

Return to: Weissman, Nowack, Curry & Wilco, P.C.
3500 Lenox Road, 4th Floor
Atlanta, Georgia 30326
Attention: Jay Lazega

[Space Above Reserved for Recording Data]

STATE OF GEORGIA
COUNTY OF FULTON

Reference: Deed Book 15529
Page 320

**AMENDMENT TO THE DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS FOR BRIERFIELD**

WHEREAS, the Declaration of Protective Covenants and Easements for Brierfield was recorded on July 27, 1992, in Deed Book 15529, Page 320, *et seq.*, Fulton County, Georgia Records ("Declaration"), as amended; and

WHEREAS, Article VI, Section 7 of the Declaration provides for amendment of the Declaration by an agreement signed by at least seventy-five (75%) percent of the owners of lots in Brierfield; and

WHEREAS, at least seventy-five (75%) percent of the owners of lots in Brierfield desire to amend the Declaration and have approved this amendment;

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

1.

Article V of the Declaration is hereby amended by adding the following Section 25 thereto:

Section 25. Leasing. To preserve the character of Brierfield as predominantly owner-occupied, the leasing of Lots is prohibited, except as provided herein. **No Owner may lease his or her Lot 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; or (3) the Owner is not a Grandfathered Owner but has received a written hardship leasing permit from the Board as provided below.**

Non-Grandfathered Owners who want to lease their Lots 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 Lot, in strict accordance with the terms of the permit and this Section. The Board of Directors has the authority to establish conditions as to the duration and use of such permits consistent with this Section. All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Lot and shall not be transferable between Lots or to subsequent Owners.

(a) Definitions.

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

(ii) **"Grandfathered Owner"** means an Owner of a Lot who is lawfully leasing his or her Lot on Effective Date. Grandfathering shall apply only to the Lot owned by such Grandfathered Owner on the Effective Date. Grandfathering hereunder shall continue until the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's spouse). Upon such event, the Lot shall automatically lose grandfathering hereunder, and any lease on the Lot shall automatically terminate. To qualify to be a Grandfathered Owner hereunder, the Owner must:

(A) Be leasing his/her Lot in compliance with the Declaration on the Effective Date; and

(B) Within 30 days of the Effective Date, provide the Board, by personal delivery to a director or by certified mail, 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 lease copy as provided above shall be in violation of the Declaration, and the Board may terminate such unauthorized lease and remove all unauthorized occupants, as provided herein.

(iii) "**Grandfathered Lot**" means the Lot owned by a Grandfathered Owner on the Effective Date.

(iv) "**Leasing**" means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Lot with the Owner or parent, child or spouse of the Owner occupying the Lot as his or her primary Lot.

(b) **Leasing Permits.** The Board of Directors shall approve an Owner's request for a leasing permit if: (1) the Owner has owned the Lot and occupied the dwelling on the Lot as his or her principal and primary residence for at least two years; and (2) the total number of current, outstanding leasing permits, hardship leasing permits and Grandfathered Lots is less than nine. However, a leasing permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner is in violation of the Declaration or any Association rules or regulations.

If the total number of current leasing permits, hardship leasing permits and Grandfathered Lots is nine or more, then no additional leasing permits shall be issued (except for hardship leasing permits) until that number falls below nine. Owners who have been denied a leasing permit shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. 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.

Leasing permits are automatically revoked upon: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Lot for 120 consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Lot by the Owner.

(c) **Hardship Leasing Permits.** If an Owner must lease to avoid an undue hardship, then the Owner may seek to lease on a hardship basis by applying to the Board for a hardship leasing permit. The Board may issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to Brierfield if the permit is approved; (3) the number of hardship leasing permits which have been issued to other Owners; (4) the Owner's role in causing the hardship or ability to cure the hardship; and (5) whether previous hardship leasing permits have been issued to the Owner.

A "hardship" hereunder shall include, but not be limited to the following situations:

- an Owner dies, and the Lot is being administered by his or her estate;
- an Owner must relocate outside the metropolitan-Atlanta area and cannot, within six months 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; or
- an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Lot within one year.

