

After recording, please return to:  
Rachel E. Conrad  
Dorough & Dorough, LLC  
Two Decatur TownCenter, Suite 520  
125 Clairemont Avenue  
Decatur, Georgia 30030

CROSS REFERENCE: Deed Book: 17391  
Page: 140

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**THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS  
AND EASEMENTS FOR THE HIGHLANDS**

THIS THIRD AMENDMENT (hereinafter referred to as "Third Amendment") is made this 26<sup>th</sup> day of January, 2008 by **THE HIGHLANDS HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as "Association").

WITNESSETH:

**WHEREAS**, The Village at Park Bridge, L.P., a California limited partnership, as Declarant, executed that certain Declaration of Protective Covenants and Easements for The Highlands, which was recorded November 10, 1993 in Deed Book 17391, page 140, *et seq.*, Fulton County, Georgia records; as amended by that certain First Amendment to Declaration of Protective Covenants and Easements for The Highlands, recorded December 8, 1993 in Deed Book 17494, page 348, *et seq.*, aforesaid records; as amended by that certain Second Amendment to Declaration of Protective Covenants and Easements for The Highlands, recorded October 12, 2001 in Deed Book 31134, Page 320, *et seq.*, aforesaid records (hereinafter as supplemented and/or amended from time to time collectively 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 XIII, Section 13.04 of the Declaration, the Declaration may be amended upon the affirmative vote or written consent of at least two-thirds (2/3) of the Lot Owners 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 to unilaterally annex additional property to the Community); and

**WHEREAS**, the Declarant no longer owns any property for development and/or sale in the Community and no longer has the right to unilaterally annex property to the Community; and

**WHEREAS**, two-thirds of the Lot Owners agreed to amend the Declaration as provided herein; and

**WHEREAS**, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the President of the Association, which sworn statement states that the affirmative vote or written consent two-thirds (2/3) of the Lot Owners was lawfully obtained; and

**WHEREAS**, the Association and the Owners desire to amend the Declaration as set forth herein and intend for this Third Amendment to be prospective only

**NOW THEREFORE**, the undersigned hereby adopts this Third Amendment to the Declaration of Protective Covenants and Easements for The Highlands, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

The Declaration is hereby amended by adding to Article IV a new Section 4.10, entitled "Initiation Fee," to read as follows:

4.10 Initiation Fee. Upon each and every conveyance of title to a Lot in the Community, an initiation fee in an amount equal to the amount of the annual assessment applicable to that Lot for that year shall be paid by or on behalf of the new Owner to the Association at the closing of such transaction, or if not paid at closing shall be paid immediately upon demand by the Association. The initiation fee shall constitute a specific assessment against the Lot, shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of the Declaration. This specific assessment shall not apply to the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring the Lot from the foreclosing Mortgagee.

2.

The Declaration is further amended by deleting Article VI, Section 6.06 of the Declaration, entitled "Leasing", in its entirety and replacing it with a new Section 6.06 to read as follows:

(a) 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 Lots shall be governed by the restrictions imposed by this Article. Except as provided herein, the leasing of Lots shall be prohibited.

(b) Definitions.

(i) Leasing means the regular, exclusive occupancy of a Lot 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 by a roommate of an Owner occupant; (ii) occupancy by a member of the Owner's family, (iii) occupancy by one or more wards if the Lot is owned by their legal guardian, or (iv) occupancy by one or more beneficiaries of a trust if the Lot is owned in trust by the trustee.

(ii) Applicability - Grandfathered Lot. Those Lots which are being leased as of the date this Third Amendment is recorded in the Fulton County, Georgia land records (hereinafter the "Effective Date") are for all purposes herein a "Grandfathered Lot" and may continue to be leased, provided the tenant complies with all regulations pertaining to the use of the Lot set forth herein and in the Declaration. All Owners of Grandfathered Lots shall file a copy of the lease agreement in effect as of the Effective Date with the Board or the management company, as the case may be. Any Lot designated as a "Grandfathered Lot" shall authorize a Lot Owner to lease said Lot at any time until such time as title to said Lot is conveyed to any person or entity other than the person or entity holding record title as of the Effective Date. Upon the transfer of title described herein, the Lot shall automatically be converted to Restricted Leasing Status, regardless of the continued occupancy by the same lessee.

(iii) Open Leasing Status. Any Lot designated as being in "Open Leasing Status" shall authorize a Lot to be leased in accordance with the provisions set forth herein. A Lot designated as being in Open Leasing Status shall remain in Open Leasing Status until such time as title to the Lot is conveyed or transferred to another person or entity, after which conveyance the Lot shall be

converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee unless the new owner requests that the Lot remain in Open Leasing Status within ninety (90) days of said conveyance. Notwithstanding anything to the contrary herein, any Lot in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Lot is not subject to a lease for ninety (90) or more consecutive days.

(iv) Restricted Leasing Status. Any Lot that is designated as being in "Restricted Leasing Status" shall prohibit a Lot Owner from leasing his or her Lot except as may be provided below for cases of undue hardship. All Lots that are not Grandfathered Lots shall be in Restricted Leasing Status until such time as the Lot is converted to Open Leasing Status as provided below.

