

STATE OF GEORGIA  
COUNTY OF COBB

**Return To:**  
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*Cross Reference: Deed Book 8982, Page 340.*

**AMENDMENT TO THE DECLARATION OF PROTECTIVE  
COVENANTS FOR SUMMERFIELD SUBDIVISION**

This AMENDMENT is made on the date hereinafter set forth by the Owners of Lots in Summerfield Subdivision (hereinafter referred to as "Owners").

W I T N E S S E T H :

**WHEREAS**, that certain DECLARATION OF PROTECTIVE COVENANTS FOR SUMMERFIELD SUBDIVISION, was recorded in Deed Book 8982, Page 284, Superior Court Records, Cobb County, Georgia (hereinafter referred to as "Declaration"); and

**WHEREAS**, Section 9.02(b) of the Declaration provides that it may be amended by agreement of owners of lots to which two-thirds of the votes of the association pertain; and

**WHEREAS**, this Amendment was passed by a two-thirds majority, or more, on the \_\_\_ day of \_\_\_\_\_, 2005, as attested to by the below signed officers of the Association; and

**WHEREAS**, the Owners desire to amend the Declaration.

**NOW, THEREFORE**, for and in consideration of the premises, said Declaration is hereby amended as follows:

1.

Article XI of the Declaration is deleted in its entirety, and is replaced by the following:

***11.01 Leasing Restrictions.** In order to protect the equity of the individual owners, and to carry out the purpose for which the Association was formed by preserving the character of Summerfield subdivision as a homogeneous residential community of predominantly owner-occupied homes and by preventing the community from assuming the character of a renter-occupied 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 a Lot (or dwelling thereon) shall be governed by the restrictions imposed by this Section (other than as provided herein for certain Mortgagees) as follows:*

A. NOTICE AND REGULATIONS. Any Owner intending to lease his Lot, or any portion thereof, must be in good standing with the Association, must have owned the property for a minimum of one (1) year, and shall give written notice of such intention to the Board, stating the name and address of the intended lessee, the mailing address for the Owner, and the terms of the proposed lease and such other information as the Board may reasonably require. Owners shall immediately notify the Association in writing of any changes in the Owners mailing address.

Sub-leasing or renting a portion of a Lot may be allowed, with the Board's prior written approval, but only if the Owner will still be residing on the Lot. The Board may also allow temporary exceptions on the basis of hardship.

The Board shall have the authority to make and enforce reasonable Rules and Regulations regarding the restrictions for leasing, sub-leasing, and renting, including definitions, and the grounds for temporary exceptions to said restrictions, along with the right to impose fines constituting a lien upon the Lot being leased.

B. LIMITATION ON TOTAL LEASES. No more than ten percent (10%) of the total number of Lots may be leased at any one time.

C. REQUIRED LEASE PROVISIONS. The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for greater than one (1) year. All leases and lessees are subject to the provisions of the Declaration, Bylaws, Architectural Guidelines, and Rules. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of the below paragraphs lettered; (a) through (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, 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. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

(a) Lessee acknowledges that promises made to Lessor, as contained in Section XI, Paragraph C., Subparagraphs (a), (b), (c) and (d) of the Declaration of Protective Covenants for Summerfield subdivision which govern the leased premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted by the Association pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association

*harmless for any such person's failure to comply. Lessee acknowledges the violation by Lessee or any occupant or person living with Lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.*

(c) *Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments, special assessments, or fines, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of occupancy by Lessee; provided, however, that 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 Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent 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 Premises during the term of this lease agreement and any other period of occupancy by Lessee.*

(d) *Lessee's right shall be subject to all rights of the Association and any bona fide Mortgage or deed to secure debt which is now or may hereinafter be placed upon the Premises by Lessor.*

*D. ENFORCEMENT. For the purpose of enforcing the provisions of this Section, which shall be incorporated in the provisions of any leases of a Lot, each Owner, by acceptance of a deed or other conveyance of a Lot, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Article XI of this Declaration, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.*

*E. EXPENSES OF EVICTION. In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees actually incurred, and court costs, associated with the eviction shall be specifically assessed against the Lot, becoming a lien thereon subject to enforcement in accordance with Article IV of this Declaration, and shall become the personal obligation of the Owner thereof, such being deemed hereby as an expense which benefits the Lot and the Owner thereof.*

*F. RIGHTS OF LESSEE. Any Lessee charged with a violation of the Declaration, Bylaws, or rules and regulations, is entitled to the same rights to which the Owner is entitled as provided in the Association's Bylaws.*

*G. RIGHTS OF FIRST MORTGAGEES. Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first Mortgagee to:*

- (a) *foreclose or take title to the Lot pursuant to remedies contained in any Mortgage;*
- (b) *take a deed or assignment in lieu of foreclosure; or*
- (c) *sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.*

2.

