

After Recording Return To:  
Lueder, Larkin & Hunter, LLC  
5900 Windward Parkway, Suite 390  
Alpharetta, Georgia 30005  
Attention: Joseph C. Larkin

Cross Reference:  
Deed Book 8515, Page 125

STATE OF GEORGIA

COUNTY OF GWINNETT

**AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS  
FOR HIGHLAND OAKS**

This Amendment to the Declaration of Protective Covenants for Highland Oaks (hereafter referred to as "Amendment") is made on the date set below.

W I T N E S S E T H:

WHEREAS, BCL Properties II, a Georgia limited partnership (hereafter referred to as the "Declarant"), recorded that certain Declaration of Protective Covenants for Highland Oaks on March 19, 1993, in Deed Book 8515, Page 125, *et. seq.*, of the Gwinnett County, Georgia land records (hereafter referred to as the "Declaration");

WHEREAS, Highland Oaks Homeowners Association, Inc. is the Association defined and identified in the Declaration;

WHEREAS, pursuant to Article XII, Section 4 of the Declaration, the Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community;

WHEREAS, as of the date of this Amendment, one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed from Declarant to another person for residential use, and in accordance with Article XI of the Declaration, the Declarant's right to unilaterally annex additional property to the community expired on March 19, 1998, as such, Declarant approval is no longer required to amend the Declaration;

WHEREAS, this Amendment has been properly approved by the affirmative vote or written consent of the owners of at least two-thirds (2/3) of the Lots; and

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

1.

**Article IV is amended by adding the following thereto as Section 10:**

Section 10. Capital Contribution Assessments (Initiation Fee). Upon the conveyance of ownership of a Lot, including all resales, a capital contribution assessment (an initiation fee) shall become due and payable to the Association by each new Owner. The amount of the initiation fee shall be the same amount as the annual assessment in effect for the fiscal year in which the conveyance of ownership occurs. The initiation fee shall not be deemed to be an advance payment of any assessment and may not be paid in lieu of any assessment. The initiation fee shall be the personal obligation of the new Owner and shall constitute a lien against the Lot. Notwithstanding anything to the contrary herein, no initiation fee shall be due as a result of a conveyance of a Lot to an Owner's spouse, child, or a corporation, partnership, company, or legal entity in which the Owner is a principal; no initiation fee shall be due from any Person who takes title through foreclosure upon the lien of any first priority Mortgage covering the Lot or the lien of any secondary purchase money Mortgage covering the Lot; and no initiation fee shall be due from any Owner who has owned a Lot in the Community and who obtains title to a different Lot in the Community

2.

**Article VI, Section 7 is amended by striking same in its entirety and substituting therefor the following:**

Section 7. Leasing. In order to protect the equity of the 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 development, 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 Section.

(a) Prohibition. Except as provided herein, the leasing of Lots is hereby prohibited. Notwithstanding anything to the contrary herein, the short-term occupancy, leasing or hotel type use of a Lot through services such as, but not limited to, Airbnb, HomeAway, or VRBO, shall be prohibited. The advertising of any Lot or holding out of any Lot in any manner whatsoever by any Owner, person, business, website, agency, or any other service for the purpose of procuring or enticing persons to occupy such Lot in such manner is also prohibited. Such use

shall constitute a prohibited business use and shall not constitute authorized leasing under this subparagraph.

(b) 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 exclusive occupancy by the spouse, domestic partner, 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.

If the Owner of a Lot is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person, the entity shall designate in writing to the Board of the Directors the name(s) of the natural person(s) who will occupy the Lot. To constitute a valid designation in accordance with this subsection, the natural person must have a substantial relationship to the legal entity, including, by way of illustration and not limitation, being a shareholder, director, or officer of the corporation, being a member of the limited liability company, being a partner in the partnership, or being a beneficiary of the trust. Further, and notwithstanding anything to the contrary set forth herein, in no event shall the natural person(s) designated to occupy the Lot be changed more frequently than once every twenty-four (24) months.

If the entity Owner receives any consideration or benefit, including, but not limited to, rent, a fee, service, or gratuity from or on behalf of the designated person(s) occupying the Lot, then such arrangement shall be considered leasing, and the Owner shall be required to comply with the entirety of this Section. The express purpose of this subsection is to ensure that entity owners do not utilize the designation of a natural person to occupy the Lot in order to circumvent the leasing restriction contained within this Section.

