

Apalachee Heritage Homeowners Association, Inc.

4485 Tench Road, Suite 2511
Suwanee, GA 30024

October 22, 2013

Re: Grandfathered Lease Agreements

Dear Homeowner:

I am writing to you on behalf of the Board of Directors of Apalachee Heritage Homeowners Association, Inc. (the "Board") to advise you that the recent homeowner vote to amend the Association's Declaration of Protective Covenants, Conditions, Restrictions and Easements for Apalachee Heritage (as amended, the "Declaration") with regards to leasing restrictions has been passed with a 70% approval of the homeowners. The Declaration has been amended to impose a leasing cap in the community and a recorded copy is enclosed. Pursuant to the amendment, no more than fifteen percent (15%) of the Lots may be leased at one time. However, the amendment permits any Lot Owner who is currently leasing a Lot as of the date the amendment is recorded in the land records (the "Effective Date") to continue to lease such Lot.

If your Lot is currently leased it will be considered a "Grandfathered Lot" as defined in the amendment. Section 7.5(a)(ii) of the Declaration provides that all Owners of Grandfathered Lots are required to file a copy of the lease agreement in effect with the Board within thirty (30) days of the Effective Date, in order to claim and establish the "Grandfathered Status" of your lot.

Additionally, Section 7.5(d)(i) of the Declaration provides that the Owner of a leased Lot shall provide the Board with the name of the lessee and all other people occupying the Lot, the phone number of the Lessee and the Owner's address and telephone number other than at the Lot. As such, we have enclosed a form for you to complete that will provide the Board with the above listed information. Please complete this form and return it to Darlene Janis at Atlanta Community Services, Inc., 4485 Tench Road, Suite 2511, Suwanee, Georgia 30024, along with a copy of the fully executed lease agreement between you and your tenant **no later than November 30, 2013**. You may also scan this information and send it by email to darlene@atlantacommunityservices.com. Additionally, any time the information you provide us on this form changes, please provide the Board with updated information within ten (10) days of that change.

The recorded amendment, all related forms and documents, as well as guidelines concerning the amendment are available in PDF format on the community web site, www.apalacheeheritage.com, on the "Forms & Documents" page. Thank you in advance to your attention to this matter

Regards,

Darlene Janis, CAM
Property Manager for Apalachee Heritage Home Owners Association, Inc.

Enclosure

Apalachee Heritage Homeowners Association, Inc.

4485 Tench Road, Suite 2511
Suwanee, GA 30024

LEASE INFORMATION FORM

As an Owner of a Lot that is leased within the Apalachee Heritage Community you are required to provide the Board of Directors of Apalachee Heritage Homeowners Association, Inc. (the "Board") with a copy of the executed lease agreement between you and the Lessee as well as the information requested below. Please fill out this form and return it to the Board. The Board must be notified of any changes made to the information provided below within ten (10) days of the change.

Executed Lease Attached

Date: _____

Owner(s):

Lessee(s):

Apalachee Heritage Address:

Other Occupants:

Off-Site Address:

Lessee Contact Information:

(home) _____

(cell) _____

(e-mail) _____

Owner(s) Contact Information

Other Lessee (if applicable):

(home) _____

(home) _____

(cell) _____

(cell) _____

(e-mail) _____

(e-mail) _____

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FILED AND RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY GA

2013 OCT 11 PM 2:00

RICHARD ALEXANDER, CLERK

After recording, please return to:
Rachel E Conrad
Dorough & Dorough, LLC
Attorneys at Law
160 Clairemont Avenue, Suite 650
Decatur, Georgia 30030
(404) 687-9977

CROSS REFERENCE: Deed Book: 22947
Page: 215

**SECOND AMENDMENT TO THE DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR APALACHEE HERITAGE**

THIS SECOND AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR APALACHEE HERITAGE (hereinafter referred to as "Amendment") is made this 9th day of October, 2013 by APALACHEE HERITAGE HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation (hereinafter referred to as "Association").

WITNESSETH

WHEREAS, The Ryland Group, Inc., a Maryland corporation, as "Declarant," executed that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Apalachee Heritage, which was recorded April 26, 2001 in Deed Book 22947, Page 215, *et seq.*, Gwinnett County, Georgia records; as amended by that certain First Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements for Apalachee Heritage, recorded November 13, 2006 at Deed Book 47248, Page 549, *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, Article 11, Section 11.6 of the Declaration provides that the Declaration may be amended upon the affirmative vote or written consent of Owners of at least two-thirds (2/3) of the Lots and the consent of the Declarant; and

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WHEREAS, Owners of at least two-thirds (2/3) of the Lots agreed by affirmative vote or written consent 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 incumbent Secretary of the Association which sworn statement states unequivocally that the approval of Owners of at least two-thirds (2/3) of the Lots was lawfully obtained and that any notices required by the Declaration, Bylaws and Georgia law were given; and

WHEREAS, rights of Declarant under the Declaration were terminated pursuant to that certain Termination of Declarant's Rights Under the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Apalachee Heritage, recorded December 17, 2007, at Deed Book 48501, Page 786, *et seq.*, aforesaid records; and

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

NOW THEREFORE, the undersigned hereby adopt this Second Amendment to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Apalachee Heritage, hereby declaring that all of 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 deleting Article 7, Section 7.5 of the Declaration, entitled "Leasing," in its entirety and replacing it with a new Section 7.5 to read as follows:

7.5 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 Section.

No Owner may lease his or her Lot unless: (1) the Lot is a Grandfathered Lot, as defined herein; (2) the Owner has received a leasing permit, in writing, from the Board of Directors and has occupied the Lot as his or her primary residence for a period of (2) consecutive years immediately prior to the date of the leasing permit; or (3) the Owner has received a hardship leasing permit, in writing, from the Board of Directors, all as may be more specifically set forth below.

Any Lot which is not a Grandfathered Lot may be leased only if the Owner has applied for and received from the Board of Directors a leasing permit or a

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hardship leasing permit, as the case may be. No Owner shall be eligible to receive a leasing permit unless such Owner has occupied the Lot as his or her primary residence for two (2) consecutive years immediately prior to the date of such leasing permit.

A leasing permit or hardship leasing permit will allow an Owner to lease his or her Lot 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 Lot and shall not be transferrable between Lots or subsequent Owners.

(a) Definitions.

(i) Effective Date means the date this Amendment is recorded in the Gwinnett County, Georgia land records.

(ii) Grandfathered Lot means any Lot being leased as of the Effective Date. Grandfathered Lots may continue to be leased until 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, provided the tenant complies with all regulations pertaining to the use of the Lot set forth in the Declaration and any amendments thereto, the Bylaws and any rules and regulations of the Association. All Owners of Grandfathered Lots shall file a copy of the lease agreement in effect with the Board within thirty (30) days of the Effective Date.

(iii) 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: (A) occupancy of the Lot by member of the Owner's family; (B) occupancy of the Lot by a roommate of an Owner-Occupant; (C) occupancy of the Lot by one or more wards if the Lot is owned by their legal guardian, or (D) occupancy of the Lot by one or more beneficiaries of a trust if the Lot is owned in trust by the trustee.

(b) Leasing Permits. The Board of Directors shall approve an Owner's application for a leasing permit and shall issue the same if less than fifteen percent (15%) of the Lots in the Community are leased.

If fifteen percent (15%) or more of the Lots in the Community are leased, including Grandfathered Lots, no additional leasing permits shall be issued, except for hardship leasing permits as provided below, until that number falls below fifteen percent (15%). Owners who have been denied a leasing permit shall be placed on a waiting list to be issued such a permit. Nothing herein shall prevent an Owner who has resided in a Lot for at least two (2) consecutive years from placing himself or

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herself on such waiting list. When the number of leased Lots falls below fifteen percent (15%), the Owner at the top of the waiting list shall be issued a leasing permit and shall have ninety (90) days to lease such Lot at which time if the Lot 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 Lot to a third party (excluding sales or transfers to an Owner's spouse); (ii) the failure of an Owner to lease his or her Lot within ninety (90) consecutive days at any time after the issuance of such leasing permit; or (iii) the occupancy of the Lot by the Owner.

(c) Hardship Leasing Permits. If an Owner must lease his or her Lot 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 Lot 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 Lot was placed on the market, sell the Lot 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 Lot 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.

(d) 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 Lot, 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 Lot; (C) the phone number of the lessee; (D) the Owner's address and telephone number other than at the Lot; and (E) other such information as the Board may reasonably require.

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(ii) General. Lots may be leased only in their entirety; rooms, basements or fractions or portions of a Lot 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 Lots 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 Lot is leased or occupied in violation of this Section, 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 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 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 and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner agrees to cause all Occupants of his or her Lot 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 Lot 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 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.

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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. 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 or 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 dispossession 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 and any leasing permit granted herein shall automatically be revoked.

(B) Liability for Assessments. If a Lot Owner who is leasing his or her Lot 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, including, without limitation, the Community recreational facilities.

(e) Exemptions. This Section 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.

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2.

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

3.

In the event that the application of any provision of this Agreement to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Agreement are declared to be severable.

4.

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

5.

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

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Association has caused this Amendment to be executed under seal the day and year first above written.

ASSOCIATION:

APALACHEE HERITAGE HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation

By: Printed Name:

John Hembree
JOHN HEMBREE
President

Attest: Printed Name:

Hugh R. Crossman
HUGH R. CROSSMAN
Secretary

[AFFIX CORPORATE SEAL]

Signed, sealed and delivered in the presence of:

Witness James A. Foran
Carol A. Hadaway
Notary Public

[AFFIX]



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EXHIBIT "A"

Sworn Statement of Secretary of
Apalachee Heritage Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF GWINNETT

Re: Apalachee Heritage Homeowners Association, Inc.

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

1. Deponent is the Secretary of Apalachee Heritage Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his/her own personal knowledge.
3. The foregoing Second Amendment to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Apalachee Heritage was approved by Owners of at least two-thirds (2/3) of the Lots.
4. Any notices required by the Declaration, Bylaws and Georgia law were given.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-3-226 and Section 11.6 of the Declaration.

This the 9TH day of OCTOBER, 2013.

By:
Printed Name:

Hugh R. Crossman
HUGH R. CROSSMAN

Sworn to and Subscribed
before me this 9th day of October, 2013.

Carol A Hedaway
Notary Public

