

ORIGINAL

Deed Book 33475 Pg 460
Filed and Recorded Nov-07-2002 09:42am
2002-0325800
Real Estate Transfer Tax \$0.00
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia
A FULTON COUNTY DEED BOOK 33475 PAGE 460 FILED NOV 07 2002

Return after recording to:
Michael J. Zenner, Esq.
Weinstock & Scavo, P.C.
3405 Piedmont Road, N.E.
Suite 300
Atlanta, Georgia 30305

STATE OF GEORGIA

Cross Reference: Deed Book 21548,
Page 63

COUNTY OF FULTON

FIFTH AMENDMENT TO THE
DECLARATION OF CONDOMINIUM FOR HEMBREE CREEK CONDOMINIUM

This Fifth Amendment to the Declaration of Condominium for Hembree Creek Condominium (hereinafter, the "Amendment") is made this 4th day of November, 2002, by Hembree Creek Condominium Association, Inc., (hereinafter, the "Association") a Georgia nonprofit corporation, in accordance with the provisions of said Declaration.

WITNESSETH

WHEREAS, Hembree Creek Condominium (hereinafter sometimes called the "Condominium" or "Hembree Creek") is a residential condominium established pursuant to the Georgia Condominium Act, O.C.G.A. § 44-3-70 et seq. and in accordance with the terms of that certain Declaration of Condominium for Hembree Creek Condominium filed and recorded on September 26, 1996 at Deed Book 21548, Page 63 et seq., Fulton County, Georgia Records; as amended by that certain First Amendment to Declaration of Condominium for Hembree Creek Condominium recorded on February 3, 1997, in Deed Book 22108, Page 175, et seq., Fulton County, Georgia records; as further amended by that certain Second Amendment to Declaration of Condominium for Hembree Creek Condominium recorded on October 13, 1997, in Deed Book 23240, Page 262, et seq., Fulton County, Georgia records; as further amended by that certain Third Amendment to Declaration of Condominium for Hembree Creek Condominium recorded on June 1, 1998, in Deed Book 24467, Page 147, et seq., Fulton County, Georgia records; and as further amended by that certain Fourth Amendment to Declaration of Condominium for Hembree Creek Condominium recorded on December 14, 1998, in Deed Book 25863, Page 343, et seq.,

Fulton County, Georgia records (said Declaration, as amended, being hereinafter referred to as the "Declaration");

WHEREAS, a plat depicting Phase 1 of the Condominium property prepared by Construction Engineering Associates dated July 25, 1996 is filed in Condominium Plat Book 10, Page 118, Fulton County, Georgia records; a plat of survey for Phase 2 prepared by Construction Engineering Associates dated December 18, 1996 is filed in Condominium Plat Book 11, Page 18, Fulton County, Georgia records; a plat of survey for Phase 3 prepared by Construction Engineering Associates dated September 29, 1997 is filed in Condominium Plat Book 10, Page 147, Fulton County, Georgia records; a plat of survey for Phase 4 prepared by Construction Engineering Associates dated May 18, 1998 is filed in Condominium Plat Book 11, Page 19, Fulton County, Georgia records; and a plat of survey for Phase 5 prepared by Construction Engineering Associates dated May 19, 1998 is filed in Condominium Plat Book 11, Page 41, Fulton County, Georgia records;

WHEREAS, floor plans relating to the Condominium are filed in Condominium Floor Plan Drawer Number 2, Folder Number 324, of the Fulton County, Georgia records;

WHEREAS, pursuant to Section 23(b) of the Declaration, said Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-seven percent (67%) of the total vote thereof, provided that so long as Declarant has an unexpired option to add any portion of the Additional Property to the Condominium or has the right to appoint and remove directors and officers of the Association, any amendment to this Declaration also requires the written consent of the Declarant;

WHEREAS, the Declarant no longer has the right to add any portion of the Additional Property to the Condominium or to appoint and remove directors of the Association; and

WHEREAS, the following Amendment has been approved by the required sixty-seven percent (67%) of the members of the Association as evidenced by the Certification of Approval attached hereto as Exhibit "A" and by this reference made a part hereof;

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

1. Section 15 of the Declaration is amended by deleting said Section in its entirety and substituting therefor a new Section 15, entitled "LEASING," which shall read as follows:

15. **LEASING.**

(a) **Definition of Leasing.** "Leasing," for purposes of this Declaration, shall mean regular occupancy of a Unit by any person other than the Owner, with or without a written lease agreement, for which the Owner, any relative of the Owner or any other agent or affiliate of the Owner receives any consideration or benefit, including, but not limited to, a fee, service, or gratuity. The term "Leasing" shall expressly include, without limitation, occupancy of a Unit by any individual or

entity under a house-sitting arrangement for the purpose of maintaining occupancy of the Unit pending the sale of the Unit.