(c) General. Any Owner who desires to lease such Owner's Lot may do so only if the Owner has applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Lot provided that such leasing is in strict accordance with the terms of the permit and this Article. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Article. All permits shall be valid only as to a specific Lot Owner and Lot and shall not be transferable between either Lots or Lot Owners. In order to be eligible for a Leasing Permit or Hardship Leasing Permit, an Owner shall not be delinquent in the payment of any assessments, fine or other charge levied by the Association pursuant to the provisions of the Declaration and/or shall not be in violation of the Declaration or rules and regulations of the Association ("Eligible Owner").

(d) Leasing Permits. An Eligible Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than five percent (5%) of the total number of Lots. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party; (2) the failure of a Lot Owner to lease his or her Lot within ninety (90) days of the Leasing Permit having been issued; (3) the failure of a Lot Owner to have his or her Lot leased for any consecutive ninety (90) day period thereafter; or (4) the occurrence of the date referenced in a written notification by

the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit. Further, a Leasing Permit may be revoked if an Eligible Owner becomes delinquent in the payment of any assessments, fine or other charge levied by the Association pursuant to the provisions of the Declaration and/or is in violation of the Declaration or rules and regulations of the Association; provided, however, the Board shall first provide the Owner thirty (30) days notice of the Board's intention to revoke the Leasing Permit and provide the Owner with an opportunity to restore Eligible Owner status. All costs associated with restoring an Owner to Eligible Owner status, including reasonable attorney's fees actually incurred, shall be assessed against the Owner, Occupant and/or Lot, and Eligible Owner status shall not be required to be restored until all amounts are paid in full.

If current Leasing Permits have been issued for five percent (5%) of the total number of Lots, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits, as set forth below) until the number of outstanding current Leasing Permits falls below five percent (5%) of the total number of Lots. Eligible Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued a Leasing Permit if they so desire when the number of current outstanding Leasing Permits issued falls to less than five percent (5%) of the total number of Lots. The issuance of a Hardship Leasing Permit to an Eligible Owner shall not cause the Eligible Owner to be removed from the waiting list for a Leasing Permit. If the Lot is not rented in 90 days after the issuance of a Leasing Permit, the Leasing Permit is automatically revoked, and the Eligible Owner shall be placed to the bottom of the waiting list.

(e) Hardship Leasing Permits. If the failure to lease will result in a hardship, an Eligible Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the sole authority to issue or deny requests for Hardship Leasing Permits in its discretion. In making such a determination, the Board may take any factor into account, including: (1) the nature, degree, and likely duration of the hardship, (2) the number of Hardship Leasing Permits which have been issued to other Owners, (3) the Owner's ability to cure the hardship, and (4) whether previous Hardship Leasing Permits have been issued to the Owner. Hardship Leasing Permits shall be valid for a term not to exceed one year. The Board may request whatever information it reasonably requires to validate the Hardship Leasing Permit request. Eligible Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit. Further, a Hardship Leasing Permit may be revoked if an Eligible Owner becomes delinquent in the payment of any assessments, fine or other charge levied by the Association pursuant to the provisions of the Declaration and/or is in violation of the Declaration or rules and regulations of the Association; provided, however, the Board shall first provide the Owner thirty (30) days notice of the Board's intention to revoke the Hardship Leasing Permit and provide the Owner with an opportunity to restore Eligible Owner status. All costs associated with restoring an Owner to Eligible Owner status, including reasonable attorney's fees actually incurred, shall be assessed against the Owner, Occupant and/or Lot, and Eligible Owner status shall not be required to be restored until all amounts are paid in full.

(f) Leasing Provisions. Leasing shall be governed by the following provisions:

(1) Notice. At least fourteen (14) 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 and such other information as the Board may reasonably require. The Board may approve or disapprove the form of the lease. In the event a lease form is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease form into compliance with the Declaration, any rules and regulations adopted pursuant thereto, and any criteria determined by the Board. Within ten (10) days from the execution of the lease by both parties, the Owner shall provide the Board with a copy of the executed lease and the names and contact information of the lessees.

(2) General. Lots may be leased only in their entirety; no fraction or portion of a Lot may be leased (other than to an Owner's roommate, which shall not constitute leasing, as defined herein). 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 one (1) year, and the Owner may request an extension or extensions from the Board for one (1) year periods. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations.

