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Cross Reference: Deed Book 11776
Page 203

Deed Book 8905
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STATE OF GEORGIA

COUNTY OF COBB

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
& EASEMENTS FOR ESSEX PARK SUBDIVISION
TO PROHIBIT ALL LEASING EXCEPT ON THE BASIS OF
UNDUE HARDSHIP**

WHEREAS, a Declaration of Covenants and Restrictions for Essex Park was recorded on June 8, 1995, in Deed Book 8905, Page 23, et seq., Cobb County, Georgia Records, governing Phase I of the Essex Park subdivision (the "Phase I Declaration"), as may be amended; and

WHEREAS, a Declaration of Covenants, Conditions, Restrictions and Easements for Essex Park Subdivision) on October 13, 1998, in Deed Book 11776. Page 203 et seq., Cobb County, Georgia records, as amended, governing Phase II of the Essex Park subdivision (the "Declaration"); and

WHEREAS, the owners of lots subject to the Phase I Declaration amended the Phase I Declaration by striking the Phase I Declaration in its entirety and subjecting the Phase I lots to the Declaration, as amended, via Amendment to the Phase I Declaration recorded on November 20, 2002, in Deed Book 13633, Page 5089, et seq., Cobb County, Georgia records, so that both Phase I and Phase II of the Essex Park subdivision are now subject to the Declaration, as amended; and

WHEREAS, Article IX, Section 6 of the Declaration provides for amendment of the Declaration by a vote of two-thirds (2/3) of the votes entitled to be cast by lot owners subject to the Declaration; and

WHEREAS, at least two-thirds (2/3) of the lot owners at subject to the Declaration entitled to cast votes approved this Amendment to the Declaration;

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

1. **Article I of the Declaration is hereby amended by adding the following new Sections 15 and 16 to the end thereof that reads as follows:**

Section 15. "Governing Documents" shall mean the Declaration, Bylaws, Articles of Incorporation, any architectural standards promulgated pursuant to the Declaration, and the rules and regulations of the Association, as each may be amended from time to time.

Section 16. "Occupant" shall mean and refer to any Person occupying all or any portion of a Lot in the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such Property. "Occupy" or "Occupancy" shall refer to the situation when a Person occupies a Lot for any period.

2. **Article VIII, Section 1 of the Declaration is hereby amended by deleting therefrom the second sentence of the paragraph titled "Number of Occupants" which reads as follows:**

"Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling within the Community for a total of more than thirty (30) Days, either consecutive or non-consecutive, in any calendar year.

And substituting therefore the following new sentence:

An "Occupant", for purposes of this Article VIII, Section 1(a) only, shall be defined as any Person who stays overnight in a dwelling within the Community for a total of more than thirty (30) Days, either consecutive or non-consecutive, in any one year period.

3. **Article VIII, Section 1 of the Declaration is hereby amended by deleting therefrom sub-paragraphs (b) and (c) in their entirety.**

4. **Article VIII of the Declaration is hereby amended by adding the following new Section 14, entitled "Leasing and Occupancy" to the end thereof:**

Section 14. LEASING AND OCCUPANCY

(a) **Leasing of Lots.** Except as provided herein on a hardship basis, Leasing of Lots is prohibited in the Essex Park Community. Under no circumstances may Lots be leased or rented on a nightly, weekly, monthly or other transient basis.

(i) **Leasing Restriction:**

The only Owners permitted to lease in the Community are those that apply for, and receive, a written "Hardship Leasing Permit" from the Board of Directors as provided below.

(A) **Hardship Leasing Permits.**

If the inability to lease will result in an undue hardship to an Owner, such Owner may apply to the Board of Directors for a Hardship Leasing Permit. Such a permit, upon its issuance, shall allow an Owner to lease his, her or its Lot provided that such Leasing is in accordance with the terms of the Hardship Leasing Permit and this Declaration.

