



Jay C. Stephenson

Return to:
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JAY C. STEPHENSON
CLERK OF SUPERIOR COURT Cobb Cty. GA.

Cross Reference:
Book 14639, Page 4900
Book 14855, Page 2127

**AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS,
AND EASEMENTS FOR VILLAGE TOWNHOMES AT AVIGNON**

This Amendment is made as of the 23rd day of August, 2012, by JWC PACES OVERLOOK, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

On March 19, 2008, Avignon, LLC executed that certain Declaration of Covenants, Restrictions, and Easements for Village Townhomes at Avignon, which was recorded on September 29, 2008 in Deed Book 14939, Page 4900, et seq., Cobb County, Georgia land records (hereinafter, as supplemented and/or amended from time to time, the "Declaration"). Pursuant to that certain Assignment of Declarant's Rights Under Declaration of Covenants, Restrictions, and Easements for Village Townhomes at Avignon dated March 1, 2011 and recorded in Deed Book 14839, Page 2792, et seq., Cobb County, Georgia land records, Avignon, LLC assigned the Declarant's Rights (as defined therein) to Eagle GA I SPE, LLC. Pursuant to an Assignment of Declarant's Rights Under Declaration of Covenants, Restrictions, and Easements for Village Townhomes at Avignon dated May 20, 2011 and recorded in Deed Book 14855, Page 2127 et seq., Cobb County, Georgia land records, Eagle GA I SPE, LLC assigned the Declarant's Rights (as defined therein) to Declarant.

The Declaration provides in Article 9, Section 9.2 thereof for the amendment of the Declaration by Declarant with the written consent of a majority of the Members affected by such amendment, which consent has been obtained.

Declarant desires to amend the Declaration as provided herein.

NOW THEREFORE, pursuant to the powers retained by Declarant under Article 9, Section 9.2 of the Declaration, and in accordance with the provisions of that section, Declarant hereby amends the Declaration by making the following changes:

1. Article 2, Section 2.8 is hereby deleted and replaced with the following:

2.8 Association's Responsibility.

(a) The Association (or at its option, the Master Owners' Association) shall maintain and keep in good repair the Common Area. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, paving and other improvements

situated on the Common Area. The Association shall also maintain (i) all entry features for the Development, including any gate(s) and gatehouse(s), to the extent such areas and features are not maintained on an ongoing basis by a governmental entity or the Master Association, (ii) all private Development streets, alleys, sitting areas, pavilions, common fencing, and walking trails, including street signs, if any, to the extent such areas and facilities are not maintained on an ongoing basis by a governmental entity or the Master Association, (iii) all storm water management, drainage detention and retention areas and related facilities which were originally installed or maintained in the Development, to the extent such areas and facilities are not maintained on an ongoing basis by a governmental entity or the Master Association, and (iv) all water and sewer pipes or facilities which serve more than one (1) Lot, whether located within or without the Lot's boundaries, to the extent that such pipes and facilities are not maintained by public, private or municipal utility companies, or by a governmental entity. The Association shall also maintain all property outside of Lots located within the Development which was originally maintained by Declarant or its affiliates.

(b) The Association shall also maintain and keep in good repair the Area of Common Responsibility which shall be deemed to include the following: (a) exterior surfaces of garage doors (but the Lot Owner shall be responsible for the operation of the garage doors), (b) mowing and maintenance of all grass within the Development, (c) all roofs, downspouts and gutters, (d) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade, (e) all driveways, (f) all exterior iron railings and balcony column masonry and (g) porches, stoops, stairs and handrails (front and rear). If the Board shall elect, in its sole discretion, the Association shall paint exterior surfaces of windows, window frames, doors and door frames during Development-wide painting projects only at such time or times as shall be determined by the Board, provided, however, that the Association shall not be responsible for painting, caulking, or other maintenance required due to the condition of any such windows or doors (and frames), it being understood that such responsibility shall be and remain solely that of the Unit Owner. Specifically excluded from the Area of Common Responsibility shall be the following: (1) walkways, decks and patios (whether enclosed or not), including surfaces, fencing, and/or landscaping within or surrounding any of the foregoing, or within planters or courtyards, if any, and balcony surfaces, of the Lots, (2) HVAC or similar equipment located outside the Lots, (3) all doors, including screen and storm doors, hinges, frames and door frames, handrails, and hardware which are part of the entry system, and all caulking around any of the same, (4) hose bibs contained in exterior walls of a Lot, (5) lighting fixtures pertaining to a particular Lot, (6) window screens, window frames and glass, and all caulking around any of the same, (7) foundations and footings, including waterproofing, and (8) pipes, wires and conduit which serve only one (1) Lot whether located within or without the Lot's boundaries. Upon resolution of the

