

Real Estate Transfer Tax \$0.00

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Katharine A. Dyott
Dorough & Dorough, LLC
Attorneys at Law
160 Clairemont Avenue, Suite 650
Decatur, Georgia 30030
(404) 687-9977

CROSS REFERENCE: Deed Book: 24703
Page: 795

**FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR EAST HOWARD PLACE**

THIS FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR EAST HOWARD PLACE (hereinafter referred to as the "Amendment") is made this 26th day of June, 2015 by **DECATUR HILLYER PLACE, LLC**, a Georgia limited liability company (hereinafter referred to as "Declarant") and **EAST HOWARD PLACE TOWNHOME ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as the "Association");

WITNESSETH

WHEREAS, Decatur Hillyer Place, LLC, as "Declarant," executed that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for East Howard Place, recorded December 15, 2014, in Deed Book 24703, Page 795, *et seq.*, DeKalb County, Georgia land records (as amended and/or supplemented from time to time hereinafter referred to as the "Declaration"); and

WHEREAS, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code to be the Association named in the Declaration to have the power and authority set forth therein; and

WHEREAS, pursuant to Article 10, Section 10.7(c) of the Declaration, the Declaration may be amended upon the affirmative vote, written consent or any combination of affirmative vote or written consent of the Owners holding at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant; and

WHEREAS, Declarant is the Owner of all of the Units in the Community and desires to amend the Declaration as provided herein, as evidenced by the signature attached hereto and by this reference incorporated herein;

NOW THEREFORE, the undersigned hereby adopt this First Amendment to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for East Howard Place hereby declaring that all of the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject of the Declaration, amended as follows:

1.

The Declaration is hereby amended by deleting Article 7, Section 7.31, entitled "Leasing," in its entirety and replacing it with a new Section 7.31 to read as follows:

7.31 Leasing. In order to protect the equity of the individual members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Section. Units may be leased for residential purposes only, except that the commercial component of a Live/Work Unit may be leased for those permitted uses set forth in Section 7.3 hereof.

No Owner may lease his or her Unit unless the Owner has received either a leasing permit or a hardship leasing permit, in writing, from the Board of Directors, all as may be more specifically set forth below. A leasing permit or hardship leasing permit will allow an Owner to lease his or her Unit in accordance with the terms and conditions set forth in this Section and in accordance with the rules and regulations of the Association and the covenants and conditions set forth in the Declaration. Notwithstanding anything to the contrary herein, leasing permits and hardship leasing permits shall only be valid as to a specific Owner and Unit and shall not be transferrable between Units or subsequent Owners.

For purposes of this Section 7.31, leasing means the regular, exclusive occupancy of a Unit by any Person(s) other than the Owner for which the Owner received any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. For purposes hereof the following shall not constitute leasing: (i) occupancy of the Unit by member of the Owner's family; (ii) occupancy of the Unit by a roommate of an Owner-Occupant; (iii) occupancy of the Unit by one or more wards if the Unit is owned by their legal guardian, or (iv) occupancy of the Unit by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee.

(a) Leasing Permits. Any Owner desiring to lease a Unit shall submit a written request regarding the same to the Board of Directors. The Board of Directors shall automatically approve an Owner's application for a leasing permit and shall issue the same if less than four (4) Units in the Community are leased. If four (4) or more of the Units in the Community are leased, no additional leasing permits shall be issued, except for hardship leasing permits as provided below, until that number falls below four (4). Owners who have been denied a leasing permit shall be placed on a waiting list to be issued such a permit. When the number of leased Units falls below four (4), the Owner at the top of the waiting list shall be issued a leasing permit and shall have ninety (90) days to lease such Unit at which time if the Unit is not leased, the leasing permit shall be revoked and the Owner shall automatically be placed at the bottom of the waiting list. Notwithstanding anything to the contrary herein, the issuance of a hardship leasing permit to an Owner shall not cause such Owner to be removed from the waiting list for a leasing permit.

Leasing permits are automatically revoked upon: (i) the sale or transfer of a Unit to a third party (excluding sales or transfers to an Owner's spouse); (ii) the failure of an Owner to lease his or her Unit within ninety (90) consecutive days at any time after the issuance of such leasing permit; or (iii) the occupancy of the Unit by the Owner.

(b) Hardship Leasing Permits. If an Owner must lease his or her Unit to avoid an undue hardship, the Owner shall apply to the Board in writing for a hardship leasing permit. The Board may issue or deny requests for hardship leasing permits in its discretion after considering the following factors, which include, but are not limited to: (i) the nature, degree and likely duration of the hardship; (ii) the harm, if any, which will result to the Community if the hardship leasing permit is approved; (iii) the number of hardship leasing permits which have been issued to other Owners; (iv) the Owner's role in causing the hardship or ability to cure the hardship; and (v) whether previous hardship leasing permits have been issued to the Owner.

