

SPACE ABOVE RESERVED FOR RECORDING DATA

After recording, please return to:

Coulter & Sierra, LLC
2800 Century Parkway, Suite 275
Atlanta, GA 30345
Attn.: KMK

STATE OF GEORGIA
COUNTY OF PAULDING

Cross Reference: Deed Book: 2014
Page: 922

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BALLENTINE POINTE**

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BALLENTINE POINTE (“Third Amendment”) is made this _____ day of 2020, by BALLENTINE POINTE HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation (“Association”).

W I T N E S S E T H:

WHEREAS, Legacy Communities of Ballentine Point, LLC, a Florida limited liability company, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions for Ballentine Pointe, which was recorded on October 31, 2005, in Deed Book 2014, Page 922 *et seq.*, of the Paulding County, Georgia land records (hereinafter as may be amended and/or supplemented from time to time, the “Declaration”); and

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

WHEREAS, pursuant to Paragraph 19(b) of the Declaration, the Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Owners holding sixty-seven (67%) percent of the total votes; and

WHEREAS, further pursuant to Paragraph 19(b) of the Declaration, material amendments to the Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes that are subject to Mortgages held by Eligible Mortgage Holders; and

WHEREAS, Owners holding at least sixty-seven (67%) percent of the total votes desire to amend the Declaration as hereinafter provided; and

WHEREAS, attached hereto as Exhibit “A” and incorporated herein by reference is the sworn statement of the Secretary of the Association, which sworn statement certifies that the written consent of the required number of Owners was lawfully obtained.

WHEREAS, this Third Amendment does not alter, modify, change or rescind any right, title, interest or privilege held by any Eligible Mortgage Holder; provided, however, if a court of competent jurisdiction determines that any provision of this Second Amendment does so without such Eligible Mortgage Holder’s consent, then such provision of this Amendment shall not be binding on the Eligible Mortgage Holder so involved, unless it consents hereto; and if such consent is not forthcoming, then the relevant provision of the Declaration prior to this Second Amendment shall control with respect to the affected Eligible Mortgage Holder.

NOW, THEREFORE, the undersigned hereby adopt this Third Amendment, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

Paragraph 12 of the Declaration is hereby amended by deleting that Paragraph in its entirety and substituting the following new Paragraph 12 therefor:

In order to carry out the purpose for which Ballentine Pointe was formed by preserving the character of the subdivision as a homogenous residential community of predominantly Owner-occupied Lots and by preventing the community from assuming the character of a renter-occupied apartment complex, the leasing of Lots shall be governed by the restrictions imposed by this Paragraph. The Board of Directors shall have authority to make and enforce reasonable rules and regulations in order to enforce this Section.

(a) Definitions.

(i) “Authorized Corporate Occupant” shall mean the occupant designated by a Lot Owner who is a corporation, limited liability company, partnership or trust or other legal entity not being a natural person. If the record title Owner of a Lot is a corporation, limited liability company, partnership or trust or other legal entity not being a natural person, the Owner shall designate in writing to the Board of Directors the name(s) of the Authorized Corporate Occupant, who will occupy the Lot. The name of each Authorized Corporate Occupant shall be designated in writing to the Board of Directors and may not be changed more frequently than once every twelve (12) months without the Board’s written consent. A person’s designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person’s relationship with the entity holding record title to the Lot. Occupancy of an entity-owned Lot by any person that does not qualify as an Authorized Corporate Occupant hereunder shall be unauthorized and shall be deemed to constitute leasing under this Section.

(ii) "Effective Date" shall mean the date that this Amendment is recorded in the Paulding County, Georgia land records.

(iii) "Grandfathered Owner" shall mean an Owner who is lawfully leasing his or her Lot on the Effective Date, who is current in the payment of all assessments and other charges owed to the Association, and who, within thirty (30) days of the Effective Date, provides the Board with a copy of the lease in effect on the Effective Date. For the purpose of this provision, "current in the payment of all assessments and other charges" shall mean that the Owner is not shown on the books and records of the Association as being more than thirty (30) days delinquent in the payment of assessments or other charges. Grandfathering hereunder shall continue only until the earlier of:

(A) the date that the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's spouse or former spouse);

(B) the date that the Grandfathered Owner is shown on the books and records of the Association as being more than thirty (30) days delinquent in the payment of any assessments or other charges owed to the Association hereunder;

(C) the date that the Grandfathered Owner is shown on the books and records of the Association of failing to maintain a lease for more than ninety (90) consecutive days at any point after Grandfathering status is established;

(D) the date that the Grandfathered Owner and/or Lot occupant, or any guest of the Grandfathered Owner or Occupant, is shown to have committed an egregious violation of the Declaration, Bylaws, rules and regulations of the Association, or any other applicable laws or ordinances; or

(E) the date that the Grandfathered Owner occupies the Lot as his or her primary residence.

