

UPON RECORDING RETURN TO:

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CROSS REFERENCE: Deed Book: 4944

Page: 395

Deed Book: 19861

Page: 345

**FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF
CONDOMINIUM FOR EMORY CHASE CONDOMINIUM**

THIS FIRST AMENDMENT (hereinafter referred to as "First Amendment") is made this 17th day of April, 2007 by **EMORY CHASE CONDOMINIUM ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as "Association").

W I T N E S S E T H

WHEREAS, D. R. Properties (hereinafter referred to as "Declarant") executed that certain Declaration of Condominium of Emory Chase Condominium, which was recorded on March 27, 1984 in Deed Book 4944, Page 395, *et seq.*, DeKalb County, Georgia records (hereinafter the "Original Declaration"); and

WHEREAS, the Association is a non-profit corporation organized under the Georgia Nonprofit Code to be the Association named in the Original Declaration to have the power and authority set forth therein; and

WHEREAS, the Original Declaration was amended and restated in its entirety by the Association and the Owners in that certain Amended and Restated Declaration of Condominium for Emory Chase Condominium, recorded on April 17, 2007, in Deed Book 19861, Page 345, *et seq.*, aforesaid records (hereinafter referred to as the "Amended and Restated Declaration"); and

WHEREAS, the Association and the Owners desire to amend the Amended and Restated Declaration as set forth herein; and

WHEREAS, pursuant to Article 19, of the Amended and Restated Declaration, the Amended and Restated Declaration may be amended by the agreement of Owners of Units to which two-thirds (2/3) of the votes of the Association appertain; 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 unequivocally that the agreement of Owners of Units to which two-thirds (2/3) of the votes of the Association appertain was lawfully obtained;

NOW THEREFORE, the undersigned hereby adopt this First Amendment to the Amended and Restated Declaration of Condominium for Emory Chase Condominium, hereby declaring that all the property now or hereafter subject to the Amended and Restated Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Amended and Restated Declaration, as follows:

1.

The Amended and Restated Declaration is hereby amended by deleting Article 14 of the Amended and Restated Declaration, in its entirety and replacing it with a new Article 14 entitled, "Leasing of Units." to read as follows:

Article 14
Leasing of Units

14.1 Purposes. In order to protect the equity of the individual Unit Owners, to carry out the purpose for which the Condominium was formed by preserving the character of the Condominium as a homogenous residential community of predominantly owner-occupied homes and by preventing the Condominium from assuming the character of a renter-occupied apartment complex, 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 Units shall be governed by the restrictions imposed by this Article. The Board of Directors shall have authority to make and enforce reasonable rules and regulations in order to enforce this Article, including the right to impose fines constituting a lien upon the Unit sold or leased pursuant to Sections 44-3-76 and 44-3-109 of the Act. Except as provided herein, the leasing of Units shall be prohibited.

14.2 Definitions.

(a) Leasing means regular, exclusive occupancy of a Unit 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 Unit is owned by

their legal guardian, or (iv) occupancy by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee.

(b) Applicability - Grandfathered Unit. Every Unit in the Condominium as of February 1, 2008 (hereinafter the "Effective Date") shall be considered a "Grandfathered Unit", and Owners of a Grandfathered Unit may lease their Units, provided the tenant complies with all regulations pertaining to the use of the Condominium. All Owners of Grandfathered Units shall file a copy of the lease agreement in effect as of the Effective Date, if any, with the Board. All Owners of Grandfathered Units may lease their Unit at any time until such time as title to said Unit 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 in this subparagraph, the Unit shall automatically be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee.

(c) Leased Grandfathered Unit. Any Grandfathered Unit leased to a Person other than the Owner as provided herein shall be a "Leased Grandfathered Unit."

(d) Open Leasing Status. Any Unit that is designated as being in "Open Leasing Status" shall authorize a Unit Owner to lease said Unit at any time. For purposes of this subparagraph only, a lease shall continue, regardless of extensions or renewals, for so long as the existing lessee remains as lessee. The lease shall terminate at such time as the existing lessee ceases to be lessee. Upon the transfer or conveyance of title of a Unit in Open Leasing Status to any person or entity, said Unit shall automatically be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee. In addition, Open Leasing Status may be conferred upon a Unit as provided in Section 14.3 below.

(e) Restricted Leasing Status. Any Unit that is designated as being in "Restricted Leasing Status" shall prohibit a Unit Owner from leasing his or her Unit except as may be provided below. All Units that are not Grandfathered Units shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in Section 14.3 below.

14.3 General. No Owner of a Unit in Restricted Leasing Status may lease his or her Unit if the total number of Units in Open Leasing Status plus the number of Leased Grandfathered Units is equal to or exceeds twenty-five (25%) percent of the Units in the Condominium, except as provided in Section 14.4 below for cases of undue hardship. Any Owner of a Unit in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Unit shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times that the total number of Units in Open Leasing Status plus the total number of Leased Grandfathered Units is less than twenty-five (25%) percent, the Board shall notify the Owner of the Unit 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 Unit or it shall automatically revert to Restricted Leasing Status. Any Unit in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Unit is not subject to an approved lease for ninety (90) or more consecutive days.