Board of Directors and approval of a majority of the Association, the Association may assume responsibility for providing additional exterior maintenance of a Lot.

(c) The Association shall maintain, repair or replace, as necessary, all mailboxes or mailbox posts located within the Development. In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association, and/or to provide services, where the Board has determined that such maintenance and/or services would benefit all Owners.

(d) There is hereby granted to the Association a blanket easement upon, across, over and under all property within the Development for access, ingress and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

(e) The Association shall not be liable for injury or damage to person or property caused by or resulting from the elements, the Owner of any Lot, any other person, any utility, rain, snow or ice which may leak or flow from any portion of the Common Area, or any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities hereunder where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(f) The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons of its choice such duties as are approved by the Board of Directors.

(g) Notwithstanding the other provisions of this Section, the Association, in its sole discretion, may mow and maintain grass enclosed within any fences and/or any courtyard areas adjacent to a Lot and may maintain and keep in good repair the fencing associated with any courtyards adjacent to a Lot. The Association may contract with a third party to perform this work, and said third party and its employees, personnel, agents and representatives, as well as Association agents and representatives, may be accessing the entire yard area at any time and without notice and may access areas that Owners and residents consider to be private. Utility companies and contractors may also be accessing yard areas to read, inspect and maintain HVAC, electrical and other utility meters and units. To accommodate this maintenance, yard gates should not be locked.

2. Article 11, Sections 11.7 through 11.13 inclusive are hereby deleted and replaced with the following:

"11.7 Insurance.

(a) The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Area or required to be maintained by the Association under Article 2, Section 2.8 hereof and blanket insurance for all Lots; provided, however, the Association's insurance shall not include the Lot Owners' personal property (which shall be the sole responsibility of the Lot Owner). This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Area insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

(c) The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through Declarant or its affiliates and to reimburse the person so providing or arranging the insurance coverage for the cost thereof, and Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through Declarant or its affiliates.

(d) Premiums for all insurance shall be common expenses of the Association; provided, however, such premium expenses which primarily benefit a group or subset of Residences may be assessed as a specific assessments against only such group or subset of Residences, as provided in Article 4, Section 4.12. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(e) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with a company authorized to do business in Georgia.

(ii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iii) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

(iv) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Development is located.

(v) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(.1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

(.2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(.3) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;

(.4) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or mortgagee;

(.5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(.6) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

(f) In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

11.8 Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Association and the Owner or Owners of any damaged Lot or Lots otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to

participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development by the Association in a neat and attractive condition.

11.9 Damage and Destruction – Lots Not Insured by Association. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot not insured by the Association shall be repaired and restored to substantially its condition prior to such damage or destruction by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be expeditiously completed within a reasonable time thereafter. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article 8, Section 8.1 of this Declaration.

11.10 Insurance Deductible. The deductible (up to \$2500) for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Area, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each Lot separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article 4, Section 4.12 of this Declaration.

