

STACY K. HARALSON
Clerk Superior Court, HARRIS SUPERIOR COURT
BK 01110 Pg 0340-0348

Upon recording, please return to:

PLEASE CROSS-REFERENCE TO:

Hudson Law Offices, LLC
c/o Edward P. Hudson, Esq.
1921 Whittlesey Road, Suite 110
Columbus, GA 31904

Community Covenant: Book 1024
Page 524

THIS SPACE FOR RECORDER'S USE

**FIRST AMENDMENT TO THE AMENDED AND RESTATED COMMUNITY COVENANT
FOR
CALLAWAY RESORT**

THIS FIRST AMENDMENT is made this ~~16~~¹⁸TH day of OCTOBER, 20____, by Callaway Gardens Resort, Inc., a Georgia corporation (hereinafter, with its successors and assigns, referred to as the "Founder").

WITNESSETH

WHEREAS, that certain Community Covenant for Callaway Resort was recorded on December 3, 2003 in Deed Book 702, Page 415, *et seq.*, in the Office of the Clerk of the Superior Court of Harris County, Georgia, and subsequently amended and restated in its entirety by that certain Amended and Restated Community Covenant for Callaway Resort, recorded on March 28, 2008, in Deed Book 1024, Page 524, *et seq.*, in the Office of the Clerk of the Superior Court of Harris County, Georgia (as may be further amended and supplemented from time to time, the "**Community Covenant**"); and

WHEREAS, pursuant to Section 4.5(a) of the Community Covenant, the Founder may unilaterally amend the Community Covenant for any purpose for so long as the Founder, Resort, or the Foundation (as such terms are defined in the Community Covenant) owns any property described on Exhibit "A" or "B" to the Community Covenant; and

WHEREAS, the Founder desires to amend certain provisions of the Community Covenant; and

WHEREAS, the Founder is the owner of property described on Exhibit "A" or "B" to the Community Covenant;

NOW, THEREFORE, pursuant to the powers retained by the Founder under the Community Covenant, the Founder hereby amends the Community Covenant as follows:

1.

Section 2.2(a)(iii), Annual Assessment, is hereby amended by striking such sub-Section in its entirety and substituting the following therefor:

(iii) Annual Assessment. The Community Council shall levy an "**Annual Assessment**" against the Units and Owners to fund the Council Expenses. The total budgeted Council Expenses, less any income anticipated from sources other than assessments against the Units, shall be allocated among all Units subject to assessment based upon the method of allocating assessments set forth in Exhibit "D." As set forth in Exhibit "D," the method of allocation and the actual allocation of Council Expenses among the Units shall take into account *all* parcels within Callaway Resort, regardless of whether such parcels are encumbered by this Community Covenant, and shall treat all such parcels as if they were Units under this Community Covenant.

2.

Section 2.2(a)(viii), Annual Assessment, is hereby amended by striking such sub-Section in its entirety and substituting the following therefor:

(viii) Commencement of Assessments; Time of Payment. The obligation for assessments levied by the Community Council under this Community Covenant shall commence as to each Residential Unit encumbered by the Residential Charter on the later of: (A) the date such Unit is conveyed to a Person other than the "Founder" or a "Founder Affiliate" (as such terms are defined in the Residential Charter) or a "Builder" designated by the "Founder" under the Residential Charter as being exempt; or (B) the date the Unit is made subject to this Community Covenant. Notwithstanding that all parcels within Callaway Resort shall be taken into account for purposes of calculating Annual Assessments in accordance with Exhibit "D," the obligation for assessments under this Community Covenant as to Units which are *not* encumbered by the Residential Charter shall commence on the later of (AA) the date on which the Unit is made subject to this Community Covenant; (BB) the date the Unit is conveyed to a Person other than the Founder or any affiliate of the Founder under this Community Covenant; or (CC) such other later date as is provided in the Supplement recorded to submit such property to this Community Covenant.

Section 3.9, Callaway Club Membership, is hereby amended by striking such Section in its entirety and substituting the following therefor:

3.9. Callaway Club Membership Fee

Except as provided herein or as otherwise provided in a recorded instrument consented to by Resort, the Owner of each Residential Unit shall be obligated to pay a membership fee to the Callaway Club ("**Membership Fee**"), which Membership Fee shall be a means of funding Callaway Club Services. From the date of recording of this Amended and Restated Community Covenant until December 31, 2009, the Membership Fee shall be \$500.00 per Residential Unit. Unless the Residential Association, acting through its board of directors, agrees to a greater increase, the Membership Fee charged to a Residential Unit may be increased by Resort for subsequent fiscal years by an amount not to exceed five percent per year, applied cumulatively against the initial \$500.00 Membership Fee described above.

