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Return to: Weissman, Nowack, Curry & Wilco, P.C.  
3500 Lenox Road, 4th Floor  
Atlanta, Georgia 30326 Attention: Jay Lazega

STATE OF GEORGIA  
COUNTY OF COBB

Cross Reference: Deed Book 13215  
Page 289

**AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
OLDE TOWN SQUARE**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Olde Town Square was recorded on January 6, 2000, in Deed Book 13215, Page 289, *et seq.*, Cobb County, Georgia Records ("Declaration"), as amended; and

WHEREAS, Article IX, Section 2 of the Declaration provides for amendment of the Declaration with the vote, written consent, or combination thereof, of members of the Olde Town Square HOA, Inc. ("Association") holding two-thirds (2/3) of the total eligible vote thereof; and

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

WHEREAS, this Amendment does not materially alter, modify or rescind any right, title, interest or privilege herein granted or accorded to any mortgage holder on a lot at Olde Town Square; provided, however, if a court of competent jurisdiction determines that this Amendment does so without such mortgage holder's written consent, then this Amendment shall not be binding on such mortgage holder, 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 mortgage holder;

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

1.

**Article VI of the Declaration is hereby amended by adding the following Section 16 thereto:**

**Section 16. Leasing.** In order to protect the equity of the individual Owners at Olde Town Square, and to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogenous residential Property of predominantly 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.**

**Leasing of Lots is permitted only by:**

- (1) a Grandfathered Owner;**
- (2) a Grandfathered Mortgage Holder on a Lot who becomes the Owner of such Lot through foreclosure of such mortgage or deed in lieu of foreclosure of such mortgage;**
- (3) a non-Grandfathered Owner who has received either a written leasing permit or a written hardship leasing permit from the Board of Directors authorizing leasing, as provided below.**

**(a) Definitions.**

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

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

**(iii) "Grandfathered Mortgage Holder"** means a mortgage holder on a Lot on the Effective Date.

**(iv) "Grandfathered Owner"** means an Owner of a Lot whose Lot is lawfully leased and occupied by such lessee on the Effective Date. Grandfathering shall apply only to the Lot owned by such Grandfathered Owner on the Effective Date, and shall continue only until the earlier of the date the Grandfathered Owner either: (1) conveys title to the Grandfathered Lot to any other person (other than the Owner's spouse); or (2) occupies the Lot as his or her residence. At that time, the Lot shall automatically lose grandfathering hereunder. To qualify to be a Grandfathered Owner hereunder, the Owner must, within 30 days of the Effective Date, provide the Board with a copy of the lease in effect on the Effective Date.

**(v) "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 roommate who occupies the Lot with the Owner or parent, child or spouse of the Owner occupying the Lot as his or her primary residence.

**(b) Leasing Permit.**

Non-Grandfathered Owners who want to lease their Lots may do so only if they have applied for and received from the Board of Directors either a "leasing permit" or a "hardship leasing permit." Such a permit will allow an Owner to lease his or her Lot, in strict compliance with the terms of the permit and this Section. The Board may establish conditions as to the duration and use of such permits consistent with this Section. 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). 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 (excluding sales or transfers to an Owner's spouse); or (2) the failure of an Owner to lease his or her Lot for 180 consecutive days at any time after a leasing permit is issued.

**An Owner's request for a leasing permit shall be approved if the total number of current, outstanding permits issued plus Grandfathered Lots is less than 6.**

If the total number of current leasing permits issued and Grandfathered Lots is 6 or more, then no additional leasing permits shall be issued (except for hardship leasing permits) until that number falls

below 6. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued a permit, if they so desire, when that number falls below 6.

(c) **Hardship Leasing Permits.** If an Owner believes that the failure to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Board for a hardship leasing permit. The Board may 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 harm, if any, which will result to the Property if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner.

The following are examples of undue hardships:

- An Owner must relocate his or her residence and cannot, within six 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;
- An Owner dies and the Lot is being administered by his or her estate; and
- An Owner takes a leave of absence or temporarily relocates out of Georgia and intends to return to reside in the Lot at a specified time.

Hardship leasing permits shall be valid for a term of one (1) year, unless the Board establishes a shorter or longer term. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant.

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

(i) **Notice.** At least seven (7) days before entering into a lease, the Owner will provide the Board with a copy of the proposed lease agreement. The Board will approve or disapprove the form of that lease. If a lease is disapproved, the Board will notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) **General.** Except for roommates of an Owner as provided above, Lots may be leased only in their entirety, and no rooms or fractions of Lots may be leased without prior written Board approval. 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. Within 10 days after executing a lease agreement for the lease of a Lot, the Owner will provide the Board with a copy of the lease and the name of the tenant and all other occupants of the Lot. The Owner must provide the tenant copies of the Declaration, By-Laws, and Association rules. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed tenant; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) **Tenant Compliance with Rules.** 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 tenant, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

**Tenant Compliance with Declaration, Bylaws, and Rules and Regulations.** If a Lot is leased or occupied in violation of this Section, then the Board of Directors of the Olde Town Square HOA, Inc. ("Association") is authorized, in addition to all other available remedies, to terminate that lease and occupancy, and to suspend all voting and/or Common

Property use privileges of the Owner and any unauthorized tenant(s) or occupant(s), subject to the provisions of the Declaration of Covenants, Conditions and Restrictions for Olde Town Square ("Declaration") and the Association By-Laws ("By-Laws").

The tenant shall comply with all provisions of the Declaration, By-Laws 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, By-Laws 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 the tenant, or a person living with the tenant, violates the Declaration, By-Laws or Association rules, fines may be levied against the tenant and/or the Owner, and such 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 tenant in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the authority of enforcement against the tenant for breaches resulting from the violation of the Declaration, By-Laws, and Association rules, including the power and authority to evict the tenant as attorney-in-fact on behalf of 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 tenant, any costs, including reasonable attorneys' fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(e) **Applicability of this Section.** Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by the Association, or by any Grandfathered Mortgage Holder who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage. Such parties shall be permitted to lease a Lot without first obtaining a permit in accordance with this Section.

**IN WITNESS WHEREOF**, the undersigned officers of Olde Town Square HOA, Inc., hereby certify that this amendment to the Declaration was duly adopted by the required majority of the Association membership, with any required notices duly given.

This \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

**ASSOCIATION: OLDE TOWN SQUARE HOA, INC.**

Sworn to and subscribed to before me this \_\_\_\_day of \_\_\_\_\_, 200\_\_\_\_\_.

By: \_\_\_\_\_(Seal)  
President

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_(Seal)  
Secretary

\_\_\_\_\_  
Notary Public

[Corporate Seal]

[Notary Seal]

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