11.11 Reserved.

11.12 Reserved.

11.13 Reserved.”

2. Article 3, Section 3.8, subsection (a), subparagraph (ii) is deleted and replaced with the following:

“(ii) the date upon which ninety (90%) of the Residences submitted or to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or”

3. Article 2 is amended to add a new Section 2.10 as follows:

“2.10 Exclusive Use Easement. Declarant, as the owner of all of the real property in the Development (other than Lots heretofore conveyed to Owners of the same, and Common Area heretofore conveyed to the Association), hereby reserves for the benefit of itself, and its successors and assigns, as Owners of certain Lots, an easement of access, ingress, egress, use and enjoyment (an “Exclusive Use Easement”) across the Exclusive Use Easement Area adjacent to, serving and exclusively benefiting the Lot, as and to the extent such Exclusive Use Easement Area is shown and identified on either or both of (i) the subdivision plat(s) for the Development or (ii) a plan or plat recorded with the deed of conveyance of such Lot from Declarant, as each may be recorded from time to time in the Cobb County, Georgia land records. From and after the conveyance of the same to the Association, such Exclusive Use Easement Area shall be deemed Limited Common Area, and may be used and enjoyed exclusively by the Owner of such Lot benefited by such Exclusive Use Easement Area in any manner and for any purpose permitted by this Declaration, including such purposes as landscaping and general recreation; provided, however, each Owner shall comply with the use restrictions contained herein and rules adopted by the Board of Directors, and shall obtain prior written consent and approval of the Board of Directors in accordance with Article 5 hereof as applicable, including, without limitation, as required under Section 5.6. Subject to the terms of Section 2.8 above, the Owner of the Lot benefited by such Exclusive Use Easement Area shall maintain, at its sole cost and expense, any and all improvements (e.g., patios, garden beds) made within such Exclusive Use Easement Area (whether made by Declarant or its successor(s), or by such Owner with the prior written consent and approval of the Board of Directors). Standard landscaping installed by the Declarant within the Exclusive Use Easement Area shall be maintained by the Association. Such easement rights shall be appurtenant to and run with title to such benefited Lot for the benefit of the Owner of said Lot, and shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such benefited Lot. Declarant hereby reserves the right to construct, maintain, repair, and/or replace fencing within or along the periphery of any Exclusive Use Easement Area, at any time, and the maintenance, repair and replacement of such fencing shall be governed by Section 2.8 above.”

4. Article I Definitions is amended to add new a Definition as follows:

"1.24 Exclusive Use Easement Area means a portion of the Development, whether owned by Declarant and/or now or hereafter conveyed to the Association as Common Area, adjacent to a Lot and (i) identified as "Exclusive Use Easement Area" on the most recent recorded subdivision plat(s) for the Development on which the Lot benefited by the same is shown, and/or (ii) described in and/or identified on any instrument given by Declarant as an "Exclusive Use Easement Area" and granting easement rights to any Lot Owner over such area consistent with the terms of Article II, Section 2.10 above. Each Exclusive Use Easement Area is appurtenant to and benefits the Lot adjacent to the Exclusive Use Easement Area as provided in Article II, Section 2.10 hereof.

5. Article 2, Section 2.2, is hereby deleted and replaced with the following:

"Limited Common Areas. The Limited Common Areas mean a portion of the Common Area reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Lots, including, without limitation, doorsteps, front porches, and Exclusive Use Easement Areas."

6. The Declaration, and any and all exhibits thereto, including, without limitation Exhibit B to the Declaration, is hereby amended to reflect that the name of the Association shall be Paces View Townhome Association, Inc.

The Declarant hereby certifies that this Amendment has been duly approved by Declarant and such Members as required under the Declaration, and shall be effective upon recordation.

IN WITNESS WHEREOF, the undersigned has executed this Amendment and affixed the corporate seal as of the day and year first written above.

Signed, sealed and delivered
in the presence of:

Courtney A. Hull
Witness

Jennifer Bojda
Notary public

My Commission Expires: 3/10/15

[NOTARIAL SEAL]

JWC PACES OVERLOOK, LLC, a Georgia
limited liability company

By: F. Robert Parker
F. Robert Parker, Manager

[CORPORATE SEAL]