(iv) "Grandfathered Lot" shall mean the Lot owned by a Grandfathered Owner on the Effective Date hereof.

(v) "Leasing" shall mean the regular, exclusive occupancy of a Lot by any person(s) other than the Owner for which the Owner receives 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; (ii) occupancy by an Owner's parent, grandparent, spouse or former spouse, sibling or child of an Owner, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate or similar document satisfactory to the Board; (iii) occupancy by one or more wards if the Lot is owned by their legal guardian; (iv) occupancy by one or more beneficiaries of a trust if the Lot is owned in trust by the trustee; or (v) occupancy by an Authorized Corporate Occupant. For purposes hereof, occupancy by a roommate of an Owner who occupies a Lot continuously and at all times resides in and occupies the Lot as such Owner's primary residence shall not constitute Leasing hereunder; however, occupancy of any Lot by any roommate of an Owner, where said Owner does not continuously and at all times reside in and occupy a Lot as such Owner's primary residence, shall be deemed to constitute Leasing hereunder and said occupancy/tenancy shall be subjected to all of the rules, restrictions and regulations set forth herein. Moreover, for

purposes hereof, occupancy by any tenant, renter, lessee, guest, invitee or other similar person who in any way compensates any Owner for any right to enter or occupy a Lot for any period of time, and who is not otherwise qualified as a roommate hereunder, shall be deemed to constitute Leasing hereunder and same shall be governed by and subject to all of the rules, restrictions and regulations set forth herein. By way of example only, the immediately preceding standard shall include any occupancy under any Airbnb, time share, vacation rental, Vacation Rental By Owner (“VRBO”), Home Away, Craigslist or other similar arrangement whereby any person is granted, by Owner for compensation in any form, a right to enter and/or occupy a Lot for any period of time shorter in duration than is required hereunder; the listing hereinabove shall not be considered exhaustive or exclusive with regard what constitutes Leasing hereunder, and same shall hereinafter be referred to as “Short-Term Leasing.” Lastly, a person occupying a Lot only may qualify to be an Authorized Corporate Occupant if no rent or consideration is paid or provided to the Lot Owner by or for the occupant. Additionally, a Lot may be considered leased hereunder even if no rent is paid to the Owner if the occupant does not constitute one of the occupants exempted from leasing above. The Board shall have the power to make and enforce reasonable rules and regulations, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section.

(vi) “Leasing Cap” shall mean the maximum total number of outstanding Leasing Permits plus Grandfathered Lots, but excluding Hardship Leasing Permits that are permitted. The Leasing Cap shall be twenty percent (20%) of the total number of Lots in Ballentine Pointe.

(b) Restrictions on Leasing Lots.

(i) Authorized Leasing. Owners may lease their Lots only if: (1) the Owner is a Grandfathered Owner; (2) the Owner is not a Grandfathered Owner but has received a Leasing Permit or Hardship Leasing Permit from the Board as provided below; or (3) the Owner or lessee is the Association. A Leasing Permit or Hardship Leasing Permit is not intended as a way for the Association to approve or disapprove a particular tenant or occupant, but a method to ensure that all leasing of Lots is strictly in compliance with the conditions and requirements specified in this Paragraph. These conditions and requirements are of utmost importance in maintaining the high quality of the community.

(ii) Leasing Permits. If any other Owner requests a Leasing Permit and complies with the conditions and requirements of this Paragraph, the Board of Directors shall issue a Leasing Permit to the Owner within fifteen (15) days of receipt of all documentation, fees, or other information as may be required herein, if no more than twenty percent (20%) of the total number of Lots in Ballentine Pointe are either Grandfathered or have been issued Leasing Permits. Owners who have been denied a Leasing Permit because the Leasing Cap is satisfied shall be placed on a waiting list to be issued such a Permit, if the Owner requests in writing, when the above conditions have been satisfied. 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. The Board may refuse to issue any Leasing Permit or Hardship Leasing Permit if the Owner is shown on the Association’s books and records to be delinquent in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws or any Association rule and regulation. Leasing Permits shall be valid only as to a specific Owner and Lot, and they shall not be transferable between either Owners or Lots.

(iii) Hardship Leasing Permits. If an Owner wishes to lease and does not satisfy the conditions and requirements for leasing under this Section, and the inability to lease will result in an undue hardship to the Owner, then the Owner may apply to the Board for a Hardship Leasing Permit, for a term not to exceed one (1) year or as otherwise approved by the Board. The Board has sole discretion whether to grant a Hardship Leasing Permit, and the existence of a hardship does not guaranty that an Owner is entitled to or will receive a Hardship Leasing Permit, as such Permit is discretionary. By way of example only, an undue hardship may include, without limitation, the following situations: (1) an Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six months from the date the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) the Owner dies and the Lot is being administered by his or her estate; or (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside at the Lot (*e.g.*, because of military service and/or deployment), in which case the Owner must reapply every year for renewal of the hardship exception. The Board shall also have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (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 involvement in creating the hardship and ability to cure the hardship; and (4) whether previous Hardship Leasing Permits have been issued to the requesting Owner.

