DOES CREATE PROPERTY SUBJECT TO THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

2.

**Article I of the Declaration is amended by adding the following thereto as Section 1.18:**

1.18 "Georgia Property Owners' Association Act" or "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*, as the same may be supplemented, amended or modified. Magnolia Place is a residential property owners development which is hereby submitted to the Act. The Declaration and all property subject to the Declaration are accordingly submitted to the Act, and any provision in the Declaration to the contrary shall be null and void.

3.

**Article III, Section 3.09 of the Declaration is amended by striking same in its entirety.**

4.

**Article V, Section 5.02 of the Declaration is amended by striking same in its entirety and substituting the following therefor:**

5.02 Purposes, Powers, and Duties of the ACC: The purpose of the ACC is to assure that any installation, construction or alteration to any Lot or of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation, and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration to any Lot or of any Structure on any Lot.



5.

**Article V, Section 5.04(a) of the Declaration is amended by striking the first sentence thereof in its entirety and substituting the following therefor:**

(a) Meetings: The ACC shall hold regular meetings at least once every four (4) months or more often as may be established by the ACC.

6.

**Article V, Section 5.11 of the Declaration is amended by striking the second sentence thereof in its entirety and substituting the following therefor:**

If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by United States First Class mail, postage prepaid, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation.

7.

**Article VIII, Section 8.02(a) of the Declaration is amended by striking the first sentence thereof in its entirety and substituting the following therefor:**

(a) Except where different notice provisions are provided in Sections 5.11 and 6.13, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by United States First Class mail, postage prepaid, to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach.

8.

**Article VI, Section 6.13 of the Declaration is amended by striking same in its entirety and substituting the following therefor:**

6.13 Maintenance: Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures, (ii) the seeding, edging, watering, mowing and weeding of all lawns, (iii) the pruning and trimming of all trees, hedges and shrubbery on the Lot, and (iv) keeping islands and beds free of weeds and grass. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curb of the street bordering said Lot. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this



Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in questions, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by United States First Class mail, postage prepaid, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

9.

**Article XIII of the Declaration is amended by striking same in its entirety and substituting the following therefor:**

ARTICLE IX

LEASING

In order to protect the equity of the individual Lot Owners within the community, to carry out the purpose for which the community was formed by preserving the character of the community as a residential property of predominantly owner-occupied homes, to prevent the community from assuming the character of a renter-occupied complex, and to comply with any eligibility criteria for mortgages, including mortgages on the secondary mortgage market, insofar as such criteria provide that the community be substantially owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this Article.

13.1. Prohibition. Except as provided herein, the leasing of Lots shall be prohibited.

13.2. Definitions. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include occupancy by the spouse, child or parent of an Owner and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary dwelling.

13.3. Undue Hardship. The Board shall be empowered to allow reasonable leasing of Lots, upon written application, to avoid undue hardship to an Owner. By way of illustration, and not by limitation, examples of circumstances which could constitute "undue hardship" are those in which (1) an Owner must relocate his or her dwelling for employment purposes and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot for a price no greater than the current appraised market value, after having made reasonable efforts to do so; (2) where the



Owner dies and the Lot is being administered by his or her estate; and (3) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every six (6) months for renewal of the hardship exception. Those Owners who have demonstrated that the inability to lease their Lot would result in undue hardship and have obtained the requisite approval of the Board may lease their Lots as provided herein.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Article. Any transaction which does not comply with this Article shall be voidable at the option of the Board of Directors, and the Board of Directors shall be empowered to bring an eviction proceeding against any person who has leased a Lot in violation of this Article.

13.4. Leasing Provisions. Such leasing as approved by the Board of Directors in order to avoid undue hardship shall be governed by the following provisions:

(a) Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease form and such other information as the Board may reasonably require. The Board shall approve or disapprove the form of said lease. In the event a lease form is disapproved, the Board shall notify the Owner of the requisite action to be taken to obtain approval of the lease form. Within ten (10) days from the execution of the approved lease form by both parties, a copy of the lease, signed by the lessor and lessee, shall be submitted to the Board. All leases must be signed by the Owner (the lessor) and the tenant (the lessee).

