

[SPACE ABOVE RESERVED FOR RECORDING DATA]

Return to: Rob Stein  
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STATE OF GEORGIA  
COUNTY OF DEKALB

Cross Reference: Deed Book 11443  
Page 605

**AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR ASHWORTH**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Ashworth was recorded on June 29, 2000, in Deed Book 11443, Page 605, et seq., Dekalb County, Georgia Records ("Declaration"); and

WHEREAS, the Original Declaration has been previously amended by amendments recorded in the Dekalb County, Georgia records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
October 5, 2000	Deed Book 11626, Page 600
January 23, 2002	Deed Book 12888, Page 723
April 12, 2002	Deed Book 13159, Page 212; and

WHEREAS, Article 15, Section 15.2(b) of the Declaration provides for amendment to the Declaration by an affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of Class "A" votes held by Members other than the Declarant, and written consent of the Declarant for any amendment during the Development Period, as said terms are defined in the Declaration; and

WHEREAS, Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of Class "A" votes held by Members other than the Declarant, desire to amend the Declaration and Bylaws and have consented hereto; and

WHEREAS, the Declarant has consented hereto for these amendments made during the Development Period; and

WHEREAS, these amendments do not alter, modify, change or rescind any right, title, interest or privilege of any mortgage holder or Builder on a Homesite at Ashworth, as defined in the Declaration; provided, however, in the event a court of competent jurisdiction determines that these amendments do so without such mortgage holder's or Builder's consent, then these amendments shall not be binding on the mortgage holder or Builder so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Declaration in effect prior to these amendments shall control with respect to the affected mortgage holder or Builder;

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

1.

Article 5, Section 5.3 of the Declaration is hereby amended by deleting the sentence which states "In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, reasonably incurred in such action" and substituting the following therefor:

In any such enforcement action, the Association may assess the violating Owner and Homesite all costs thereof, including reasonable attorney's fees actually incurred, regardless of whether or not suit at law or in equity has been filed in such enforcement. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner.

2.

Article 9, Section 9.1 of the Declaration is hereby amended by deleting the first three paragraphs of such section and substituting the following in its place:

9.1. Creation of the Lien and Personal Obligation for Assessments. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Association common expenses provide for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Homesites, as may be authorized by the Board. Each Owner of any Homesite, by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) General Assessments or charges as described in Section 9.2; (ii) Neighborhood Assessments for Neighborhood expenses as described in Section 9.3; (iii) Special Assessments as described in Section 9.4; and (iv) Specific Assessments against any particular Homesite which are as described in Section 9.5, established pursuant hereto or the Act.

All such assessments, together with charges, interests, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge to the Homesite and shall be a continuing lien upon the Homesite against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Homesite at the time when the assessment fell due. 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. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Dekalb County, Georgia records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

[The last three paragraphs from the current Section 9.1 of the Declaration are repeated for the convenience of the reader:

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 Homesite and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Neighborhood 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 Homesite, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15<sup>th</sup>) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Property, abandonment of his or her Homesite, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.]

3.

**Article 9, Section 9.5 of the Declaration is hereby amended by inserting the following after Section 9.5(b):**

(c) Any common expenses benefiting less than all of the Homesites shall be specially assessed equitably among all of the Homesites so benefited, as determined by the Board;

(d) Any common expenses occasioned by the Conduct of less than all of those entitled to occupy all of the Homesites or by the licensees or invitees of any such Homesite or Homesites shall be specially assessed against the Homesite or Homesites, the conduct of any occupant, licensee, or invitee of which occasioned any such common expenses;

(e) Any common expense significantly disproportionately benefiting all of the Homesites shall be assessed equitably among all of the Homesites in the development as determined by the Board;

4.

**Article 9, Section 9.6 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:**

9.6. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If any assessment or other charge, or any part thereof, is not paid in full within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent 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 and interest at the rate of ten (10%) percent per annum or such higher rate as may be permitted by the Act shall accrue from the due date. If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(b) If assessments, fines or other charges, or any part thereof due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then, after ten (10) days written notice, the Board may accelerate and declare immediately due any installments of the annual assessment and any special assessment.

(c) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law and suspend the Owner's and Occupant's right to use the Common Property, provided, however, the Board may not deny ingress or egress to or from the Homesite.

(d) The Association may bid for the Homesite at the foreclosure sale and acquire, hold, lease, mortgage, and convey Homesite.

5.

**Article 11, Section 11.4 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:**

Section 11.4. Leasing. In order to protect the equity of the individual Homesite Owners within the Community, to carry out the purpose for which the Community was formed by preserving the character of the Community as a homogeneous residential Community of predominantly owner-occupied homes, to prevent the Community from assuming the character of a renter-occupied complex, and to comply with any eligibility criteria for mortgages, including mortgages on the secondary mortgage market, insofar as such criteria provide that the Community be substantially owner-occupied, leasing of Homesites shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Homesites shall be prohibited.

(a) Definition. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Homesite 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 Homesite as such Owner's primary residence. 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 or director of such corporation, manager of such limited liability company, partner of such partnership, beneficiary of such trust, or principal or owner of such other legal entity shall be deemed an Owner of such Homesite for purposes of Section 11.4. The corporation, limited liability company, partnership, trust, or other legal entity cannot change those persons designated as occupants of the Homesite more than once every twelve months. Such person's designation as an Owner of such Homesite pursuant to Section 11.4 shall terminate automatically upon the termination of such person's relationship with the entity holding record title of the Homesite.