Article IV, Section 4.09 shall be deleted in its entirety, and replaced by the following:

*4.09 Initiation Fee. Each time a Lot is sold, or title is otherwise transferred to a third party (other than to the Owner's spouse), the Association may charge a one-time initiation fee in an amount to be set by the Board, not to exceed the amount of the then current annual assessment. This fee shall be charged to any purchaser or transferee of a Lot, is in addition to the annual assessment, and shall not be considered an advance upon the payment of the annual assessment. A delinquent initiation fee may be collected in the same manner as other assessments, including the filing of a lien.*

3.

Amend Article VIII, Section 8.02(a) regarding abatement, to delete the following portions, "...within thirty (30) days after such written notice,..." and replace with "...within ten (10) days after such written notice...".

4.

Article VIII, Section 8.03(c) shall be deleted in its entirety, and replaced by the following:

*8.03(c) Fines. The Association may levy fines and suspend membership, including voting rights and privileges to use the common areas, for any violation of the Declaration, Bylaws, Rules, Regulations, or Design Standards, which fines shall be collected as provided herein for the collection of assessments. The amount of said fines shall be set by the Board. The following procedure shall not be required for suspension due to delinquent payment of the annual assessments, said suspension being automatic.*

*The Association shall not levy a fine (a late charge shall not constitute a fine) or impose a suspension unless and until the following procedure is followed:*

*Written demand to cease and desist from an alleged violation shall be mailed to the alleged violator specifying:*

- (i) the alleged violation;*
- (ii) the action required to abate the violation;*
- (iii) a time period, not less than ten (10) days, during which the violation may be corrected without further sanction. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property;*
- (iv) that the alleged violator may, within ten (10) days from the date of the notice, send a written appeal to the Board;*
- (v) the mailing address to which the appeal may be sent;*

(vi) *that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice, and that fines shall not accrue during the appeal period.*

*These provisions shall supersede any other provision of this Declaration requiring different notice.*

**ALL OTHER PROVISIONS OF SAID DECLARATION SHALL REMAIN UNCHANGED.**

IN WITNESS WHEREOF, the foregoing Amendment is executed by the undersigned duly authorized representative of the Summerfield Residents Association on this \_\_ day of \_\_\_\_\_, 200\_\_, and said representatives attest that the Amendment was passed by a two-thirds majority or greater of the eligible voting owners.

**Summerfield Residents Association, Inc.**

\_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: President.

**ATTEST:**

\_\_\_\_\_  
SECRETARY

*Signed, sealed and delivered in the presence of*

\_\_\_\_\_  
NOTARY PUBLIC

**Prepared By:**  
*Michael Rome, Esq.*  
*GA Bar #: 613945*

## **SUMMARY OF PROPOSED LEASING RESTRICTION AMENDMENT**

The main purpose for the proposed amendment is to restrict the number of homes in the subdivision that can be leased at any given time to ten percent of the total Units. This type of amendment is becoming much more common in order to preserve the nature of the subdivision as a predominantly owner occupied community as opposed to assuming the characteristics of a renter-occupied complex. It is expected that this will ultimately help protect the property values in the neighborhood as well as allow property to be able to compete with new surrounding residential units that are being built.

Another reason for the amendment is to comply with requirements in the secondary mortgage market of such entities as FHA, which will not lend in communities that contain a high renter occupation rate.

The amendment also requires Owners to own the residence for a minimum of one (1) year, submit any proposed lease to the Association for approval, and provides that it has to contain certain provisions, including:

1. The lease term must be for a minimum of one year;
2. The Owner will give the tenant a copy of the covenants, bylaws, and rules;
3. That the tenant will comply with all requirements and rules of the Association;
4. The tenant can be made to pay all Association assessments, but may deduct said payments from rent due to the Owner.
5. The Association may have the tenants evicted for violations of the Association's rules and regulations, and may hold the Owner responsible for all related costs.

The Board may pass any further rules as needed to enforce the above, and may make hardship exceptions for Owners regarding the leasing restrictions. Owners may rent or sub-lease a portion of their home if the Owner will also be residing on property, and has prior written permission of the Board.

## **SUMMARY OF PROPOSED FINE AMENDMENT**

The main purpose of this amendment is to better equip the Board in addressing immediate concerns with violations. Whereas before this amendment, it currently takes anywhere between 30 and 120 days to get immediate issues addressed, ie. mowing of grass on vacant lots, structural repairs, etc. In the meantime, the entire community, in particular residents that are immediately adjacent to these properties, bear the unnecessary burden of dealing with the resulting eyesore, and additional difficulty in selling their property because of decreasing value. The amendment would require the violation to be corrected within ten (10) days or the board levy fines and/or suspend membership privileges, quickly correcting the situation.

This amendment offers a much more clear set of procedures for both the board and the homeowner as to notification, timely response, how a fine may occur, and utilization of the appellate process.

In amending this article, there will be less frustration for those in the community regarding the amount of time it takes to get violations addressed, as well as making available to the board, more immediate tools and paths of recourse to maintain the quality of life for all residents.