

[SPACE ABOVE RESERVED FOR RECORDING DATA]

Return to: Weissman, Nowack, Curry & Wilco, P.C.  
3500 Lenox Road, 4<sup>th</sup> Floor  
Atlanta, Georgia 30326  
Attn: Jay S. Lazega

STATE OF GEORGIA  
COUNTY OF FULTON

Cross Reference: Deed Book 10905  
Page 336

**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR SOMERSET AT HENDERSON VILLAGE**

**WHEREAS**, the Declaration of Covenants, Conditions and Restrictions for Somerset at Henderson Village was recorded on June 29, 1987, in Deed Book 10905, Page 336, *et seq.*, Fulton County, Georgia records, as amended ("Declaration"); and

**WHEREAS**, Article VIII, Section 4 of the Declaration provides for amendment of the Declaration with the vote, written consent, or combination thereof, of members of the Somerset at Henderson Village Homeowners' Association, Inc. ("Association"), holding at least two-thirds (2/3) of the total eligible vote thereof; and

**WHEREAS**, members holding at least two-thirds (2/3) of the total eligible vote of the Association have approved this Amendment to the Declaration; and

**WHEREAS**, this Amendment is not material with respect to, and is not made without the approval of, eligible mortgagees in that it does not materially and adversely affect the security, title or interest of any eligible mortgagee; provided, however, in the event a court of competent jurisdiction determines that this Amendment does so without such mortgagee's consent when required, then this Amendment shall not be binding on the mortgagee so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Amendment shall control with respect to the affected mortgagee;

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

1.

**Article V of the Declaration is hereby amended by adding the following Section 14 thereto:**

**Section 14. Leasing of Lots.** In order to protect the equity of the individual Lot Owners at Somerset at Henderson Village, and to carry out the purpose for which the community was formed by preserving the character of the community as a homogenous residential community of predominately Owner-occupied homes, leasing of Lots shall be governed by the restrictions imposed by this Section. **Except as provided herein, the leasing of Lots is prohibited.**

**(a) Definitions.**

**(i) "Effective Date"** means the date that this Amendment to the Declaration is recorded in the Fulton County, Georgia land records.

(ii) "Grandfathered Lot" means the Lot owned by a Grandfathered Owner on the Effective Date.

(iii) "Grandfathered Owner" means an Owner of a Lot which is being lawfully leased in accordance with the Declaration on the Effective Date. Grandfathering hereunder shall continue only until the Grandfathered Owner conveys title to the Grandfathered Lot to any other person or entity (other than to a spouse), at which time the Lot shall automatically lose grandfathering hereunder. The following Owners, and their respective Lots, are Grandfathered hereunder:

<u>Name</u>	<u>Address</u>
1. Victor Hosseini	5010 N. Somerset Lane, Alpharetta GA 30004
2. Janice B. McKillop	5051 N. Somerset Lane, Alpharetta GA 30004
3. Sergey Demin	5061 N. Somerset Lane, Alpharetta GA 30004
4. Angeline E. Wolle	5070 N. Somerset Lane, Alpharetta GA 30004
5. Patricia Murphy	5145 N. Somerset Lane, Alpharetta GA 30004
6. Charles Hensley & Victoria Burridge	5205 N. Somerset Lane, Alpharetta GA 30004
7. James & Susan Bonne	5225 N. Somerset Lane, Alpharetta GA 30004

(iv) "Leasing" means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Lot with the Owner or parent, child or spouse of the Owner, who also is occupying the Lot as his or her primary residence.

**(b) Leasing Permit and Restriction. No Owner of a Lot may lease his or her Lot, except: (1) a Grandfathered Owner, (2) a non-Grandfathered Owner who has received a written leasing permit from the Board of Directors, or (3) a non-Grandfathered Owner who has received a hardship leasing permit from the Board.**

Non-Grandfathered Owners who want to lease their Lots may do so only if they have applied for and received from the Board either a "leasing permit" or a "hardship leasing permit." All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner's predecessor in title).

An Owner's request for a leasing permit shall be approved only if: (i) the Owner has owned and occupied the Lot as his or her primary residence for at least one (1) year, and (ii) the number of current, outstanding permits issued plus Grandfathered Lots is less than three (3).