The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (a) the nature, degree, and likely duration of the hardship, (b) the harm, if any, which will result to the Community if the Hardship Leasing Permit is approved, (c) the Owner's ability to cure the hardship; (d) the Owner's involvement in causing the hardship; and (e) 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: (i) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within ninety (90) days from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (ii) where the Owner dies and the Lot is being administered by his or her estate; and (iii) the Owner takes a temporary leave of absence or temporarily relocates and intends to return to reside in the Lot.

The Board of Directors shall have the authority to establish conditions as to the application for, duration and use of Hardship Leasing Permits consistent with this Article VIII, Section 14. Hardship Leasing Permits shall not be transferable between either Lots or Owners. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year.

(B) Revocation of Hardship Leasing Permits.

A Hardship Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the failure of an Owner to lease his, her or its Lot within ninety (90) days of the Hardship Leasing Permit having been issued; or (2) the transfer or conveyance of the Lot to a third party other than such Owner's legal spouse.

The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Hardship Leasing Permit as follows: (1) when an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Association on or before the date being ten (10) days after the Association sends a written notice to the Owner stating that the Owner is more than thirty (30) days delinquent and that the Hardship Leasing Permit shall be revoked unless payment is received on or before such date being ten (10) days after the Association sends the written notice; or (2) if the Owner or the Owner's Occupants, tenants, guests, or invitees violate the Governing Documents of the Association in a non-monetary manner, provided, however, the Board shall first provide written notice to the Owner and provide the Owner with a right to hearing in the same manner as for fines as set forth in the Bylaws. The Hardship Leasing Permit shall be revoked for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing.

(C) Leasing Provisions.

Leasing in Essex Park shall be governed by the following provisions:

(1) Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board with a copy of the proposed lease agreement. All leases shall be in writing and must comply with the Governing Documents. If a proposed lease does not comply, the Board shall notify the Owner of the action to be taken to bring the lease into compliance. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee.

(2) General. Lots may be Leased only in their entirety; no fraction or portion of a Lot may be Leased.

All leases must be for an initial term of not less than one (1) year, except with written Board approval. No Lot or any part thereof shall be Leased, rented, Occupied or used for transient purposes. For purposes hereof, transient purposes shall be defined as any Lease, rental or Occupation of a Lot by any person other than an Authorized Occupant or Authorized Corporate Occupant, for a period of thirty (30) consecutive days or less, except as expressly permitted below for Guests.

Within ten (10) days after executing a lease agreement for the Lease of a Lot, the Owner shall provide the Board with: (1) a copy of the executed lease; (2) the names, phone numbers, e-mail addresses, work locations and work phone numbers of all of the Occupants of the Lot; (3) the Owner's primary residence address and phone number, e-mail address, work location and work phone number; and (4) such other information required by the Board. The Owner must provide the lessee copies of the Governing Documents. The Owner must keep the Board of Directors informed in writing of the Owner's current mailing and e-mail address for notice at all times when such Owner's Lot is being Leased.

(3) Compliance with Declaration, Bylaws, and Rules and Regulations.

All tenants and Occupants shall comply with all provisions of the Declaration, Bylaws, and rules and regulations and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all Occupants of his, her or its Lot to comply with this Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the tenant, or a Person living with the tenant, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner or the tenant, and such fine may be assessed against either the Owner or tenant, at the Board's option. If the Board determines to first assess the fine to the tenant, and the fine is not paid by the tenant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the tenant's failure to pay the fine.

If a Lot is leased or Occupied in violation of the Governing Documents, or if the Owner, Occupant or any guest violates same, such violation shall be deemed to be a default under the terms of any lease or occupancy agreement (or arrangement) for the Lot and the Association may require the Owner to evict the Occupants. In addition to all other remedies permitted by this Declaration, such default authorizes the Owner and/or the Association, as the Owner's delegate and attorney-in-fact, to terminate the lease and/or occupancy and to evict all Occupants, without liability, in accordance with Georgia law. In any such eviction action by the Association, the Association may terminate the Occupancy rights upon 15 days' notice, notwithstanding any notice requirement in the lease or Occupancy terms. Once the Association invokes its right to terminate the lease or Occupancy and evict the Occupant(s), the Owner no longer has the right to extend or revive the terminated lease or Occupancy in any way.

