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After Recording Return To:  
NowackHoward, LLC  
One Alliance Center, Suite 1650  
3500 Lenox Road NE  
Atlanta, GA 30326  
Attention: Melinda K. Banks

Cross Reference:  
Deed Book 13344, Page 5936

STATE OF GEORGIA

COUNTY OF COBB

**AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR DEERFIELD CREEK SUBDIVISION AND SUBMISSION TO THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT ("POAA")**

This Amendment to the Declaration of Protective Covenants for Deerfield Creek Subdivision (hereafter referred to as "Amendment") is made on the date set below.

W I T N E S S E T H:

**WHEREAS**, Grove Park Development, Inc., a Georgia corporation (hereafter referred to as "Declarant"), recorded that certain Declaration of Protective Covenants for Deerfield Creek Subdivision on March 20, 2001, in Deed Book 13344, Page 5936 of the Cobb County, Georgia deed records (hereafter referred to as "Declaration"); and

**WHEREAS**, Article XII, Section 4 of the Declaration provides that the Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots and the consent of the Declarant so long as the Declarant owns any property in the Community or has the right unilaterally to annex additional property to the Community; and

**WHEREAS**, as of the date of this Amendment, the Declarant no longer owns any property which is subject to the Declaration; and

**WHEREAS**, this Amendment has been approved by the Owners of at least two-thirds (2/3) of the Lots; and

**WHEREAS**, this amendment does not alter, modify, change or rescind any right, title, interest or privilege granted or accorded to the holder of any deed to secure debt encumbering

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**THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.**

**CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.**

any Lot within Deerfield Creek, as defined in the Declaration. However, if a court of competent jurisdiction determines that this Amendment does so without such mortgage holder's consent, then this Amendment shall not be binding on the mortgage holder so involved unless it consents to this Amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Amendment shall control with respect to the affected mortgage holder;

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

1.

**Article II, Section 1 of the Declaration is hereby amended by adding the following language to the end thereof:**

All of the real property in the Deerfield Creek subdivision shall be owned in fee simple and subject to the provisions of this Declaration and the Georgia Property Owners' Association Act, O.C.G.A., Section 44-3-220, *et seq.* The Community subjected to this Declaration constitutes a residential property owners' development, which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie, 1982), as such act may be amended from time to time.

2.

**Exhibit "B" of the Declaration is hereby amended by adding a new Section (q) thereto as follows:**

**(q) "Act":** means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

3.

**Article IV of the Declaration is hereby amended by adding the following sentences before Section 1:**

**Purpose of Assessment.** The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be levied and used for any purpose the Board of Directors determines will benefit the Owners or the community.

4.

**Article IV, Section 2 of the Declaration is hereby amended by deleting that Section in its entirety and substituting therefor the following new Section 2:**

**Section 2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments and other charges levied pursuant to this

Declaration and the By-Laws, including annual assessments or charges; special assessments; specific assessments, which shall include fines; and a one-time initiation fee in an amount not to exceed the annual assessment in effect for the year during which a closing occurs, to be collected at the closing of any Lot. Except as provided below, or elsewhere in the Act, the amount of all actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate (“Common Expenses”) shall be assessed against all the Lots equally.

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys’ fees actually incurred (including post-judgment attorneys’ fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the person or entity who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessment which accrued prior to such acquisition of title. The Association, in the Board’s discretion, may record a notice of such lien in the Cobb County, Georgia, land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority and may be foreclosed upon by the Association as provided in the Act.

No Owner may exempt him or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever. Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the annual assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any installment shall be considered delinquent on the fifteenth (15) day following the due date unless otherwise specified by Board resolution.

5.

**Article IV, Section 6 of the Declaration is hereby amended by deleting that Section in its entirety and substituting therefor the following new Section 6:**

**Section 6. Delinquent Assessments.** All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner’s debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 15 days of the due date, or such later date as may be provided by the Board of Directors:

(a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;

(b) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;

(c) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(d) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Property are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

6.

**Article IV of the Declaration is hereby amended by adding the following new Sections to the end thereof:**

**Section 8. Statement of Account.** Any Owner, Mortgagee, or a person or entity having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall

respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

**Section 9. Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

7.

**Article XII, Section 1 of the Declaration is hereby amended by adding the following to the end thereof:**

Section 1. Enforcement.

(a) Compliance with Association Legal Documents.

