

[SPACE ABOVE RESERVED FOR RECORDING DATA]

Return to: Gaddis & Lanier, LLC
3330 Cumberland Blvd.
Suite 500
Atlanta, Georgia 30339
Attn: Kimberly Gaddis

STATE OF GEORGIA

CROSS REFERENCE: Deed Book 43580
Page 269

COUNTY OF FULTON

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
& BYLAWS OF ASBURY PARK**

WHEREAS, ASBURY PARK, LLC, a Georgia Limited Liability Company, ("Declarant") recorded a Declaration of Covenants, Conditions & Restrictions for Asbury Park on October 3, 2006, in Deed Book 43580, Page 269, et. seq., in the Fulton County, Georgia, land records (hereafter the "Declaration"); and

WHEREAS, Paragraph 19(b) of the Declaration provides that the Declaration may be amended by affirmative vote, written consent, or any combination of affirmative vote of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof; provided, however, such amendment by the Owners shall not be effective unless also consented to by the Declarant if the Declarant is the owner of any real property then subject to this Declaration; and

WHEREAS, the Declarant no longer owns any real property subject to this Declaration, and as such, the consent of the Declarant is not required for this Amendment; and

WHEREAS, members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof have voted in favor of and have approved this amendment to the Declaration after proper notice; and

WHEREAS, Article VI, Section 8 of the Bylaws provides that they Bylaws may be amended upon the affirmative vote, written consent, or any combination of affirmative vote of the members of the Association holding a majority of the total eligible vote thereof, plus the Declarant so long as the Declarant is the owner of any real property then subject to the Declaration for sale or development; and

WHEREAS, members of the Association holding a majority of the total eligible vote thereof have voted in favor of and have approved this amendment to the Bylaws after proper notice; and

WHEREAS, this amendment does not materially or adversely affect the security title and interest to any mortgagee.

NOW, THEREFORE, the Declaration is amended as follows:

1.

Paragraph 8 of the Declaration is hereby amended by adding the following new Sections 8.9 and 8.10 thereto as follows:

8.9 Capital Contribution Assessment. In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Lot, other than to the spouse or heir of the Owner, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment (“Capital Contribution Assessment”). The Capital Contribution Assessment shall be an amount equal to the current annual assessment, or such other amount as may be authorized by the Board of Directors from time to time. The Capital Contribution Assessment shall not constitute an advance payment of the annual assessment. The Capital Contribution Assessment shall constitute a specific special assessment against such Lot, a continuing lien against such Lot, and a personal obligation of the Owner of such Lot.

2.

8.10 Foreclosure Administration Fee. It is recognized that foreclosures of mortgages on Lots create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Fulton County, Georgia, land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations, and updating Association records multiple times to deal with just a single Lot. Pursuant to this Declaration and the Georgia Property Owners’ Association Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners or those Owners’ Lots. In accordance with these provisions, and in addition to annual assessments, special assessments and other charges provided for in this Declaration, any Person who acquires a Lot at a foreclosure sale of the mortgage of such Lot, or by deed in lieu of foreclosure, will be required to pay the Association a Foreclosure Administration Fee in the amount of \$2,500.00 at the time that the foreclosure deed or deed in lieu of foreclosure is recorded in the Fulton County, Georgia, land records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

3.

Paragraph 12 of the Declaration is hereby stricken in its entirety and replaced with the following:

12. Leasing.

In order to preserve the character of the Asbury Park community as a predominantly owner-occupied community, and to comply with the eligibility requirements for financing in the secondary mortgage market, ***leasing of Lots shall be prohibited except as provided herein.***

(a) Definitions.

- (i) "Leasing," for the purposes of the Declaration, is defined as the regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include exclusive occupancy by the spouse, child, or parent of an Owner, and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence.
- (ii) "Corporate Owners." If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or agent of such other legal entity shall be deemed an Owner of such Lot for purposes of this Paragraph 12. Such person's designation as an Owner of such Lot pursuant to this Paragraph 12 shall terminate automatically upon the termination of such person's relationship with the entity holding record title of the Lot.
- (iii) "Grandfathered Owner." An Owner who is currently leasing their Lot at the time of the Amendment Effective Date shall be considered a Grandfathered Owner, and may continue leasing their Lot until one of the following occurs:
 - (A) The current term of the lease expires;
 - (B) The current tenant(s) vacate the property, whether or not the lease has expired;
 - (C) The Grandfathered Owner transfers the property to any Person other than their spouse or heir, or if Owner is a Corporate Owner, the transfer of the Lot to any other corporation, partnership, company, or legal entity to which the Corporate owner is NOT a principal; or
 - (D) The Grandfathered Owner is in violation of the Declaration, Bylaws, or rules and regulations of the Association.

(b) Liability for Assessments and Compliance with Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot in the Community shall be deemed to contain the following provisions, whether or not expressly stated therein, and 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 on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

- (i) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee, or which become due as a

consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, Bylaws, or the rules and regulations ("Governing Documents") adopted pursuant thereto.

When a Lot Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and upon demand by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease, and any other period of occupancy by lessee; provided, 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'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's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorneys' fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the owner of the premises during the term of the agreement and any other period of occupancy by lessee.

None of the provisions herein shall be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(ii) Compliance with Governing Documents. Lessee and all occupants and guests shall abide by, and comply with, all provisions of the Governing Documents of the Association. Lessee acknowledges that violation of the Governing Documents shall constitute a default under this lease. Owner shall cause all occupants of his or her Lot to comply with the Governing Documents, and is responsible for all violations and losses caused by such occupants. If such occupant or guest violates the Governing Documents, the Association may choose to fine the offending party, or may cause the Owner to terminate the lease without liability and evict the occupants in accordance with Georgia law. If a fine is imposed, such fine may be assessed against the occupant or guest, and/or the Owner. If a 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 Board of lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. The Owner hereby delegates and assigns to Asbury Park Homeowners Association, Inc., acting through the Board, the power and authority of enforcement against the lessee for violations of the Governing Documents, including the power and authority to evict the lessee on behalf of, and for benefit

of, the Owner. In the event the Association proceeds with eviction of the lessee or occupant, any costs, including attorneys' fees and court costs associated with the eviction shall be specially assessed against the Lot and the Owner thereof. Any lessee charged with a violation of the Governing Documents is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

- (c) 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, including, but not limited to, the use of any and all recreational facilities and other amenities.

4.

Article III, Part A, Section 8 of the Bylaws is hereby amended by deleting the first sentence thereof and replacing it with the following: "Directors may be compensated for services up to an amount equal to the annual assessment in any fiscal year per director."

IN WITNESS WHEREOF, the undersigned officers of the Asbury Park Homeowners Association, Inc. hereby certify that the above Amendment to the Declaration was duly adopted by the required percentage of votes in the community with all required notices duly given.

This ____ day of _____, 20____.

ASBURY PARK HOMEOWNERS ASSOCIATION, INC.

By: _____ [SEAL]
President

Attest: _____ [SEAL]
Secretary

[CORPORATE SEAL]

Sworn to and subscribed to before me
this ____ day of _____, 2017.

Witness

Notary Public [SEAL]