(4) Liability for Assessments.

When an Owner who is leasing his, her or its Lot fails to pay any annual or special assessment or any other charge 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 tenant during the period of delinquency. Upon request by the Board, tenant 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 shall not be required to 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 the Owner would otherwise be responsible.

(5) Use of Common Elements.

The Owner transfers and assigns to the tenant, for the term of the lease of a Lot, any and all rights and privileges that the Owner has to use the Common Area as a result of owning that Lot, including but not limited to, the use of any and all recreational facilities and other amenities.

(6) Required Lease Provisions.

Any lease of a Lot shall be required to contain or incorporate by reference the terms set forth in Section 14(i)(C) (3) and (4) above. If such language is not expressly contained or incorporated by reference therein, then such language shall be incorporated into the lease by the existence of this covenant, and the tenant, by Occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the above-referenced language into the lease.

(7) Lease Administrative Fee.

As the review process of applications for Hardship Leasing Permits occasions common expenses by the Association, the Board shall have the authority to require a fee of up to half of the annual assessment

amount for that year as a part of each submission of an application for a Hardship Leasing Permit hereunder. Said fee shall constitute a specific assessment under Article V.

(ii) **Leasing Definitions.**

(A) **"Leasing"** is defined as the Occupancy of a Lot by any person(s) other than: (1) the Owner or a Family Member of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant; or (3) a Roommate or Guest of an Authorized Occupant or Authorized Corporate Occupant, when the Authorized Occupant or Authorized Corporate Occupant also Occupies the Lot as his or her primary residence.

(B) **"Family Member"** shall be defined as an Owner's parent or parent-in-law; an Owner's legal spouse; or an Owner's child or legal step-child.

(C) **"Roommate"** shall be defined as any person who Occupies a Lot as his/her primary residence pursuant to a written agreement with the Authorized Occupant or Authorized Corporate Occupant thereof (the "Roommate Agreement") under which such person will Occupy the entirety of the Lot for a period of at least ninety (90) consecutive days, while the Authorized Occupant or Authorized Corporate Occupant also resides in the Lot.

(D) **"Guest"** shall be defined as a person who (a) possesses an established relationship with the Authorized Occupant or Authorized Corporate Occupant that is unrelated to the person's Occupancy of the Lot; (b) who Occupies the Lot on a temporary basis for less than ninety (90) days in a year; and (c) who does not provide any Authorized Occupant or Authorized Corporate Occupant any consideration or benefit in exchange for his or her Occupancy of the Lot, including but not limited to any fee, service, gratuity or emolument, as may be determined by the Board in its reasonable discretion.

The Board may require submission of additional true and accurate information that the Board deems necessary, in its reasonable discretion, to determine whether a person identified as Family Member, Roommate or Guest meets the requirements set forth hereunder for Family Members, Roommates and Guests, including but not limited to requesting copies of the written Roommate Agreement.

(E) **"Owner"** For the purposes of this Article VIII, Section 14(a) only, the definition of "Owner" shall not include any record holder of an interest in title to a Lot that is ten percent (10%) or less, unless all title interests are held in equal percentages or unless the holders of all record title interests prove to the satisfaction of the Board of Directors of the Association by sworn affidavit and competent evidence (and in addition to the title documents filed in the land records or with other governmental agencies or departments) that the distribution of title interests in the Lot: (1) is a bona fide fee simple transfer for value, (2) is otherwise in good faith, and (3) is not intended to avoid a violation of the requirements of this Section or of any other provision of, or the purposes of, the Governing Documents, as such is determined by the Board in its discretion. The record holders of all of the title interests in the Lot shall have the burden of proof and it shall be presumed that a holder of a title interest of 10% or less is not an "Owner" for the purposes of this Article VIII, Section 14(b) of the Declaration. In its sole discretion, the Board may require submission of true and accurate information in order to evaluate the transaction and aid its determination.