Leasing permits and hardship leasing permits are automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party (other to an Owner's spouse); or (2) the failure of an Owner to lease his or her Lot for one hundred twenty (120) consecutive days at any time after the issuance of a leasing permit.

If the number of current leasing permits issued and Grandfathered Lots is three (3) or more, then no additional leasing permits shall be issued (except for hardship leasing permits) until that number falls below three (3). Owners who have been denied a leasing permit shall be placed on a waiting list and shall be issued a leasing permit, if they so desire, when that number falls below three (3). 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.

**(c) Hardship Leasing Permit. If not leasing a Lot will result in an undue hardship to the Owner, then the Owner may request approval to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board shall 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 Owner. Hardship leasing permits shall be valid for a single term not of one year, or such**

shorter term as may be approved by the Board, at which time the hardship leasing permit shall automatically expire.

A "hardship" hereunder shall include, but not be limited to the following situations:

(i) an Owner dies, and the Lot is being administered by his or her estate;

(ii) an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Lot by a specified date; or

(iii) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that 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.

**(d) Leasing Provisions.** When leasing is permitted under this Section, that leasing shall be governed by the following provisions:

(i) **Notice.** At least seven (7) days before entering into the lease of a Lot, the Owner shall provide the Board with a copy of the proposed lease, the name, address, and home and business telephone numbers of the proposed tenant, the Owner's address other than at the Lot, and such other information as the Board may reasonably require. Within seven (7) days after the approved lease is executed by both parties, the Owner shall provide the Board with a copy of the executed lease.

(ii) **General.** Lots may be leased only in their entirety; no rooms or fractions may be rented. There shall be no subleasing or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Lot. 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 (12) months, except with written Board approval. The Owner must provide, the tenant copies of the Declaration, Bylaws, and the rules and regulations.

(iii) **Liability for Assessments; Compliance With Declaration, Bylaws, and Rules and Regulations.** Each Owner and, by occupancy of a Lot, each tenant 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 a lease by existence of this covenant on the Lot:

**(A) Liability for Assessments.** When an Owner who is leasing his or her Lot fails to pay any assessments or other charge for more than thirty (30) days after it is due, then the delinquent Owner hereby consents to the assignment of any rent received from the tenant during the period of delinquency, and, upon request by the Board of Directors, the tenant shall pay to the Association all unpaid assessments and other charges payable during and before the lease term and any other period of occupancy by the tenant. All such payments made by the tenant shall reduce, by the same amount, the tenant's obligation to make monthly rental payments to lessor. 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.

**(B) Compliance with Declaration, Bylaws, and Rules and Regulations.** The tenant 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 for their actions. The Association may levy reasonable fines against the Owner for any violations of the Declaration, Bylaws or Association rules by the tenant. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the tenant, any occupant, or any person living with the tenant 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 tenant in accordance with

Georgia law. In the event of any such violation, the Association can require the Owner to take action against the tenant to ensure compliance with the provisions of the Declaration, Bylaws or rules and regulations and/or terminate the lease and evict the tenant.

(e) **Grandfathering and Applicability of this Section.** Owners of Grandfathered Lots may lease those Lots, subject to the provisions of this Section, without demonstrating undue hardship. Additionally, 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 may lease those Lots, subject to the provisions of this Section, without demonstrating undue hardship.

**IN WITNESS WHEREOF**, the undersigned officers of Somerset at Henderson Village Homeowners' Association, Inc., hereby certify that this Amendment was approved with the requisite agreement of the Association membership.

This 7 day of February, 2007.

**SOMERSET AT HENDERSON VILLAGE  
HOMEOWNERS' ASSOCIATION, INC.**

Sworn to and subscribed to before  
me this 7<sup>th</sup> day of February  
2007.

SABarnes  
Witness

Esther R. Eschen  
Notary Public

Notary Seal

Notary Public, Fulton County, Georgia  
My Commission Expires April 12, 2009

By: Jennifer Schulman (Seal)  
President

Attest: Bethany W. Lean (Seal)  
Secretary

[CORPORATE SEAL]