(b) General. Owners desiring to lease their Homesites may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Homesite provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All permits shall be valid only as to a specific Homesite Owner and Homesite and shall not be transferable between either Homesites or Homesite Owners. Further, each Owner shall be limited to one permit regardless of the number of Homesites each such Owner shall own.

(c) Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than eight (8) Homesites in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Homesite to a third party (excluding sales or transfers to an Owner's spouse, a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of a Homesite Owner to lease his or her Homesite within three months of the Leasing Permit having been issued; (3) the failure of a Homesite Owner to have his or her Homesite leased for any consecutive six month period thereafter; or (4) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

If current Leasing Permits have been issued for eight (8) Homesites in the Community, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits, as set forth below) until the

number of outstanding current Leasing Permits falls below eight (8) Homesites in the Community. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued a Leasing Permit if they so desire when the number of current outstanding Leasing Permits issued falls to less than 8 Homesites in the Community. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(d) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion. In making such a determination, the Board may take any factor into account, including: (1) the nature, degree, and likely duration of the hardship, (2) the number of Hardship Leasing Permits which have been issued to other Owners, (3) the Owner's ability to cure the hardship, and (4) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) a Homesite Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six months from the date that the Homesite was placed on the market, sell the Homesite except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Homesite 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 Homesite. Hardship Leasing Permits shall be valid for a term not to exceed one year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

(e) Leasing Provisions. Leasing which is authorized, pursuant to permit hereunder, shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Homesite, the Owner shall provide the Board of Directors with a copy of the proposed lease and such other information as the Board may reasonably require. 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. Within ten (10) days from the execution of the approved lease by both parties, the Owner shall provide the Board with a copy of the executed lease and the names and phone number of the lessees.

(ii) General. Homesites may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Homesites or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Homesite. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases shall be for a period of at least twelve months, except with written Board approval. The Homesite Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

(iii) Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any lease of a Homesite in the Community shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Homesite shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into a lease by existence of this covenant on the Homesite. Any lessee, by occupancy of a Homesite, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) 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, the Bylaws, or the rules and regulations adopted pursuant thereto. 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.

When an Owner who is leasing his or her Homesite 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 Homesite 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 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 attorney's 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 Homesite during the term of the agreement and any other period of occupancy by lessee.

(B) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and 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 in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her Homesite to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Homesite are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, 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 the lessee's failure to do so. Unpaid fines shall constitute a lien against the Homesite. 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.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee 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 Ashworth Homeowners Association, Inc., 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 the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Homesite and the Owner thereof, such being deemed hereby as an expense which benefits the leased Homesite and the Owner thereof.

(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.

(f) Applicability of this Section to Leases Existing at Time of Recordation. Leases existing on the date which this Amendment is recorded in the DeKalb County, Georgia property records shall not be subject to the terms of Section and such leases may continue in accordance with the terms of the Declaration as it existed prior to the recording date of this Amendment. Excluding the modification of the lessee, any extension, renewal, or modification of any lease existing on the date which this

Amendment is recorded in the Dekalb County, Georgia property records shall be considered a termination of the old lease and commencement of a new lease which must comply with Section 11.4 (e). However, any assignment or modification which would involve a change in lessee pursuant to any lease existing on the date which this Amendment is recorded in the Dekalb County, Georgia property records, shall be considered a termination of the old lease and commencement of a new lease which must comply with Section 11.4 in its entirety. Any Owner of a Homesite which is leased on the effective date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Amendment is recorded in the Dekalb County, Georgia property records.

6.

**Article 11, Section 11.11 of the Declaration is hereby amended by inserting the following paragraphs after the last sentence:**

All animals must be kept under restraint and control of a responsible person at all times while outdoors in unfenced areas. An animal is deemed under control when: (1) it is securely confined within a vehicle, parked or in motion; (2) it is properly confined within a secure enclosure with the permission of the owner of the Homesite where the enclosure is located; or (3) it is securely restrained by a leash or other device held by a competent, responsible person. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Property without prior written approval of the ARB as provide in Section 10.4 hereof. Feces left by pets upon the Common Property or on any Homesite must be removed promptly by the owner of the pet or the person responsible for the pet.

Any Owner or Occupant who keeps or maintains any pet on any portion of the Properties shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatsoever arising by reason of keeping or maintaining such pet within the Property.

7.

**Article 15, Section 15.1 of the Declaration is hereby amended by striking that Section in its entirety and substituting the following therefor:**

15.1. Duration. The covenants and conditions of this Declaration shall run with and bind the Properties perpetually.

Except as expressly amended herein, all of the terms and conditions set forth in the Declaration of Covenants, Conditions, and Restrictions for Ashworth remain unchanged.

IN WITNESS WHEREOF, the undersigned officers of Ashworth Homeowners Association, Inc. hereby certify that the above Amendment to the Declaration was duly adopted by the required majority of the Association and its membership and the written consent of the Declarant and any required notices were given.

[SIGNATURES CONTAINED ON NEXT PAGE]

This \_\_\_ day of \_\_\_\_\_, 2003.

ASHWORTH HOMEOWNERS ASSOCIATION, INC.

By: \_\_\_\_\_ (SEAL)  
President

ATTEST: \_\_\_\_\_ (SEAL)  
Secretary

Sworn to and subscribed before me  
this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My commission expires:  
(NOTARY SEAL)

CENTEX HOMES, INC.

By: \_\_\_\_\_ (SEAL)

Sworn to and subscribed before me  
this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My commission expires:  
(NOTARY SEAL)