This modification to the definition of "Owner" shall not be construed to affect the validity of any transfer of title to or ownership of a Lot (as ownership may otherwise be defined by law), it being the intent of the parties to this Declaration to only regulate and restrict the Occupancy of Lots. Further, this modification to the definition of "Owner" shall not be construed to exempt any record holder of an interest in title to a Lot who is otherwise an "Owner" within the meaning of Article 1, Section 10 of this Declaration, regardless of his or her respective percentage of ownership interest, from any rights, liabilities or obligations applicable to an Owner pursuant to any provision of this Declaration other than this Section 14(b), including but not limited to, the obligation to pay assessments pursuant to this Declaration.

(b) **Corporate Occupancy.**

If an Owner of a Lot is a corporation, limited liability company, partnership, trust, an unincorporated association, or is otherwise not a natural person, then such Owner's Lot may only be occupied by a natural person designated by the Board in writing as meeting the requirements set forth in this sub-paragraph 14(b) (the "Authorized Corporate Occupant").

(i) Definition. An Authorized Corporate Occupant shall only be 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 that: (1) neither the Owner, nor any other interest holder in the Lot or in the Owner, receives any rent or other consideration for such Occupancy; (2) with the exception of a beneficiary of an Owner that is a trust, the Authorized Corporate Occupant of a Lot must perform a valid corporate/entity/partnership function(s) for the Owner that is unrelated to the Lot or the Authorized Corporate Occupant's Occupancy thereof; and (3) that the designation of Authorized Corporate Occupant is in good faith and not intended to avoid a violation of the requirements of this Article VIII, Section 14 of the Declaration, or the purposes thereof, as such is determined by the Board in its discretion.

Notwithstanding the above, if the natural person proposed by Owner as the Authorized Corporate Occupant of its Lot is not: (1) a single officer or at least a 50% shareholder or member of an Owner that is a corporation; (2) at least a 50% member of an Owner that is a limited liability company; (3) at least a 50% member of an Owner that is a partnership; or (4) at least a 50% beneficiary of an Owner that is a non-revocable trust, then it shall be presumed that the designation of such natural person is not in good faith and that the natural person does not fit within the definition of Authorized Corporate Occupant hereunder. In order to overcome this presumption, the Owner shall bear the burden of proving to the Board, in its discretion, that the designation of such natural person as Authorized Corporate Occupant is in good faith and not intended to avoid a violation of the requirements of this Section 14 of the Declaration, or the purposes thereof, and meets all other requirements for the Authorized Corporate Occupant set forth hereunder.

(ii) Designation. A Lot Owner who is not a natural person may apply to have a natural person designated as an Authorized Corporate Occupant by providing the Board a written application that includes the name of the proposed Authorized Corporate Occupant and written documentation evidencing the proposed Authorized Corporate Occupant's relationship with the Owner. The Board may require submission of additional true and accurate information that the Board deems necessary, in its sole discretion, to determine whether the natural person proposed as an Authorized Corporate Occupant meets the requirements for Authorized Corporate Occupancy hereunder. Information which may be requested by the Board may include, but not limited to, Owner's organizational documents, books and records, and affidavits from Owner's officers, directors, members and trustees.

Upon a determination that a natural person meets the requirements of this sub-paragraph 14(b), the Board shall issue a written notice to the Owner designating the natural person as the Authorized Corporate Occupant of Owner's Lot. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person ceasing to meet the definition of Authorized Corporate Occupant set forth herein.

The designated person to occupy a Lot shall not be changed more frequently than once every twelve (12) months without the prior written approval of the Board of Directors.

IN WITNESS WHEREOF, the undersigned officers of Essex Park Property Owners Association, Inc. hereby certify that the above amendment to the Declaration was duly adopted by the required majority of the Association members.

This 20th day of April, 2017

ESSEX PARK PROPERTY OWNERS'
ASSOCIATION, INC.

By: Jeni Jackson
Its President

Attest: Theresa S. Haas
Its Secretary

Sworn to and subscribed to before me this
20th day of April, 2017.

Karen Nowakowski
Witness

Karen Nowakowski
Notary Public

My Commission Expires: 1/6/21

[NOTARY PUBLIC]