A hardship hereunder shall include, but not be limited to, the following situations: (i) an Owner dies and the Unit is being administered by his or her estate; (ii) an Owner must relocate outside metropolitan Atlanta and cannot, within six months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after making reasonable efforts to do so; or (iii) an Owner takes a leave of absence or temporarily relocates out of the metropolitan Atlanta area and intends to return to reside in the Unit within one year.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may reapply for additional hardship leasing permits at the expiration of a hardship leasing permit in accordance with the procedures set forth herein.

(c) Leasing Provisions. Leasing authorized under this Section shall be governed by the following provisions:

(i) Notice. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board of Directors with the following information: (A) a copy of the fully executed lease agreement; (B) the name of the lessee and all other people occupying the Unit; (C) the phone number of the lessee; (D) the Owner's address and telephone number other than at the Unit; and (E) other such information as the Board may reasonably require.

(ii) General. Units may be leased only in their entirety; rooms, basements or fractions or portions of a Unit may not be leased without the prior written approval of the Board of Directors. All leases shall be in writing. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board of Directors. All leases must be for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee with copies of the Declaration, Bylaws, and the rules and regulations and Architectural Guidelines of the Association and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations and Architectural Guidelines.

(iii) Compliance; Liability for Assessments. If a Unit is leased or occupied in violation of this Section 7.31, then the Board of Directors shall be authorized, in addition to all other available remedies, to terminate the lease and occupancy, and to suspend all voting rights and the right to use and enjoy the Common Property of the Owner and any unauthorized tenants(s) or Occupant(s). Each Owner covenants and agrees that any lease of a Unit 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 existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Declaration, Bylaws and Rules and Regulations and Architectural Guidelines. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations and Architectural Guidelines adopted pursuant thereto. Lessee shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner agrees to cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations and Architectural Guidelines adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations and Architectural Guidelines adopted pursuant thereto.

In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation or Architectural Guideline 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 accordance with the provisions contained herein. If the 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 Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, Bylaws or rules and regulations and Architectural Guidelines adopted pursuant thereto by the lessee, any Occupant, or any guest of the 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.

(B) Liability for Assessments; Assignment of Rent. If an Owner who is leasing his or her Unit fails to pay any general, special or specific assessment or any other charge owed to the Association 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 of Directors, lessee shall pay to the Association all unpaid general, special and specific 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 of Director'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 of Director'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 he or she would otherwise be responsible.

(C) Right to 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.

(d) Mortgagee Exemption. The provisions of this Section 7.31 shall not apply to any Mortgagee in possession of a Unit through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage on a Unit.

(e) Rights Reserved by Declarant. Notwithstanding the restriction on the leasing of Units as described herein, Declarant may enter into a lease agreement for the lease of a Unit and the extent and duration of said lease agreement shall be

determined solely by Declarant. Under such circumstances, Declarant shall not be required to obtain a leasing permit or a hardship leasing permit as provided herein. Any ability to lease a Unit granted by Declarant which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the Occupants comply with the terms and conditions imposed by Declarant.

2.

Unless otherwise defined herein, the words used in this Amendment shall have the same meaning as set forth in the Declaration.

3.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of DeKalb County, Georgia and shall be enforceable against current Owners of Units subject to the Declaration.

4.

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

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant, as the Owner of all of the Units in the Community, has caused this Amendment to be executed under seal as of the date and year written above.

DECLARANT: **DECATUR HILLYER PLACE, LLC**, a Georgia limited liability company

By: TPA Fund 1, LLC, a Delaware limited liability company, its sole member

By: TPA Investors 1, LLC, a Georgia limited liability company, its managing member

By: _____ (SEAL)
J. Bradford Smith, Manager

Signed, sealed, and delivered in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

My Commission Expires: 5/25/19



[AFFIX NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Association hereby acknowledges and agrees to this Amendment under seal this 26 day of June, 2015.

ASSOCIATION: **EAST HOWARD PLACE TOWNHOME ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: Richard W. Deriso
Richard W. Deriso, President

Attest: Kris Voigt
Kris Voigt, Secretary

Signed, sealed, and delivered in the presence of:

[CORPORATE SEAL]

Richard W. Deriso
WITNESS
[Signature]
NOTARY PUBLIC

My Commission Expires: 5/25/19

[AFFIX NOTARY SEAL]

