



REBECCA KEATON  
CLERK OF SUPERIOR COURT Cobb Cty. GA.

----- [SPACE ABOVE RESERVED FOR RECORDING DATA] -----

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Please return to: Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, GA 30326  
Attn: Jonathan R. Benator

STATE OF GEORGIA  
COUNTY OF COBB

Cross Reference: Deed Book 7019, Page 515

Deed Book 9614, Page 312

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR BUTLER CREEK**

**WHEREAS**, Polygon Properties, Inc. recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Butler Creek in Deed Book 4616, Page 31 *et seq.*, Cobb County Georgia land records, as re-recorded in Deed Book 7019, Page 515 and amended in Deed Book 9614, Page 312 (hereinafter, the "Declaration");

**WHEREAS**, Article X, Section 7 of the Declaration provides that the Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof;

**WHEREAS**, members of the Butler Creek Homeowners Association, Inc. ("Association") holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote have approved this amendment;

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

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**Article VIII of the Declaration shall be amended by adding the following Section 21:**

Section 21. Leasing. The term leasing shall mean the regular, exclusive occupancy of a Lot by any person other than: (1) the Owner or a parent, child or spouse of the Owner; or (2) a roommate of the Owner or a parent, child or spouse of the Owner, provided the Owner or a parent, child or spouse of the Owner also occupies the Lot as his or her primary residence. To preserve the character of the Property as predominantly owner-occupied, the leasing of Lots is hereby prohibited except by: (1) the Association; (2) an Owner with Grandfathered Status; or (3) an Owner who has received a Hardship Permit, as further provided below.

(a) Hardship Leasing Permits

If the inability to lease will result in a hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Permit. A hardship is one which results in a disproportionate financial burden or challenge and one which is not caused by an Owner's action or inaction. The Board shall have the authority to issue or deny requests for Hardship Permits in its sole discretion after considering, among other things, the following factors: (1) the nature, degree, and cause of the hardship; (2) the number of Hardship Permits which have been issued to other Owners; (3) the Owner's ability to cure the hardship; and (4) whether previous Hardship Permits have been issued to the Owner; provided, however, a Hardship Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than thirty (30) days past due in any assessment or charge and/or if the Owner is in violation of the Association's Declaration, Bylaws, or rules and regulations (hereinafter, the "Governing Documents"). Such a permit will allow an Owner to lease his or her Lot, provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permit consistent with this Section. All Hardship 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).

Unless otherwise determined by the Board, Hardship Permits shall be valid for a term not to exceed one (1) year. Upon expiration of a Hardship Permit, Owners may apply for additional Hardship Permits if the circumstances warrant.

Hardship Permits are automatically revoked upon: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Lot for sixty (60) consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Lot by the Owner. The Board also shall have the power to revoke any Hardship Permit issued to any Owner if the Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner and/or Occupant is in violation of the Association's governing documents.

(b) General Leasing Provisions

(i) Notice and Approval. No later than ten (10) days after the execution of an approved lease or the renewal or extension of a lease, the Owner shall provide the Board of Directors with: (1) a copy of the proposed lease, the name and address of the proposed Occupant(s), and such other information as the Board may reasonably require; and (2) if requested by the Association, an affidavit (or other certification determined by the Board) that Owner has obtained and reviewed Background information (as defined below) as to the Occupant(s). The term "Occupant" shall mean any individual, corporation, firm, association, partnership, trust, or other legal entity staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. "Background Information" may include such information as determined from time to time by the Board including, but not limited to, criminal background information and credit history. The purpose of the Background Information is to allow the owner to better make an informed decision as to the proposed Occupant(s). The Board shall solely approve or disapprove the form of said lease; the Board shall not approve or disapprove the prospective Occupant(s).

(ii) Lease Terms. Lots may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval. There shall be no subleasing of Lots or assignment of leases without prior written Board approval.

(iii) Liability for Assessments: Compliance. The Owner must provide the Occupant with a copy of the Association's Governing Documents. Any Owner leasing his or her Lot shall incorporate and state the following provisions in the Lease for his or her Lot and, notwithstanding this requirement, the following provisions are deemed incorporated by this reference into each lease of any Lot, whether or not expressly stated therein, and into the terms of any tenancy or occupancy even if no written lease or agreement exists between the Owner and the Occupant:

A. Compliance with Governing Documents. The Owner and each Occupant shall comply with all provisions of the Association's Governing Documents. The Owner and Occupant are responsible for violations by any guests of the Lot and may be sanctioned for any such action. If a Lot is leased or occupied in violation of the Governing Documents, or if the Owner, Occupant or guest violates the Governing Documents, the Association's Board of Directors shall be authorized to take all enforcement actions against the Owner and/or Occupant authorized under the Governing Documents.