(iv) Expiration and Revocation of Permits and Grandfathering Status. Leasing Permits and Hardship Leasing Permits are automatically revoked upon the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse or former spouse). Leasing Permits and Hardship Permits also expire if the Lot is not leased as provided herein within ninety (90) days of the issuance of the Leasing Permit or Hardship Leasing Permit, or if the Owner fails to maintain a lease for more than ninety (90) consecutive days at any point after a Permit is issued. The Board also may revoke any Leasing Permit or Hardship Leasing Permit if the Owner is shown on the Association's books and records to be more than thirty (30) days past due in any assessment or charge or if the Owner and/or the Lot occupant or any guest of the Owner or occupant violates the Declaration, Bylaws, rules and regulations of the Association or any other applicable laws or ordinances. Grandfathering status is automatically revoked if the Grandfathered Owner conveys title to the Lot to any person other than the Owner's spouse or former spouse, the Owner is shown on the books and records of the Association to be more than thirty (30) days delinquent in the payment of assessments, the Grandfathered Owner fails to maintain a lease on the Lot for more than ninety (90) consecutive days, the Grandfathered Owner and/or Lot occupant, or any guest of the Grandfathered Owner or occupant, commits an egregious violation of the Declaration, Bylaws, rules and regulations of the Association, or any other applicable laws or ordinances, or if the Grandfathered Owner occupies the Lot as his or her primary residence. A revocation or expiration of the Permit or Grandfathering status serves as an immediate revocation of the lease agreement in place at the time.

(v) General Leasing Provisions. Except for roommates of an Owner as provided above, Lots may be leased only in their entirety pursuant to a single lease. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of at least twelve (12) months, except with Board approval. Transient tenants or occupants are not permitted in Lots. When requesting a Hardship Leasing Permit, an Owner shall provide the following:

(1) a copy of the proposed lease; (2) the names, phone numbers, email addresses, work locations and work phone numbers of all of the proposed occupants of the Lot; (3) the Owner's Lot address, and the Owner's phone number, email address, work location, work phone number and physical street address to be occupied by the Owner when the Lot is leased; (4) written and signed confirmation of the provision of all governing documents, including, but not limited to, the Declaration, Bylaws, and all rules and regulations to the tenant and all Lot occupants; and (5) such other information and/or leasing administrative fees as required by the Board. The Owner of a leased Lot shall provide the Board with a copy of the executed lease within seven (7) days after executing a lease for the Lot and within seven (7) days of request by the Board during the lease term. If any of the information regarding the occupant required above, or other information regarding occupancy of the Lot, changes during the term of any leasing of the Lot, the Owner and occupant shall update and notify the Board in writing of such changes within thirty (30) days of the date of such change.

(vii) Compliance with Declaration, Bylaws, and Rules and Regulations, Use of Association Property, and Liability for Assessments. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Lot, 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:

(A) Compliance with Declaration, Bylaws, and Rules and Regulations. The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any such violation.

If a Lot is leased or occupied in violation of this Paragraph or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to suspend all voting and/or Common Property use privileges of the Owner, occupants and unauthorized tenant(s) and to suspend all common services to the Lot, if any, paid for by the Association as a common expense, subject to the provisions of this Declaration and the Bylaws.

If a Lot is leased or occupied in violation of this Paragraph, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, 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 Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including

reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(B) 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.

(C) Liability for Assessments. 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 Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by 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 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 amounts authorized under Paragraph 8 herein as if lessee were an Owner. 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.

(viii) Applicability of this Paragraph. This Paragraph 12 shall not apply to any leasing transaction entered into by the holder of any First Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

3.

Unless otherwise defined herein, the words used in this Third Amendment shall have the same meaning as set forth in the Declaration.

5.

This Third Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Paulding County, Georgia.

6.

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

[SIGNATURES ON THE FOLLOWING PAGE]

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

ASSOCIATION: **BALLENTINE POINTE HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: _____

Name: _____

Title: President

Attest: _____

Name: _____

Title: Secretary

Signed, sealed, and delivered
in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

EXHIBIT "A"
Sworn Statement of the Secretary of
Ballentine Pointe Homeowners Association, Inc.

STATE OF GEORGIA
COUNTY OF PAULDING

Re: Ballentine Pointe Homeowners Association, Inc.

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

1. Deponent is the Secretary of Ballentine Pointe Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his or her own personal knowledge.
3. The foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions for Ballentine Pointe was approved by Owners holding at least sixty-seven (67%) percent of the total votes.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20 and Paragraph 19(b) of the Declaration.

This the _____ day of _____, 2020.

By: _____

Name: _____

Sworn to and Subscribed before me this
_____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]