

Richard T. Alexander, Jr., Clerk of Superior Court  
Gwinnett County, GA

**ERECORDED**  
eFile Participant IDs: 2452198986,

-----[Space Above This Line For Recording Data]-----

When recorded, return to:

Frank R. Olson, Esq.  
Cobb, Olson & Andrle, LLC  
500 Sugar Mill Road  
Suite 160-B  
Atlanta, GA 30350

Cross-reference to:  
Deed Book 56284, Page 508  
Deed Book 57013, Page 147  
Gwinnett County, Georgia Records

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR BERKLEY TOWNSHIP**

This First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Berkley Township (hereinafter referred to as "First Amendment") is made on the date first set below.

**WITNESSETH:**

**WHEREAS**, Berkley Township, LLC ("Declarant") has caused the Berkley Township Property Owners' Association, Inc. ("Association") to be formed as a Georgia non-profit corporation to perform certain functions for the common good and general welfare of the Owners at Berkley Township and the Berkley Township community; and

**WHEREAS**, Declarant has caused a Declaration of Covenants, Conditions, Restrictions and Easements for Berkley Township ("Declaration") with attached Bylaws for the Association ("Bylaws") to be recorded on the real estate records of Gwinnett County, at Deed Book 57013, Page 147, *et seq.*; and

**WHEREAS**, Declarant, pursuant to Section 9.02 of the original Declaration, may unilaterally amend this Declaration by an instrument in writing filed and recorded in the public records of the county in which the Property is located, without the approval of any Member or mortgagee, so long as Declarant has the right to appoint and remove any directors and officers of the Board and/or of the Association and so long as the amendment does not materially affect any Owner or mortgagee rights; and

**WHEREAS**, as of the date of this amendment, Declarant retains the right to appoint and remove directors and officers of the Board of the Association, and this amendment does not materially affect any Owner or mortgagee rights, and Declarant may therefore unilaterally amend the Declaration;

**NOW, THEREFORE**, the Declaration is hereby amended by Declarant as follows:

1.

**Article XI of the original Declaration entitled "Leasing" is hereby stricken in its entirety and in place thereof, the following Article XI is inserted into the Declaration to read as follows:**

**ARTICLE XI  
LEASING**

11.1 General. The leasing of Residential Units is only permitted to the extent and on such terms and conditions as are provided herein. "Leasing" is defined as regular, exclusive occupancy of a Residential Unit by any Person other than the Owner, including, but not limited to: (a) any Person who occupies a Unit pursuant to a lease-purchase agreement prior to the closing on the acquisition of the Residential Unit; and (b) any family member of an Owner who exclusively occupies a Unit which is not also the residence of and occupied by the Owner thereof. Notwithstanding the foregoing, "Leasing" does not include occupancy by a roommate(s) or family member(s) of an Owner who along with the Owner occupies a Unit as his or her residence.

Except as provided below, Owners desiring to lease their Residential Units may do so only if they have" 1) applied for and received a "Leasing Permit" from the Declarant or Board of Directors; 2) received a valid "Leasing Permit" from another Owner (with such "Leasing Permit" having been originally issued by the Declarant or Board of Directors); or 3) received a "Hardship Leasing Permit" from the Board of Directors. Such a Permit, upon its issuance or transfer, shall allow an Owner to lease his, her, or its Unit provided that such leasing is in accordance with the terms of the Leasing Permit and this Article. A Hardship Leasing Permit shall be valid only as to a specific Owner. Leasing Permits shall only be transferable between other Units or Owners in accordance with the provisions herein.

11.2. Initial Assignment of Leasing Permits.

- (a) Until Buildout, Declarant shall have the exclusive right and authority to assign Leasing Permits (excluding Hardship Leasing Permits) to Residential Units. Declarant may charge and retain a fee, charge, or premium to assign such Leasing Permits.
- (b) After Buildout, the Association shall have the exclusive right to assign Leasing Permits to Residential Units. The

Association may charge and retain a fee, charge, or premium to assign such Leasing Permits.

11.3. Leasing Permits.

- (a) An Owner to whom a Leasing Permit has been assigned shall have the permanent right to lease his, her, or its Residential Units subject to the terms of this Article. Nonuse of the Leasing Permit shall not void or extinguish the Leasing Permit. An Owner to which a Leasing Permit has been assigned shall have the right to transfer such Owner's Leasing Permit, on a temporary or permanent basis, to another Residential Unit that has not been assigned a Leasing Permit in accordance with the terms of this Article and for any such fee, payment, or other consideration as may be agreed upon between the transferring Owner and the Owner receiving the Leasing Permit. If a Leasing Permit has not been transferred and assigned to another Residential Unit, the Leasing Permit shall, upon the conveyance of the Residential Unit, transfer with the Residential Unit and become the property of the new Owner.
- (b) The Board shall of the right, but not the obligation, in its discretion to suspend a Leasing Permit if an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Association on or before the date being fifteen (15) days after the Association sends written notice to the Owner stating that the Owner is more than sixty (60) days delinquent and that the Leasing Permit will be suspended unless payment is received in full on or before such date being fifteen (15) days after the Association sends the written notice.

If the Board suspends a Leasing Permit as provided herein, any tenant's right to occupy the Residential Unit shall automatically terminate thirty (30) days from the date the Leasing Permit is suspended. A suspended Leasing Permit shall be automatically reinstated upon payment in full of all delinquent assessments, fines, or other charges owed to the Association.