The Membership Fee shall be charged to the Owner of a Residential Unit annually by Resort and Resort may enforce the obligation to pay the Membership Fee against the Owner of a Residential Unit by suit at law or in equity. Resort shall have a lien against a Residential Unit for the Membership Fee required to be paid, which lien shall have equal priority to and shall be enforceable by Resort in the same manner as the lien in favor of the Community Council as provided in Section 2.2(d). Except as provided below, the Membership Fee shall be payable by each Owner of a Residential Unit directly to Resort.

Notwithstanding the obligation of each Owner of a Residential Unit to pay the Membership Fee, the Community Council and the Residential Association may mutually agree to provide for billing and collecting of the Membership Fee by and through the Residential Association. In such case, (i) the Residential Association shall be obligated to provide in its budget for the collection of the Membership Fees allocated to Residential Units encumbered by the Residential Charter; (ii) Resort shall send notice of Membership Fees applicable to such Residential Units directly to the Residential Association; (iii) the Residential Association shall provide for collection and payment of Membership Fees by including such amounts in its common expense budget to be assessed against all Owners of Residential Units encumbered by the Residential Charter; and (iv) Resort may enforce the obligation to pay Membership Fees by suit against the Residential Association to collect those Membership Fees collected by the Residential Association but not paid to Resort, in addition to any other rights or remedies it may have hereunder or at law or in equity against each Owner of a Residential Unit.

The obligation to pay the Membership Fee shall commence as to a Residential Unit on the later of: (A) the date Resort first charges a Membership Fee against the Unit; (B) the date title to the Unit is transferred to a Person other than the Founder, the "Founder" or a "Founder Affiliate" under the Residential Charter, or any other Person that the Founder or the "Founder" under the Residential Charter designates as being exempt from payment of Membership Fees; or (C) the date, if any, provided in a recorded instrument consented to by Resort. The first annual Membership Fee levied on a Residential Unit shall be

adjusted according to the number of months remaining in the fiscal year at the time the Membership Fee commences as to the Unit.

In consideration for payment of the Membership Fee, each Owner of a Residential Unit against which Membership Fees are levied shall be a member of the Callaway Club and Resort shall make available to each such Owner, at a minimum, the following benefits and Callaway Club Services:

- Access into Callaway Gardens for Owners, Owners' spouses and children under the age of 26, and accompanied guests
- A membership card with charge privileges at Callaway Gardens attractions and retail outlets
- Priority access to all Callaway Gardens and Gardens Preserve special events and activities for Owners, Owners' spouses and children under the age of 26, and accompanied guests (some additional charges may apply for such events and activities)

In addition to the above, Owners of Residential Units are eligible for membership in the Callaway Club under other membership categories affording additional use privileges in Callaway Resort and Callaway Gardens' facilities, including any golf course(s), subject to such membership plan as Resort may impose. Membership in any such additional category of membership shall be subject to availability, the payment of additional fees and dues, and any qualification and approval requirements imposed by Resort. Neither this Community Covenant nor ownership or occupancy of a Residential Unit shall guarantee any Owner the availability of a membership, or acceptance of his or her application for membership, in any additional category of membership.

The membership granted pursuant to this Community Covenant pertains only to Owners of Residential Units and shall terminate as to any Owner upon the Owner's transfer of title to his or her Residential Unit.

Upon request, Resort shall provide the Residential Association a year-end summary showing the cost to Resort of providing or providing for Callaway Club Services during the year.

With respect to any Residential Unit which is owned by a corporation, partnership, limited liability company, or other entity other than an individual, the Owner of the Residential Unit, for purposes of determining individuals entitled to the benefits conferred to Owners under this Section 3.9, shall be as provided in, and subject to, such Callaway Club membership rules, policies, and procedures as Resort may establish from time to time.

Section 3.10, Gardens Contribution, is hereby amended by striking such Section in its entirety and substituting the following therefor:

3.10. Gardens Contribution

Except as provided herein or as otherwise provided in a recorded instrument consented to by the Foundation, the Owner of each Residential Unit shall be obligated to pay an annual contribution to the Foundation ("**Gardens Contribution**"), which Gardens Contribution shall be a means of funding Foundation activities and services relating to Callaway Gardens.