B. Use of Recreational Facilities. The Owner transfers and assigns to the Occupant, for the term of the lease, all rights and privileges the Owner has to use any recreational facilities on the Common Area.

C. Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay an assessment or any other charge to the Association when due, the delinquent Owner hereby consents to the assignment of any rent to be received from the Occupant during the period of the delinquency. In such case, Owner authorizes the Board or its agents to make demand upon the Occupant and the Occupant shall pay to the Association all unpaid assessments and other charges payable

during and prior to the term of the lease and any other period of occupancy. However, the Occupant 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 Board's request. All such payments

made by the Occupant shall reduce, by the same amount, the Occupant's obligation to make monthly rental payments to the Owner. If the Occupant fails to comply with the Board's request to pay assessments or other charges, such failure shall be deemed a violation of the Declaration and, in addition to all other enforcement rights, the Occupant shall pay to the Association all amounts authorized under the Declaration as if the Occupant were the owner of the Lot. 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.

(c) Enforcement. If a Lot is leased or occupied in violation of the Association's Governing Documents or if the Owner, Occupant or guest violates the Governing Documents, such violation is deemed to be a default under the terms of any lease or occupancy and the Association may require the Owner to evict the Occupants. In addition to all other remedies permitted by this Declaration, such default authorizes the Owner and/or the Association, as the Owner's delegate and attorney-in-fact, to terminate the lease and/or occupancy and to evict all Occupants, without liability, in accordance with Georgia law. In any such eviction action by the Association, the Association may terminate the occupancy rights fifteen (15) days after notice is sent (or such period as is required by law), notwithstanding any notice requirement in the lease or occupancy terms or any other procedure in the Association's Governing Documents. Once the Association invokes its right to terminate the lease or occupancy and evict the Occupant(s), the Owner no longer has the right to extend or revive the terminated occupancy in any way.

(d) Applicability to Certain Lease Agreements. The prohibition on leasing as well as the requirements to obtain a Hardship Permit shall not apply to any leasing transaction entered into by 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.

(e) Lease Administrative Fee. As the review process of proposed leases generates common expenses by the Association, the Board shall have the authority to require an administrative fee of up to two hundred dollars (\$200.00) as a part of each application for a Hardship Permit (whether the review is for an initial approval or renewal). Said fee shall constitute a special assessment under Article V, Section 6 of the Declaration.

(g) Lease Purchase Agreements. A lease purchase agreement permits a tenant to occupy a Lot pending the purchase of the Lot. Such occupancy shall be considered "leasing," in accordance with the definition of leasing above, unless the lease purchase agreement requires: (1) the tenant/purchaser to pay the seller earnest money of at least five percent (5%) of the purchase price; and (2) the tenant/purchaser will forfeit the earnest money to the seller if the sale of the Lot does not close by the date stated in the lease purchase agreement. The copy of the check or wire transfer evidencing receipt of the earnest money and a copy of the executed lease purchase agreement shall be furnished to the Board within seven (7) days of the effective date of the lease purchase agreement.

(h) Grandfathered Status. The effective date of this Amendment shall be the date that this Amendment is recorded in the Cobb County, Georgia land records. An Owner who is lawfully leasing his or her Lot as of the effective date of this Amendment and provides the Board of Directors within 30 days of the effective date of this

Amendment a copy of his or her lease shall obtain "Grandfathered Status." Grandfathered Status shall automatically expire upon the earlier of: (1) the date the Owner conveys title to his or her Lot to any other person (other than the Owner's spouse); (2) the date that all current occupants of the Lot vacate and cease to occupy the Lot; (3) the date the Owner of the Lot ceases to lease his or her Lot for sixty (60) consecutive days; (4) the date the Owner occupies the Lot as his or her primary residence; or (5) any assignment, termination, renewal, extension, or modification of the existing lease, including, but not limited to, changes in the terms or duration of occupancy.

**IN WITNESS WHEREOF**, the undersigned officers of the Butler Creek Homeowners Association, Inc. hereby certify that this amendment was properly approved by the required membership of the Association with all required notices duly given.

This 27 day of June, 2013.

Sworn to and subscribed before me this

27 day of June, 2013

[Signature]

Witness

[Signature]

Notary Public

**Y SANTIAGO WHITE**  
**MY COMMISSION EXPIRES**  
**SEPTEMBER 12, 2013**

[Notary Seal]

**BUTLER CREEK HOMEOWNERS  
ASSOCIATION, INC**

By: [Signature]  
President

Attest: [Signature]  
Secretary

BK: 15079 PG: 3649  
REBECCA KEATON  
CLERK OF SUPERIOR COURT Cobb Cty. GA.