(c) General. No Owner of a Lot in Restricted Leasing Status may lease his or her Lot if five percent (5%) or more of the Lots in the community are in Open Leasing Status, except as provided below for cases of undue hardship. Any Owner of a Lot in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with the rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Lot shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than five percent (5%) of the Lots in the Community are in Open Leasing Status, the Board of Directors shall notify the Owner of the Lot at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Lot or it shall automatically revert to Restricted Leasing Status. In addition, any Lot in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Lot is not subject to a lease for ninety (90) or more consecutive days.

(d) Undue Hardship. Notwithstanding the provisions of subsection (c) above, the Board of Directors may allow reasonable leasing of a Lot upon application in accordance with this Article to avoid undue hardship, including, but not limited to the following situations: (1) a Lot Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) 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; (2) the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board of Directors setting forth the circumstances necessitating the leasing and such other information as the Board of Directors may reasonably require. Leasing in the case of undue

hardship shall be permitted only upon the Board of Director's written approval of the Owner's application.

Those Owners who have complied with this Section, have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained the requisite written approval of the Board of Directors may lease their Lots for such duration as the Board of Directors reasonably determines is necessary to prevent undue hardship.

(e) Leasing Provisions. Leasing permitted by this Article shall be governed by the following provisions:

(i) General. Lots may be leased only in their entirety; no fraction or portion may be leased without the Board of Directors prior written approval. All leases shall be in writing and 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. There shall be no subleasing or assignment of leases unless approved in writing by the Board of Directors. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations 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.

(ii) Notice. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board of Directors or the management company, as applicable, with a copy of the lease and the name of the lessee and all other people occupying the Lot, the phone number of the lessee, the Owner's address other than at the Lot and other such information as the Board of Directors may reasonably require.

(iii) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. 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 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, 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 of the leased Lot in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations 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. In the event that the lessee or a person living with the lessee violates the 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 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 Lot.

The Board of Directors shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

Any violation of the Declaration, Bylaws, or rules and regulations 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.

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 violations of the Declaration, Bylaws and rules and regulations of the Association adopted thereunder, including the power and authority to terminate the lease without liability upon such violation(s) and to evict the lessee and/or the Occupant(s) as attorney-in-fact on behalf and for the benefit of the owner, in accordance with the terms hereof, it being hereby agreed that in such instance the Association shall have standing to terminate the lease and initiate dispossessory proceedings against the lessee and/or the Occupant(s). In the event the Association proceeds to evict the lessee and/or the Occupant(s) of a Lot, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot. Notwithstanding any provision in this subsection, in the event the Association evicts a lessee as provided herein, the Lot shall automatically be converted to Restricted Leasing Status even if title to said Lot has not been conveyed to any person or entity.

(B) Use of 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.

(C) Liability for Assessments. When a Lot 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 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 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 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.

(f). Mortgage Exemption. This Article shall not apply to any leasing transaction entered into by the Association or an institutional holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such first Mortgage.

3.

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

4.

This Third Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Fulton County, Georgia and shall be enforceable against any current Owner of a Lot subject to the Declaration.

5.

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

IN WITNESS WHEREOF, the Association hereby executes this Third Amendment under seal the day and year first above written.

ASSOCIATION: **THE HIGHLANDS HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: Scott E. Krause  
Name: [Signature]  
President

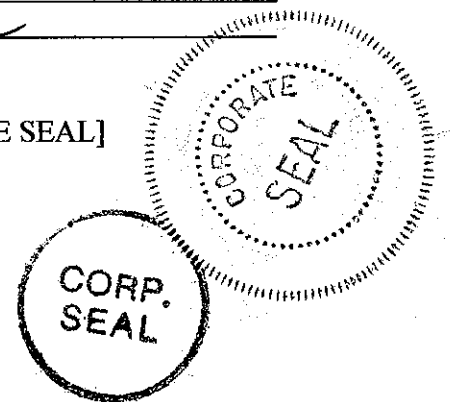
Attest: [Signature]  
Name: Perry Bynum  
Secretary

Signed, sealed and delivered in the presence of

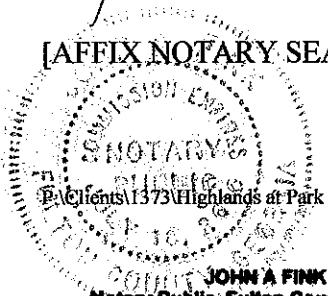
[Signature]  
Witness

[Signature]  
Notary Public

[AFFIX CORPORATE SEAL]



[AFFIX NOTARY SEAL]



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**JOHN A FINK**  
Notary Public, Fulton County, Georgia  
My Commission Expires July 18, 2010



EXHIBIT "A"

Sworn Statement of President of  
The Highlands Homeowners Association, Inc.

STATE OF GEORGIA

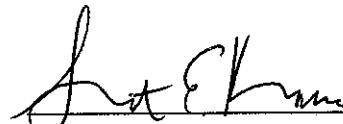
COUNTY OF FULTON

Re: The Highlands


Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

1. Deponent is the President of The Highlands Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his own personal knowledge.
3. The foregoing Third Amendment to Declaration of Protective Covenants and Easements for The Highlands, was approved by the affirmative vote or written consent of at least two-thirds (2/3) of the Lot Owners as provided in the Declaration.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 26<sup>th</sup> day of January, 2008.

  
\_\_\_\_\_  
President

Signed, sealed and delivered  
in the presence of:



Notary Public