All Owners and all Owner's family members, guests, tenants, occupants of the Owner's Lot, invitees and licensees shall comply with the Declaration, By-Laws, the rules and regulations and the use restrictions as may be amended ("Association Legal Documents"). The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Association Legal Documents directly against all violators. However, if an Owner's family member, guest, tenant, occupant, invitee and/or licensee violates the Association Legal Documents, the Association, in its sole discretion, is permitted to enforce the terms of the Association Legal Documents against: (1) only the Owner; (2) only the violating family member, guest, occupant, tenant, invitee and/or licensee; or (3) both the Owners and the violating family member, guest, occupant, tenant, invitee and/or licensee. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, occupants, guests, tenants, invitees and/or licensees of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a person violating the Association Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the violator before the Association intervenes and commences enforcement action against such violator.

(b) Types of Enforcement Actions.

In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately

or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:

- (1) Suspend all violators' rights to use the Common Property;
- (2) Suspend the voting rights of a violating Owner;
- (3) Impose reasonable fines against all violators, which shall constitute a lien on the violating Owner's Lot;
- (4) Use self-help to remedy the violation;
- (5) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the violator to cease and/or correct the violation; and
- (6) Record in the Cobb County land records a notice of violation identifying any uncured violation of the Association Legal Documents regarding the Lot.

(c) Suspension and Fining Procedure.

Except as provided below, before imposing fines or suspending right to use the Common Property, the Association shall give a written violation notice to the violator as provided below.

(1) Violation Notice.

The written violation notice to the violator shall:

- (a) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (b) Advise the violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration suspension(s) or the fine(s).

Notwithstanding the violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(2) Violation Hearing.

If the violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a violator fails to timely request a violation hearing, such violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a violator timely requests a violation hearing, the violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may

establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(3) No Violation Notice and Hearing Required.

No violation notice or violation hearing shall be required to:

(a) impose late charges and interest on delinquent assessments;

(b) suspend a violating Owner's voting rights if the violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Owner of the subject Lot's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;

(c) suspend a violator's right to use the Common Property if the violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violator's right to use the Common Property shall be automatic (which shall allow the Association to tow and/or boot a violator's vehicle located on the Common Property without complying with the Suspension and Fining Procedures described above);

(d) engage in self-help in an emergency;

(e) impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the violator; or

(f) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the violator.

(d) Self-Help.

In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Association Legal Documents by self-help without the necessity for compliance with the Suspension and Fining Procedures described above.

By way of example and not limitation, the Association or its duly authorized agent shall have the authority to enter a Lot or any portion of the Common Property to abate or remove any structure, thing or condition that violates the Association Legal Documents. Unless an emergency exists, before exercising self-help on a Lot, the Association shall give the violator at least ten (10) days prior written notice. Such notice shall request that the violator remove and abate the violation and restore the Lot to substantially the same condition that existed prior to the structure, thing or condition being placed on the Lot and causing the violation. Such removal,

abatement and restoration shall be accomplished at the violator's sole cost and expense. Notwithstanding any other provision in this Declaration to the contrary, if the same violation occurs again on the same Lot, the Association may exercise self-help without any further notice to the violator.

(e) Injunctions and Other Suits at Law or in Equity.

All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a violator to cease and desist and/or correct any violation.

(f) Costs and Attorneys' Fees for Enforcement Actions.

In any action taken by the Association to enforce the Association Legal Documents, the Association shall be entitled to recover from the violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a specific assessment and lien against the violating Owner's Lot.

(g) Failure to Enforce.

The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each violator. The failure of the Board to enforce any provision of the Association Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

- (1) the Association's position is not strong enough to justify taking enforcement action;
- (2) a particular violation is not of such a material nature as to be objectionable to a reasonable person;
- (3) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;
- (4) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or
- (5) the Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest or Occupant.

8.

**Article XII, Section 2 of the Declaration is hereby stricken and intentionally left blank.**



9.

**Article XII, Sections 3 and 4 of the Declaration are hereby deleted in their entirety and the following are substituted therefor:**

**Section 3. Duration.** This Declaration and the covenants, restrictions, and easements contained herein shall run with and bind the Community perpetually to the extent and as provided in the Act.

**Section 4. Amendment.** Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of Owners of Lots to which two-thirds (2/3) of the votes in the Association appertain. Notice of a meeting, if any, at which a proposed amendment will be considered shall state that an amendment will be considered and describe the subject matter of the proposed amendment. No amendment shall be effective until certified by the President, any Vice President, or the Secretary of the Association and filed in the Cobb County, Georgia, land records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to comply with the Act.

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Cobb County, Georgia, land records, then such amendment or document shall be presumed to be validly adopted.

9.

**Except as stated herein, the Declaration shall remain unchanged.**

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the undersigned officers of Deerfield Creek HOA, Inc. hereby certify that this Amendment was duly adopted by the required majority of the Association, with any required notices duly given.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

DEERFIELD CREEK HOA, INC.

\_\_\_\_\_  
Signature of President

Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2022.

Witness: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Signature of Secretary

Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2022.

Witness: \_\_\_\_\_

\_\_\_\_\_  
Notary Public