(b) General Prohibition on Leasing. The leasing of Units within Hembree Creek shall be prohibited, except as may be permitted in cases of undue hardship, as described below, and in cases where an Owner occupying a Unit desires to lease his or her Unit to one (1) other individual, provided the Owner continues to reside in and occupies the Unit throughout the duration of the Lease. Notwithstanding the foregoing limitation, the Board of Directors shall be empowered, in its sole discretion, to permit the leasing of a Unit if such leasing is necessary to avoid undue hardship upon the Unit Owner. Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board at least thirty (30) days in advance of the proposed commencement of such lease term, setting forth the circumstances necessitating the leasing, the name of the proposed lessee, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall only be permitted upon the Board's written approval of the Owner's application, and there shall be no occupancy by any lessee until such approval by the Board is granted. In the event the Board permits an Owner to lease a Unit for a stated period of time in order to prevent undue hardship, such leasing shall be limited to the period of time specified by the Board and such Owner shall immediately discontinue leasing of his or her Unit at the end of such period of time unless the Board renews or extends permission to lease.

(c) Leasing Provisions. Such leasing as is permitted by this Section of the Declaration shall be governed by the following provisions:

(i) General Provisions. Units may be leased only in their entirety; no fraction or portion may be leased; provided, however, that an Owner may lease a portion of his Unit to one (1) other individual if the Unit Owner is also to occupy the Unit on a full time basis. There shall be no subleasing of Units or assignment of leases. No transient tenants may be accommodated on a Unit. No Unit may be leased by an Owner who has a past due balance on any assessment account for any Unit in Hembree Creek, or who is in violation of the Declaration, the Bylaws or the Rules and Regulations of the Association (hereinafter, the "Governing Documents"). All leases shall be in writing. Except as otherwise permitted by the Board, all leases must be for a minimum term of one (1) year; provided, however, that this requirement shall not apply in situations where the Unit Owner leases all or a portion of his Unit to one (1) other individual and also occupies the Unit on a full time basis. The Owner must make available to the lessee copies of the Declaration, Bylaws, and Rules and Regulations.

(ii) Notice. All Owners leasing their Units must give thirty (30) days written notice to the Board of their intention to lease, along with a copy of the proposed lease, and all such leasing and leases shall be subject to approval by the

Association in order to assure compliance with the provisions of the Governing Documents of the Association. Leasing shall only be permitted upon written approval of the Owner's application, and there shall be no occupancy by any lessee until such approval is granted. All notices shall be in writing and shall contain such information as may reasonably be required by the Association. Failure to provide notice as required herein shall constitute disapproval thereof. The Board's review of the proposed lease and approval or disapproval thereof shall be based upon (1) compliance of the proposed lease and lessee with the Governing Documents of the Association, (2) submission of the lease notice provided for herein inclusive of all required information, and (3) submission of a copy of the proposed lease.

(iii) Specific Leasing Provisions. Each lease shall contain the following express terms, but if not included in the lease, these terms shall be deemed to be incorporated into such lease by the existence of this covenant. Any lessee, by occupancy of a Unit, agrees to the applicability of this covenant and to the incorporation of this language into such lessee's lease with the Unit Owner.

(A) Liability for Fines and Other Charges. Owner and lessee shall be jointly and severally liable to the Association for the payment of all fines and other charges which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration and other Governing Documents of the Association. Upon the failure of an Owner to pay any assessments, fines or other charges due to the Association, lessee shall, upon request by the Association, pay to the Association all rents and other charges payable to the Owner under the lease. All such payments made by lessee to the Association shall reduce, by the same amount, lessee's obligation to make monthly rental payments to the Owner.

(B) Compliance With Governing Documents. The lessee agrees to abide and comply with all provisions of the Declaration and other Governing Documents of the Association. The lessee shall control the conduct of all other occupants and guests of lessee at the Condominium, in order to assure compliance with the foregoing. The Owner acknowledges that he or she is responsible for the conduct of the lessee and lessee's guests, invitees and licensees. The Owner and lessee shall be jointly and severally liable for all losses and damages caused by lessee and lessee's guests, invitees and licensees and for any fines imposed by the Association as a result of the actions or inactions of lessee and lessee's guests, invitees and licensees. Unpaid fines constitute a lien against the Unit.