11.4. Hardship Leasing Permits. If the Owner of a Residential Unit without a Leasing Permit will suffer a hardship by not being able to lease such Owner's Residential Unit, the Owner thereof may apply to the Board of Directors for a Hardship Leasing Permit. 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 number of Hardship Leasing Permits which have been issued to other Owners, (d) the Owner's ability to cure the hardship, and (e) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall 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 Residential Unit was placed on the market, sell the Residential Unit after having made reasonable efforts to do so except at a price below the current appraised market value; (2) where the Owner dies and the Residential Unit is being administered by his or her estate; (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Residential Unit; and (4) the Owner is moving from the Community and would like to lease the Residential Unit for no more than one (1) year in total. Owners of Residential Units to which a Hardship Leasing Permit has been assigned shall not transfer the Hardship Leasing Permit to any other Unit or any successor Owners of the Residential Units and any such transfers shall be null and void.

No Hardship Leasing Permit shall be issued for more than two (2) years following the procedures set forth below. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the Hardship Leasing Permit, the Owner receives a Leasing Permit. The Board of Directors may revoke a Hardship Leasing Permit if 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. The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Hardship Leasing Permit if the Owner or the Owner's Occupants, tenants, guests, or invitees violate in a non-monetary manner the Declaration or any rules and regulations of the Association.

#### 11.5. Leasing Permit Records and Transfers.

- (a) The Association shall keep a master list of all Residential Units with Leasing Permits and Hardship Leasing

Permits and whether any of the same have been suspended.

- (b) If a Leasing Permit is transferred permanently or temporarily, the transferor shall give signed, written notice of the transfer to the Association stating the Residential Unit address of the transferor, the Residential Unit address of the transferee, the date of the transfer, the length of time of the transfer and signed by the Owner(s) of the Residential Unit from which the Leasing Permit is being assigned and Owner(s) of the Residential Unit to whom the Leasing Permit is being assigned.
- (c) Any Owner, Mortgagee or a Person having executed a contract for the purchase of a Residential Unit or a Leasing Permit or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the status of a Leasing Permit. The Association shall respond in writing within five (5) business days of receipt of the request for such a statement; provided, however, the Association may require the payment of a reasonable administrative fee, not to exceed \$25 or such higher amount as may be authorized by the Board.

11.6. Leasing Provisions. Leasing that is authorized pursuant to hereunder shall be governed by the following provisions:

- (a) Notice. At least seven (7) days prior to entering into the lease of a Residential Unit, 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. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with this Declaration and any rules and regulations adopted pursuant thereto.

(b) General.

- (i) Residential Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval.
- (ii) All leases shall be in writing and in a form approved by the Board prior to the effective

date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable.

- (iii) There shall be no subleasing of Residential Unit or assignment of leases without prior written Board approval.
  - (iv) All Leases must be for an initial term of not less than six (6) months except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship.
  - (v) Within ten (10) days after executing a lease agreement for the lease of a Residential Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Residential Unit.
  - (vi) The Owner must provide at Owner's sole expense the lessee copies of this Declaration, Bylaws, and the rules and regulations.
  - (vii) 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.
- (c) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of this Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Residential Unit in order to ensure such compliance. The Owner shall cause all occupants of his, her or its Residential Unit 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 Residential Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a Person living with the lessee, violates this Declaration, Bylaws, or a rule or regulation for which a

fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of this Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any occupant, or any guest of lessee, 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 this Declaration, Bylaws, 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. 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 Residential Unit.

- (d) Use of Common Area. 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 Area, including but not limited to, the use of any and all recreational facilities and other amenities.
- (e) Liability for Assessments. When an Owner who is leasing his, her, or its Residential Unit 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 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 this 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 or she would otherwise be responsible.

- (f) Required Lease Provisions. Any lease of a Residential Unit shall be required to contain or incorporate by reference the terms set forth in subparagraphs (c), (d), and (e) 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 Residential Unit, agrees to the applicability of this covenant and incorporation of the above-referenced language into the lease.

11.7. Applicability of this Article. Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after Buildout), the Association, or the holder of any First Mortgage on a Residential Unit who becomes the Owner of a Residential Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage; provided, however, the Declarant or holder of any First Mortgage that leases a Residential Unit must still provide the name, address, and telephone number of the Person to whom the Residential Unit is being Leased. Such parties shall be permitted to lease a Residential Unit without first obtaining a Leasing Permit or Hardship Leasing Permit in accordance with this Article, and such Residential Units shall not be considered as being leased in determining the number of Leasing Permits or Hardship Leasing Permits issued in accordance with this Article. No amendment to this Declaration or the rules and regulations shall deprive an Owner of a Leasing Permit assigned to his or her Residential Unit, terminate the Leasing Permit, modify the terms under which a Leasing Permit may be used or charge a fee with the rental of a Unit except with the prior written consent of all Owners to whom Leasing Permits have been assigned.

2.

**Except as herein modified, the Declaration shall remain in full force and effect.**

IN WITNESS WHEREOF, the Declarant has caused this Amendment to the Declaration to be duly executed and sealed this 8th day of July, 2020.

DECLARANT:

BERKLEY TOWNSHIP, LLC

By: Daniel Smedley  
Its: Member

Signed, sealed and delivered in  
the presence of:

Christia Dawson  
Unofficial Witness

Sworn to and subscribed before  
me, this 8th day of August, 2020

Asri P. Fulens  
Notary Public

My commission expires: 5-31-2022