From the date of recording of this Amended and Restated Community Covenant until December 31, 2009, the Gardens Contribution shall be \$500.00 per Residential Unit. Unless the Residential Association, acting through its board of directors, agrees to a greater increase, the Gardens Contribution charged to a Residential Unit may be increased by the Foundation for subsequent fiscal years by an amount not to exceed five percent per year, applied cumulatively against the initial \$500.00 Gardens Contribution described above. The Gardens Contribution shall be charged to the Owner of a Residential Unit annually by the Foundation and shall be secured by a lien in favor of the Foundation, which lien shall have equal priority to and shall be enforceable in the same manner as the lien in favor of the Council as provided in Section 2.2(d). Except as provided below, the Gardens Contribution shall be payable by each Owner of a Residential Unit directly to the Foundation.

Notwithstanding the obligation of each Owner of a Residential Unit to pay the Gardens Contribution, the Foundation and the Residential Association may mutually agree to provide for billing and collecting of the Gardens Contribution by and through the Residential Association. In such case, (i) the Residential Association shall be obligated to provide in its budget for the collection of the Gardens Contribution allocated to Residential Units encumbered by the Residential Charter; (ii) the Foundation shall send notice of the Gardens Contribution applicable to such Residential Units directly to the Residential Association; (iii) the Residential Association shall provide for collection and payment of the Gardens Contribution by including such amounts in its common expense budget to be assessed against all Owners of Residential Units encumbered by the Residential Charter; and (iv) the Foundation may enforce the obligation to pay the Gardens Contribution by suit against the Residential Association to collect any Gardens Contribution collected by the Residential Association but not paid to the Foundation, in addition to any other rights or remedies it may have hereunder or at law or in equity against each Owner of a Residential Unit.

The obligation to pay the Gardens Contribution shall commence as to a Residential Unit on the later of (A) the date the Foundation first charges the Gardens Contribution against such Unit; (B) the date title to the Unit is transferred to a Person other than the Founder, the "Founder" or a "Founder Affiliate" under the Residential Charter, or any other Person that the Foundation or the "Founder" under the Residential Charter designates as being exempt from payment of Gardens Contributions; or (C) the date, if any, provided in a recorded instrument consented to by the Foundation. The first annual

Gardens Contribution levied on a Residential Unit shall be adjusted according to the number of months remaining in the fiscal year at the time the Gardens Contribution commences as to the Unit.

Upon request, the Foundation shall provide the Residential Association a year-end summary showing how the Gardens Contributions for the previous year were applied by the Foundation.

5.

Exhibit "D," Allocating Liability for Assessments Among Units, is hereby amended by striking such Exhibit in its entirety and substituting therefor the Exhibit "D" attached hereto.

[Signatures on next page]

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED COMMUNITY COVENANT FOR CALLAWAY RESORT is made by Callaway Gardens Resort, Inc., a Georgia corporation, as of the date set forth above.

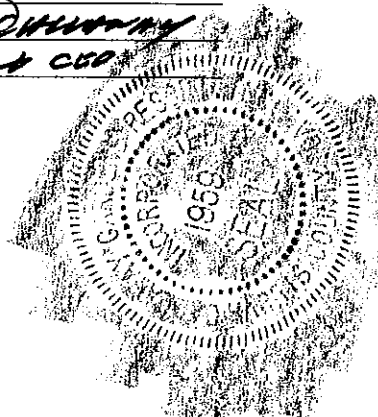
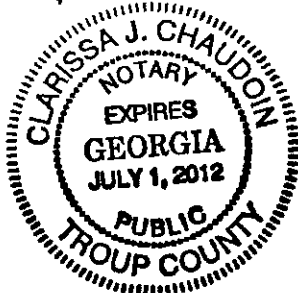
FOUNDER/RESORT: CALLAWAY GARDENS RESORT, INC.

a Georgia corporation

By: *Edward C. Callaway*
Name: EDWARD C. CALLAWAY
Its: CHAIRMAN & CEO

Signed, sealed, and delivered this 15th day of October, 2009 in the presence of:

Clarissa J. Chaudoin
WITNESS
Clarissa J. Chaudoin
NOTARY PUBLIC



Consent of Ida Cason Callaway Foundation

The Ida Cason Callaway Foundation, hereby consents to and approves the within and foregoing First Amendment to the Amended and Restated Community Covenant for Callaway Resort this 15th day of October, 2009.