(C) Violations. Any violation by the lessee of the Governing Documents 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 Governing Documents, including the power and authority to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs associated with the eviction shall be specially assessed against the Owner

and the Unit, such being deemed hereby as an expense which benefits the leased Unit and the Owner thereof.

(D) Association as Third Party Beneficiary. The Association is a third party beneficiary of the terms of each lease between a Unit Owner and a lessee.

(d) Additional Leasing Regulations. The Board of Directors shall have the authority to further regulate the sale and leasing of Units through the adoption of Rules and Regulations which shall be binding and enforceable against Owners and lessees as if fully set forth herein. Such Rules and Regulations may include, without limitation (i) a requirement that any Owner who leases his or her Unit pay to the Association a security deposit to secure payment and performance of the obligations of the Owner and the lessee under the Governing Documents and to cover any damages caused to the Area of Common Responsibility by such Owner or lessee or their respective guests, invitees or licensees; and (ii) a requirement that any Owner and/or lessee acknowledge in writing receipt of the Governing Documents of the Association and agree to comply with the provisions of such Governing Documents.

(e) Applicability. Those Unit Owners who obtain title by written instrument recorded prior to the recording date of this Amendment and who, on the recording date of this Amendment were leasing their Units, as defined herein, may continue to lease their Units in accordance with the terms of Section 15 of the Declaration as it existed prior to the recording date of this Amendment; provided, however, that upon the termination, extension, renewal or modification of the current lease, such Unit Owner shall be subject to the provisions of Section 15, as modified by this Amendment, with the exception of Section 15(b). However, upon any sale, transfer or other conveyance of the Unit, any purchaser, transferee or any other grantee thereof shall be subject to the provisions of Section 15, as modified by this Amendment, in its entirety. All Owners of Units who are not leasing their Units on the recording date of this Amendment are subject to the provisions of Section 15, as modified by this Amendment, in its entirety. Notwithstanding anything contained in this Amendment to the contrary, only those Unit Owners who were leasing their Unit as of the date of recording of this Amendment and who, within sixty (60) days of the date of such recording, provide to the Board a copy of such lease, shall be considered to be Unit Owners who are leasing their Units at Hembree Creek as of the date on which this Amendment is recorded in the Fulton County, Georgia records. This Section 15 shall not apply to any leasing transaction entered into by the holder of any first mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

2. Except as otherwise defined herein, capitalized terms, as used in this Amendment, shall have the meanings ascribed to such terms in the Declaration.

3. This Amendment shall be effective upon recordation in the Fulton County, Georgia records.

4. Except as amended hereby, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned officers of Hembree Creek Condominium Association, Inc. hereby execute this Amendment on the date and year first above written.

**HEMBREE CREEK CONDOMINIUM
ASSOCIATION, INC.,**

a Georgia nonprofit corporation

By: Richard C. Richard
Print Name: RICHARD C. RICHARD
Print Title: PRESIDENT

Attest: Victoria Gooden
Print Name: Victoria Gooden
Print Title: Secretary

[CORPORATE SEAL]

Signed, sealed and delivered in
in the presence of:

Julie Harrison
Unofficial Witness

Julie Harrison
Notary Public

My Commission Expires:

COMM. EXPIRES
SEPT 23, 2006

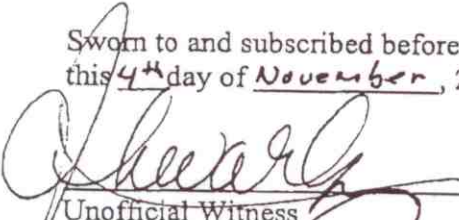
[SEAL]

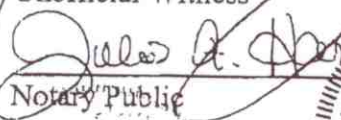
EXHIBIT "A"

Certification of Approval

The undersigned officers of Hembree Creek Condominium Association, Inc. hereby swear under oath that the above Amendment to the Declaration was duly adopted by the agreement of the required majority of the members of the Association and that any notices required under the Governing Documents of the Association were properly given. As of the date hereof, there are no Units in the Condominium that are subject to Mortgages held by Eligible Mortgage Holders, as said term is used and defined in the Declaration.

Sworn to and subscribed before me
this 4th day of November, 2002.


Unofficial Witness


Notary Public

My Commission Expires

[NOTARY SEAL]



By: 

Print Name: RICHARD C. RICHARD

Print Title: President

Attest: 

Print Name: VICTORIA GOODMAN

Print Title: Secretary

[CORPORATE SEAL]

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Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia