

STATE OF GEORGIA
COUNTY OF COBB

Return To:
Rome & Associates, P.C.
707 Whitlock Ave., Ste E-15
Marietta, Georgia 30064
(770) 428-6002

Cross Reference: Deed Book 9325, Page 169.

**AMENDMENT TO THE DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR HARPER WOODS**

THIS Amendment to The Declaration of Covenants, Restrictions and Easements for Harper Woods subdivision ("Amendment") is made on the date hereinafter set forth by the Harper Woods Homeowners Association, Inc. ("Association").

WITNESSETH

WHEREAS, Morrison Homes of Florida, Inc. recorded that certain Declaration of Covenants, Restrictions and Easements for Harper Woods on December 20th, 1995, in Deed Book 9325, Page 169, *et seq.*, in the public land records of Cobb County, Georgia ("Declaration");

WHEREAS, Section 9.03 of the Declaration provides it may be amended by agreement of Lot Owners holding at least two-thirds (2/3) of the total votes in the Association;

WHEREAS, Section 44-3-226 (a) of the Georgia Property Owners Association Act ("Act") provides that covenants may be submitted to provisions of the Act by agreement of Lot Owners holding at least two-thirds (2/3) of the total votes in the Association;

WHEREAS, the Lot Owners wish to submit the covenants to the provisions of the Georgia Property Owners Association Act, O.C.G.A. Sections 44-3-220, *et. seq.*, and also wish to add certain provisions for leasing restrictions;

WHEREAS, Lot Owners holding at least two-thirds (2/3) of the total votes in the Association agreed to this Amendment, as certified and sworn to by the Association president and secretary, and evidenced by the president's and secretary's attached signatures hereto; and

THIS AMENDMENT TO THE DECLARATION HERBY SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTIONS 44-3-220, ET. SEQ., INCLUDING INCORPORATION OF ALL OPTIONAL PROVISIONS ALLOWED (EXPRESSLY INCLUDING SECTION 44-3-232 REGARDING LIENS). *CLOSING ATTORNEYS AND TITLE EXAMINERS MUST CONTACT THE ASSOCIATION FOR INFORMATION REGARDING LIENS AND DELINQUENCIES.*

WHEREAS, the amendments provided for herein are not material with respect to first Mortgagees in that they do not materially and adversely affect the security title or interest of any first Mortgagee; provided, however, in the event a court of competent jurisdiction determines that these amendments do materially and adversely affect the security title or interest of any first Mortgagee without such first Mortgagee's consent to these amendments, then these amendments shall not be binding on the first Mortgagee so involved, unless such first Mortgagee consents to these amendments; and if such consent is not forthcoming, then the provisions of the Declaration prior to these amendments shall control with respect to the affected first Mortgagees.

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

1.

A new Section 6.28 is added to Article VI, regarding General Covenants and Restrictions, as follows:

6.28 Leasing Restrictions. *In order to preserve the character of Harper Woods subdivision as predominantly owner-occupied and thus help protect the value of Lots within the community, and ensure that Lots qualify for eligibility of mortgage financing insofar as the criteria is based upon percentage of owner-occupied Lots, the leasing of Lots is prohibited except for (1) a Grandfathered Owner or (2) an Owner who has received a written Leasing Permit or Hardship Leasing Permit from the Board as provided in this Section or (3) the Association for any Lots owned by the Association. The Board shall have the power to make reasonable rules and regulations in order to further clarify and enforce the provisions of this Section, including but not limited to, the establishment of: (i) a \$250.00 annual administrative and monitoring fee; and (ii) the right to impose daily fines, which will constitute a lien upon the Lot being leased, and a one-time \$250.00 fine in the event required application information is not submitted prior to tenant occupation.*

(a) Definitions.

(i) "Assessments" as used in this Article shall include all assessments as described and contained in Article IV of the Declaration.

(ii) "Effective Date" the date on which this Amendment to the Declaration for Harper Woods is recorded in the County Records.

(iii) "Grandfathered Owner" means an Owner of a Lot who is lawfully leasing their Lot on the Effective Date, and who has provided the Board, within thirty (30) days of the Effective Date, a copy of the lease in effect on the Effective Date. Any Owner leasing a Lot on the Effective Date who does not provide a copy of the lease shall not be entitled to Grandfathered status and shall be considered in violation of the Declaration. A Grandfathered Owner shall continue only until the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's Spouse); or (2) the date that all current occupants of the Grandfathered Owner's Lot vacate and cease to occupy the Lot. If the Grandfathered Owner and Tenant maintain compliance with all Covenants, By-Laws, and Rules of the Association, including timely payment of any Assessments, then in the discretion of the Board, a lease may be renewed with the same Lessees/Tenants, and the Grandfathered status will be renewed for the term of the new lease. No Owner may be grandfathered for leasing if they are delinquent in paying their

Assessments, fines, or other charges to the Association, or if they have had more than one late payment of Assessments, fines, or other charges in the previous twelve (12) months.

(iv) "Leasing" for the purposes of this Declaration is defined as the occupancy of a Lot by any person(s) other than the Owner or a child, Grandchild, parent, grandparent, spouse or former spouse 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. Short term rentals, including those through online services such as VRBO and Airbnb, are strictly prohibited.

*(b) **Leasing Cap & Permit.** 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". In order to qualify for a Leasing Permit, the Owner must first reside at the Lot for at least a twenty-four (24) month period. The Board may establish conditions as to the duration and use of such permits consistent with this Section. 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 Association rules. Additionally, leasing privileges will be revoked in the event a homeowner is thirty (30) days delinquent in their annual HOA dues, or after 30 days of not correcting a covenant violation.*

A non-grandfathered Owner's request for a Leasing Permit shall be approved if the number of current, outstanding permits issued plus Grandfathered Owners then leasing is less than ten percent (10%) of the total Lots in Harper Woods subdivision. An Owner, other than a Grandfathered Owner, may not lease more than one Lot at any given time. 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). 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 subsequent Owners of a Lot.

If the number of Leasing Permits issued (including Grandfathered Owners) is more than ten percent (10%) of the total number of Lots, then no additional Leasing Permits shall be issued to a non-grandfathered Owner until that number falls below ten percent (10%), except for Hardship 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 they so desire, when the above conditions have been satisfied. Even if the leasing cap of ten percent (10%) has been reached, Grandfathered Owners do not have to be placed on a waiting list and shall be issued a permit, if otherwise qualified to lease as provided above.

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 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 shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the number of Hardship Leasing Permits which have been issued to other Owners, (iii) the Owner's ability to cure the hardship, and (iv) whether previous Hardship Leasing Permits have been issued to this Owner. The Board shall not consider any hardship that pre-exists the Owner's purchase of their Lot.*

The Board may promulgate and/or amend regulations to serve as guidelines for circumstances constituting a basis for consideration of issuing a Hardship Leasing Permit. By way of illustration, and not prescription, limitation, or restriction, examples of such circumstances might be those in which:

1. The Owner has been called to active military duty.
2. Placement of the Owner in a long-term care facility.
3. Placement of the Owner with a family member due to illness.
4. The Owner dies and the Lot is being administered by their estate.
5. The Owner must temporarily relocate and intends to return to reside in the Lot.
6. An Owner must relocate his residence and cannot, within a set period of time from the date the Lot was placed on the market, sell the Lot while offering it for sale at a reasonable price no greater than its current appraised market value.

Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Hardship Leasing Permits shall be automatically revoked if during the term of the permit the Owner applies for and receives a Leasing Permit. Hardship Leasing Permits shall not be renewed. Therefore, any lease signed under a Hardship Leasing Permit must contain a provision stating that the lease is not renewable.

(d) **Leasing Provisions.** Leasing of Lots shall be governed by the following provisions:

(i) **Notice.** At least seven (7) days prior to entering into the lease of a unit, the owner shall provide the Board of Directors with a copy of the proposed lease, the names and addresses of the proposed lessee, and such other information as the Board may reasonably require. Within ten (10) business days after executing a lease agreement, 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, basements or fractions of Lots may be leased without prior written Board approval. All leases shall be in writing. 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 not less than twelve (12) months, but not more than twenty-four (24) months, except that the Board upon written request, may allow a lease term for less than twelve (12) months upon a showing of special circumstances. The Owner must provide the lessee copies of the Declaration, Bylaws, Architectural Standards, and Rules and Regulations of the Association. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) **Required Provisions.** Each Owner 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, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant, and incorporation of the following language contained in Subsections (A) and (B) into the lease:

(A) **Liability for Assessments and Other Charges.** Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Lot which become due during the term of the lease, including, but not limited to, fines which become due as a consequence of lessee's activities which violate provisions of the Declaration, Bylaws, Architectural Standards, or the rules and regulations of the Association. When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot 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 demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided 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 such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

(B) Compliance with the Governing Documents and Enforcement Powers of the Association.

If a Lot is leased or occupied in violation of this Section, the Association may bring an action against the lessee and/or the Owner 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 in equity. 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.

The Lessee shall comply with all provisions of the Declaration, Bylaws, Architectural Standards and rules and regulations of the Association, and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance, and shall indemnify and hold the Association harmless for any such person's failure to comply. The Owner shall cause all occupants of the Lot to comply with the Declaration, Bylaws, Architectural Standards and the rules and regulations, and shall be responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are also liable for any such violation or loss. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, Architectural Standards or a rule and regulation of the Association, fines may be levied against the lessee and/or the Owner; and such a violation is deemed to be a default under 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 and Lessee hereby further agree to hold harmless the Association, its Board of Directors, employees and agents if the Association exercises any of the enforcement power granted in this Section.

(e) 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:*

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

(f) Amendments to Conform With Laws. *The Board may amend this Section of the Declaration without a vote of the Owners in order to comply with requirements of federal, state, or local law.*

2.

A new Section 1.00 is added to Article I regarding Definitions, as follows:

1.00 Act. "Act" means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.

3.

Section 4.01 of Article IV regarding Covenant for Assessments Creation of the Lien and Personal Obligation of Assessments is hereby deleted in its entirety, and the following is substituted in its place:

4.01 Creation of the Lien and Personal Obligation of Assessments. *Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association for each Lot owned: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration or Bylaws. The Association, in the Board's discretion, may, but shall not be obligated to record a Statement of Delinquent Assessments & Notice of Statutory Lien on the County lien records. The lien provided for herein shall have priority as provided in the Act.*

All such assessments, together with late charges, interest, costs, and reasonable attorney fees actually incurred (including post-judgment attorney fees, costs & expenses) in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Other than provided below, the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the Association as provided in Section 10 such grantee and his or her successors, successors-in-title, and assigns shall not be liable for a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or in the event that any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments or under any instrument chargeable to the Lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from the grantor/prior owner, and his or her successors, successors-in-title, and assigns.

No Lot owner other than the Association shall be exempted from any liability for any assessment under any instrument for any reason whatsoever, including, without limitation,

abandonment, nonuse, or waiver of the use or enjoyment of his or her Lot or any part of the common area, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties .

4.

Section 4.08 regarding Effect of Nonpayment of Assessments is hereby deleted in its entirety, and the following is substituted in its place:

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. *Any assessments or installments thereof, which are not paid when due shall be delinquent, and shall incur a late charge equal to the greater of ten dollars (\$10.00) or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act. If the assessment is not paid when due a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, and interest at the rate of ten percent (10%) per annum, or such higher amounts as may be authorized by the Act, on the principal amount due (including the late charge), all costs of collection, reasonable attorney fees actually incurred, and any other amounts provided or permitted by law, including charges for returned checks due to insufficient funds or stopped payment.*

Partial payments shall not constitute payment in full, unless agreed to in writing by the Association. Any partial payments shall be applied in the following order of priority: attorney's fees, collection costs, late charges, interest, then to the oldest principal amount for delinquent assessments. The Association may allow any assessments, fines, or fees to be paid in installments, and may charge a reasonable service fee thereon.

5.

Section 4.09 regarding Certificate of Payment is hereby deleted in its entirety, and the following is substituted in its place:

4.09 Statement of Account/Estoppel Letter.

Any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as authorized under the Act as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any mortgage on such Lot.

If the Association does not require payment of the fee as a prerequisite to providing the statement of account, or if the statement of account is requested within a period shorter than five (5) business days, the Association, or its agent, may subsequently charge a reasonable fee in an amount larger than the maximum amount set by the Act, including any late payment fees, or other related costs including but not limited to fax, overnight delivery, research fee, and reasonable attorney fees actually incurred. If the statement of account is requested within a period shorter than three (3) business days, the Association or its agent may also charge a rush fee.

The Association, or its agent, may charge for ancillary expenses unrelated to providing the statement of account, including but not limited to; title transfer fees, providing copies of the governing documents, and providing completed lender questionnaires. If any of the above-related fees are not paid in full the Association shall not be obligated to release any liens. The unpaid fees and costs shall be the responsibility of the Seller/Owner; shall be considered an assessment on the Lot; and may be collected as provided in these covenants for other assessments, including the filing of a Statement of Delinquent Assessments & Notice of Statutory Lien on the county records.

6.

Section 6.12 regarding Antennae, Clotheslines, Etc., is hereby deleted in its entirety, and replaced by the following in order to comply with FCC regulations:

6.12 Antennae, Clotheslines, Etc. *No clotheslines or solar equipment of any type shall be placed, allowed or maintained upon any portion of a Structure or Lot without the prior written approval by the ARC. HAM radios, two-way radios, and other hobby or professional radio communication transmission equipment are prohibited.*

No exterior antennas, satellite dishes or multi-channel multi-port distribution service larger than one meter in length or diameter shall be placed, allowed, or maintained upon any portion of a Lot. All above referenced devices measuring one meter or less shall be installed in accordance with FCC rules and regulations, and shall not be placed in plain view from the street, unless it is the only positioning that allows for receiving or transmitting an acceptable quality signal.

If the placement is in plain view from the street, the Association may require the Owner to provide written confirmation from the satellite installer that an acceptable quality signal can only be achieved in a location that is in plain view from the street. The written confirmation shall not be considered a pre-condition to installation, but shall be provided by the Owner within seven (7) days from the Association's written request. If the written confirmation is not supplied to the Association within seven (7) days, the Association may require the Owner to re-locate the device to an area that is not in plain view of the street.

7.

Section 9.01 regarding Duration is hereby deleted in its entirety, and replaced by the following:

9.01 Duration. *The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided for in the Act.*

8.

Section 9.03 regarding Amendments by Association is hereby deleted in its entirety, and replaced by the following:

9.03 Amendments by Association. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3rds) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration. No Amendment shall be effective until filed in the Cobb County, Georgia land records.

If legal action is not instituted to challenge the validity of any amendment to the Declaration within one (1) year of the recording thereof in the Cobb County, Georgia land records, then any such amendment shall be presumed to be validly approved and adopted. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance, hereby agrees that the Declaration may be amended as provided for in this Section.

IN WITNESS WHEREOF, the foregoing Amendment is executed by the undersigned duly authorized representatives of the Association on the date indicated below, and said representatives hereby certify that after any required notice, the above Amendment was duly adopted by agreement of at least two-thirds (2/3) of the total votes in the Association. The individual agreement instruments are maintained in the corporate records of the Association.

HARPER WOODS HOMEOWNERS ASSOCIATION, INC.

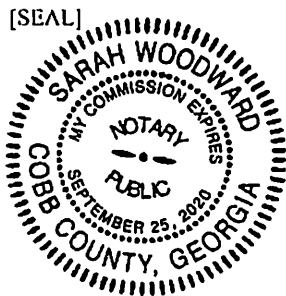
Sworn to and subscribed
before us on the 20th day of
August, 2017

By: John Athey
President

[Signature]
WITNESS

Attest:
[Signature]
Secretary

Sarah Woodward
NOTARY PUBLIC



9.03 Amendments by Association. *This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3rds) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration. No Amendment shall be effective until filed in the Cobb County, Georgia land records.*

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HARPER WOODS HOMEOWNERS ASSOCIATION, INC.

Sworn to and subscribed
before us on the 20th day of
August, 2019

By: John Atkey
President

WITNESS

Attest:

Sarah Woodward
NOTARY PUBLIC

[Signature]
Secretary

[SEAL]