14.4 Undue Hardship. Notwithstanding the provisions of Section 14.3 above, the Board of Directors shall be empowered to allow reasonable leasing of a Unit upon application in accordance with this Article to avoid undue hardship, including, but not limited to the following situations: (1) a Unit Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) the Owner dies and the Unit 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 Unit, in which case the Unit Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this Section, have demonstrated that the inability to lease their Unit would result in undue hardship, and have obtained the requisite written approval of the Board, may lease their Units for such duration as the Board reasonably determines is necessary to prevent undue hardship.

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 setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

The Board 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 Article shall be voidable at the option of the Board of Directors.

14.5 Leasing Provisions. Such leasing as is permitted by this Article shall be governed by the following provisions:

(a) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form which is deemed acceptable. There shall be no subleasing or assignment of leases unless approved in writing by the Board. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit, the phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(b) Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

14.6 Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall 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 Unit in order to ensure such compliance. The Unit Owner shall cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or any Occupant, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Unit Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Declaration and Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Unit 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 Unit. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

14.7 Lease Termination. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Unit Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Unit 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 Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including (upon written notice being sent by the Association to the Unit Owner of the Association's intent to proceed with eviction) the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Unit Owner, in accordance with the terms hereof. If the Association chooses, in its discretion, to evict the lessee, any costs, including attorney's fees and courts costs, associated with the eviction shall be an assessment and lien against the Unit.

14.8 Use of Common Elements. The Unit Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Unit Owner has to use the Condominium recreational facilities and other amenities.

14.9 Liability for Assessments. When a Unit Owner who is leasing his or her Unit 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 Unit Owner hereby consents to the assignment of any rent due from the lessee during the period of delinquency, and upon request by the Board (in its discretion), 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 the 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's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payment 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 amounts authorized under the Declaration as if lessee were a Unit Owner. This provision shall not be construed to release the Unit Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible. In addition to any other remedies, the Board may fine a Unit Owner and/or Occupant for a violation of the Declaration, Bylaws, or rules and regulations.

14.10 Applicability of this Section. All Grandfathered Units shall not be subject to the terms of this Article; existing leases at the time of the Effective Date may continue in accordance with the terms of the Declaration. However, except as provided in Section 14.4, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Article. Any Owner of a Grandfathered Unit shall place on file with the Board of Directors a copy of the lease agreement in effect no later than thirty (30) days after the Effective Date of this Amendment. This Section shall not apply to any leasing transaction entered into by the Association or 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.

14.11 Mortgagee Exemption. The provisions of this Article shall not apply to any Mortgagee in possession of a Unit through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage on a Unit.

2.

Unless otherwise defined herein, the words used in this First Amendment to the Amended and Restate Declaration shall have the same meaning as set forth in the Amended and Restated Declaration.

3.

This First Amendment to the Amended and Restated Declaration shall be effective only upon being recorded in the records of the Clerk of Superior Court of DeKalb County, Georgia.

4.

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

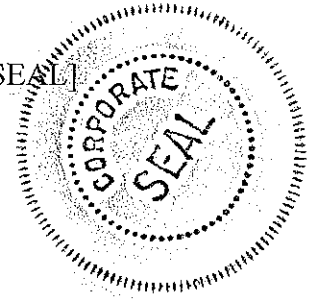
IN WITNESS WHEREOF, the Association has caused this First Amendment to the Amended and Restated Declaration to be executed under seal the day and year first above written.

ASSOCIATION: **EMORY CHASE CONDOMINIUM ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: Matthew C. Rosenbergs
Name: Matthew C. Rosenbergs
Its: President

Attest: Virginia Mischen-Hays
Name: Virginia Mischen-Hays
Title: Secretary

[AFFIX CORPORATE SEAL]



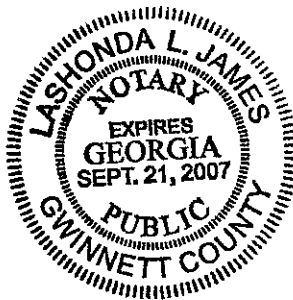
Signed, sealed and delivered in the presence of

[Signature]

Witness

Lashonda L. James
Notary Public

[AFFIX NOTARY SEAL]



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Deed Book 19861 Pg 404

EXHIBIT "A"

Sworn Statement Of President Of
Emory Chase Condominium Association, Inc.

STATE OF GEORGIA

COUNTY OF DEKALB

Re: Emory Chase Condominium

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

1. Deponent is the President of Emory Chase Condominium Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein of his own personal knowledge.
3. The foregoing First Amendment to the Amended and Restated Declaration of Condominium for Emory Chase Condominium, was agreed to by the Owners of Units to which two-thirds (2/3) of the votes in the Association appertain as provided by law and the Original Declaration.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 17th day of April, 2007.

By:
Name:
Title:

Matthew C. Rosenbly
Matthew C. Rosenbly
President

Signed, sealed and delivered
in the presence of

Lashonda L. James
Notary Public

[AFFIX NOTARY SEAL]