(b) General. Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. All leases shall be for a period of at least six (6) months, and the Owner may request an extension or extensions from the Board for six (6) month periods. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations.

(c) Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot in the community shall be deemed to contain the following provisions, whether or not expressly therein stated, and 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 a lease by existence of this Article. Any lessee, by occupancy of a Lot, agrees to the applicability of this Article and incorporation of the following language into the lease:

(i) Liability for Assessments. 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 and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rental payments from the lessee during the period of delinquency, and, upon demand by the Board of Directors to the lessee, the lessee shall pay to the Association all unpaid annual and special assessments and other charges; provided, however, except for the additional amounts provided in this Article due to lessee's failure to pay the Association, lessee shall not be obligated to pay more than the monthly rental payments. All such payments made by lessee to the Association 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 demand to pay assessments or other charges to the Association, lessee shall (i) be personally liable (jointly and severally with the Owner), from the date of the demand for payment from the Board, for all costs of collection, including reasonable attorney's fees actually incurred, and (ii) be personally liable to the Association for all rental payments made to the lessor following the date of the demand for payment from the Board.

(ii) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under the lease. Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule



and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or Association rules and regulations by lessee, any occupant, or any person living with lessee is deemed to be a violation of 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 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 Declaration, Bylaws, or Association rules and regulations, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(iii) Use of Common Property. 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 Property, including, but not limited to, the use of any and all recreational facilities and other amenities.

13.5. Applicability of this Article (Grandfathering of Existing Leases). Leases that are existing on the date which this Amendment is recorded in the Gwinnett County, Georgia land records and are in compliance with the terms of the Declaration as it existed prior to the recording of this Amendment in the Gwinnett County, Georgia land records, shall not be subject to the terms of this Article and such leases may continue in accordance with the terms of the Declaration as it existed prior to the recording date of this Amendment; provided, however the following: (1) any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Article; (2) any lease which is existing on the date which this Amendment is recorded in the Gwinnett County, Georgia land records and is not in compliance with the terms of the Declaration as it existed prior to the recording of this Amendment in the Gwinnett County, Georgia land records shall not be qualified under this grandfather provision; and (3) any owner of a Lot which is leased on the date which this Amendment is recorded in the Gwinnett County, Georgia land records must, within forty-five (45) days of such recording date, notify the Board of Directors in writing that the owner's Lot is leased as



specified above and provide a copy of the lease agreement in effect to the Board of Directors. Failure to provide such notice and lease to the Board shall disqualify the owner from this grandfather provision.

10.

Any action to challenge the validity of this Amendment must be brought within one (1) year of the recording of same in the Gwinnett County, Georgia land records. No action to challenge this Amendment may be brought after such time.

IN WITNESS WHEREOF, the undersigned hereby certify that this Amendment was properly approved by Members holding at least two-thirds of the total votes in the Association.

Dated this 2<sup>nd</sup> day of April, 2008.

MAGNOLIA PLACE HOMEOWNERS ASSOCIATION, INC.

Jorge W. Martinez  
Signature of President  
Print Name: Jorge W. Martinez

Sworn to and subscribed before me this 2<sup>nd</sup> day of April, 2008.

Witness: Howard [Signature]  
Glenda S. Vannerson  
Notary Public

Glenda S. Vannerson  
Notary Public, Gwinnett County, Georgia  
My Commission Expires February 7, 2011

Jan H. Hargrove  
Signature of Secretary  
Print Name: Jan H. Hargrove

Sworn to and subscribed before me this 2<sup>nd</sup> day of April, 2008.

Witness: [Signature]  
Glenda S. Vannerson  
Notary Public