Hardship leasing permits shall be valid for a term not to exceed one year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant.

(d) **Leasing Provisions.** Leasing authorized under this Section is governed by the following:

(i) **Notice.** At least seven days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If a 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. All leases must be for an initial term of not less than one 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, 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, By-Laws and Association rules. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) **Professional Lawn Service.** To ensure appropriate maintenance of the Lot, in accordance with the Declaration, if the Board of Directors determines that the Owner's Lot is not being maintained in accordance with community standards and such condition continues after at least two written notices from the Association to the Owner, then the Association may require the Owner and/or tenant to maintain a professional lawn service during the entire term of the lease. Such service provider then must provide all mowing, edging, fertilizing and weeding of lawns and all pruning, repair and maintenance of bushes, shrubs, trees and other landscaping on the Lot, as is necessary to keep such lawn and landscaping maintained in a condition which meets the standards for the community established by the Association's Board of Directors. If the Owner fails to do so, the Association may revoke any leasing permit or hardship leasing permit issued hereunder.

(iv) **Liability for Assessments; Compliance.** Each Owner covenants and agrees that any lease of a Lot after the Effective Date, or any extension, renewal or modification of a lease of a Lot after the Effective Date, shall contain the following language and agrees that if such language is not expressly contained therein, then such language is 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 into the lease:

(A) **Compliance with Declaration, By-Laws, and Rules and Regulations.** If a Lot is leased or occupied in violation of this Section, then the Board of Directors of Brierfield Homeowner's Association, Inc. ("Association"), shall be authorized, in addition to all other available remedies, to terminate that lease and occupancy, and to suspend all voting and/or Association amenity use privileges of the Owner and any unauthorized tenant(s) or occupant(s).

The lessee shall comply with all provisions of the Association's Declaration, By-Laws and rules 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 or her Lot 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 also liable for any such violation.

If the lessee, or a person living with the lessee, violates the Association's Declaration, By-Laws, or a rule or regulation, fines may be levied hereunder against the lessee and/or the Owner, and such 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 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 the rules and regulations adopted pursuant thereto, 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 tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorneys' fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(B) **Liability for Assessments.** When an Owner who is leasing his or her Lot 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 tenant during the period of delinquency, and, upon request by the Board, the 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 the tenant. However, the tenant 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 the tenant shall reduce, by the same amount, the tenant's obligation to make monthly rental payments to the Owner. If the tenant fails to comply with the Board's request to pay assessments or other charges, the tenant shall pay to the Association all amounts authorized under the Declaration as if the tenant 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 or she would otherwise be responsible.

IN WITNESS WHEREOF, the undersigned officers of Brierfield Homeowner's Association, Inc., hereby certify that this Amendment to the Declaration was duly adopted by the requisite majority of the Association membership, with any required notices properly given.

This 20th day of June, 2006.

Sworn to and subscribed to before me this 20 day of June, 2006.

Nancy Lee
Witness

Nancy Lee
Notary Public

[Notary Seal]

BRIERFIELD HOMEOWNER'S ASSOCIATION, INC.

By: Robert D. Conshi (Seal)
President

Attest: Paul Desim (Seal)
Secretary

[Corporate Seal]



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(B) Within 30 days of the Effective Date, provide the Board, by personal delivery to a director or by certified mail, 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 lease copy as provided above shall be in violation of the Declaration, and the Board may terminate such unauthorized lease and remove all unauthorized occupants, as provided herein.

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IN WITNESS WHEREOF, the undersigned officers of Brierfield Homeowner's Association, Inc., hereby certify that this Amendment to the Declaration was duly adopted by the requisite majority of the Association membership, with any required notices properly given.

This 20th day of June, 2006.

Sworn to and subscribed to before me this 20 day of June, 2006.

Nancye Lee
Witness

Nancye Lee
Notary Public

[Notary Seal]

BRIERFIELD HOMEOWNER'S ASSOCIATION, INC.

By: Robert D. Conso (Seal)
President

Attest: Paul Desim (Seal)
Secretary

[Corporate Seal]