IDA CASON CALLAWAY FOUNDATION,

a Georgia non-profit corporation

By: *Edward C. Callaway*
Name: EDWARD C. CALLAWAY
Its: CHAIRMAN & CEO

Signed, sealed, and delivered this 15th day of October, 2009 in the presence of:

Clarissa J. Chaudoin
WITNESS
Clarissa J. Chaudoin
NOTARY PUBLIC

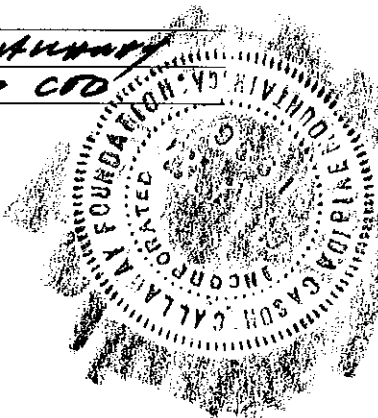


EXHIBIT "D"
Allocating Liability for Assessments Among Units

1. Formula for Calculation of Assessments. The formula for determining each Unit's share of Council Expenses assessed by the Community Council shall be the following:

$(\text{Density} \times \text{Rate of Traffic Generation} = \text{Daily Trips}) / \text{Total Daily Trips} = \text{Share of Total Daily Trips}$

$\text{Share of Total Daily Trips} \times \text{Council Expenses} = \text{Total Assessment for Area}$

$\text{Total Assessment for Area} / \text{Density} = \text{Assessment per Unit}$

2. Terms and Concepts.

(a) Land Use Classification. For purposes of allocating Council Expenses and determining Annual Assessments and Special Assessments, each Unit shall be assigned a "**Land Use Classification.**" For purposes of this Exhibit "D," the term "Unit" shall refer to all Units subject to the Community Covenant and each parcel and improvement otherwise within the Callaway Resort which would fall under the definition of Unit if made subject to this Community Covenant. During the Founder Appointment Period, Land Use Classifications shall be assigned by agreement of the Founder and Cousins/Callaway, LLC; provided, the Land Use Classification assigned to any Unit shall be based upon the actual land use of the Unit (*e.g.*, single family residential, short term rental, hotel, Callaway Resort attraction, etc.). After termination or expiration of the Founder Appointment Period, the Council Board shall determine Land Use Classifications; provided, the Land Use Classification of a Unit shall not be changed once established unless there has been a change in predominant use.

(b) Rate of Traffic Generation. A "**Rate of Traffic Generation**" shall be determined for each Land Use Classification based upon the Institute of Transportation Engineers Trip Generation Manual (or such other source as the Council Board deems appropriate). The Rate of Traffic Generation shall be determined from the same source within each Land Use Classification such that each Unit within a Land Use Classification shall be assigned the same rate. However, the Rate of Traffic Generation may be determined from a different source for different Land Use Classifications.

(c) Daily Trips. "**Daily Trips**" shall be determined by multiplying the Rate of Traffic Generation assigned to each Land Use Classification by the number of Units, rooms, or square feet of improvements within each Service Area or other are of Callaway Gardens ("**Density**"), as determined by reasonable agreement of the Founder and Cousins/Callaway, LLC. Each Unit within a Land Use Classification shall be assigned the same Rate of Traffic Generation as is assigned to other Units within the same Land Use Classification.

3. Recomputations. The Land Use Classification and Daily Trips assigned to each Unit shall be computed at least annually. If a Use Classification or Daily Trips determination for a Unit changes during the fiscal year, the Council Board shall be authorized to adjust the assessment against the Unit effective with such change, but the Council Board need not reallocate assessments against all Units to take into account such change until the next annual budget.

In the event that additional real property is made subject to this Community Covenant during the Council's fiscal year, the Council Board may recompute assessments for each Unit and send notice of such recomputed percentages to each Owner; provided, no adjustments shall be made in any assessments previously levied to reflect such recomputation.

4. **Notice of Assessments.** The Council Board shall provide the Residential Association, upon written request from the Residential Association's board of directors, a copy of the assessment fee schedule, which shall include Land Use Classifications and Daily Trips for the Units.

5. **Exceptions.** To the extent a Council assessment or contribution different from that described above may otherwise have been provided for in a Supplement originally recorded prior to March 28, 2008 (the date of recording of that certain Amended and Restated Community Covenant for Callaway Resort, in Deed Book 1024, Page 524, *et seq.*, in the Office of the Clerk of the Superior Court of Harris County, Georgia), the Council assessment or contribution described in such Supplement (as amended from time to time) shall govern as to the specific Units subject to such different Council assessment or contribution.