(g) Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot (even if such lease is in violation of the Declaration) 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 the lease by the existence of this covenant; and any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease, whether or not expressly therein stated:

(1) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Owner 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 he or she would otherwise be responsible.

When a Lot Owner who is leasing the Owner's 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 rent received from the lessee during the period of delinquency, and, upon demand by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the remaining term of the lease and any other period of occupancy by lessee following such demand. 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 demand to pay assessments or other charges to the Association, lessee shall be obligated to pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required

to make such payments to the Association if lessee were the Owner of the Lot during the term of the agreement and any other period of occupancy by lessee, and including all amounts paid by lessee to lessor following the date of such demand from the Board.

(2) 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 the Owner's 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 rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee, including but not limited to, the leasing of a Lot without a Leasing Permit or a Hardship Leasing Permit, 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 the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, 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; and the Owner shall not again lease the Owner's Lot to any person without the expressed written approval of the Board.

(h) Lease Administration Fee. The leasing of Lots in Highland Oaks creates administrative burdens for the Association, including, but not limited to, updating the Association's records, issuing access control devices, if any, to the Common Property. Pursuant to this Declaration and the Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners. In accordance with those provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration and the Act, any Owner who leases a Lot will be required to pay the Association an annual Lease Administration Fee. The Lease Administration Fee shall be at least one hundred and fifty dollars (\$150.00) for the first calendar year in which the Lease Administration Fee goes into

effect. Thereafter, the Board of Directors, in its sole discretion, and from time to time, may increase the annual Lease Administration Fee. The Lease Administration Fee shall constitute a specific assessment as described in this Declaration, and is in addition to any actual costs that the Association may incur in hiring a third-party to administer leasing within the Community, which shall also be specifically assessed to the leasing Owner.

(i) Lawn Service. To ensure appropriate maintenance of the Lot in accordance with the Declaration, and for the benefit of the Association, the Owner or Occupant shall be required to maintain a professional lawn service during the entire term of the lease or occupancy relationship, unless such requirement is waived by the Board of Directors in writing. The professional lawn service company shall 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 Development-Wide Standard. The executed lawn service contract must accompany an Owner's leasing request.

(j) Applicability of this Section (Grandfather Lots that are Currently Being Leased). Except as provided herein, the leasing restrictions within this Section 7 shall not apply to any Owner who is an Owner of a Lot on the date this Amendment is recorded in the Gwinnett County, Georgia land records if the Owner is leasing the Lot on such date pursuant to a lease for an initial term of six months or longer in accordance with the terms of the Declaration (a "Grandfathered Owner"). The Grandfathered Owner may continue to lease the Lot in accordance with the terms of the Declaration as it existed prior to the date this Amendment is recorded in the Gwinnett County, Georgia land records; provided, however, upon the conveyance of ownership of the Lot for value, all leasing restrictions of this Section 7 shall apply. The expressed purpose of this grandfathering provision is to allow Owners who own, and who are leasing, Lots as of the date this Amendment is recorded in the Gwinnett County, Georgia land records (the "Effective Date") to continue to lease their Lots without a Leasing Permit or Hardship Leasing Permit, but to thereafter restrict leasing upon conveyance of ownership of the Lots (e.g., resales).

Grandfathered Owners shall, within ninety (90) days of the Effective Date, shall provide a copy of a fully executed lease evidencing that the Owner's Lot was leased as of the Effective Date. Failure to provide such lease shall create a presumption that the Lot was not leased on the Effective Date, and thus, does not create a Grandfathered Owner.

Any and all leases entered into by a Grandfathered Owner must comply with subsections (f), (g), (h), and (i) of this Section.

Leasing pursuant to this Section shall be counted when calculating the total number of Lots issued Leasing Permits.

(k) Applicability of this Article to Association Leases. Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by the Association. The Association shall be permitted to lease a Lot without first obtaining a permit in accordance with this Section, and any such Lot shall not be considered as being leased in determining the maximum number of Lots that may be leased in accordance with this Article.

3.

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

IN WITNESS WHEREOF, the undersigned hereby certify that this Amendment was properly approved.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HIGHLAND OAKS HOMEOWNERS ASSOCIATION,  
INC.

\_\_\_\_\_  
Signature of President

Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Signature of Secretary

Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_

\_\_\_\_\_  
Notary Public