

After Recording Return To:  
Lueder, Larkin & Hunter, LLC  
5900 Windward Parkway, Suite 390  
Alpharetta, Georgia 3000  
Attn: Jesse M. Cox

Cross Reference:  
Deed Book 38699, Page 295  
Deed Book 50808, Page 686  
Deed Book 54186, Page 247

STATE OF GEORGIA

COUNTY OF FULTON

**AMENDMENT TO THE DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR ABBERLEY TOWNSHIP**

This Amendment to the Declaration of Covenants, Restrictions and Easements for Abberley Township (hereafter referred to as "Amendment") is made on the date set below.

W I T N E S S E T H:

WHEREAS, Morton/State Venture, LLC, a Georgia limited liability company (hereafter referred to as "Declarant"), recorded that certain Declaration of Covenants, Restrictions and Easements for Abberley Township on October 22, 2004, in Deed Book 38699, Page 295 of the Fulton County, Georgia land records (hereafter referred to as "Declaration");

WHEREAS, that certain Amendment to the Declaration of Covenants, Restrictions and Easements for Abberley Township was recorded on September 2, 2014 in Deed Book 54186, Page 247 of the Fulton County, Georgia land records to amend various provisions of the Declaration and to submit the Declaration to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq.;

WHEREAS, Abberley Township Homeowners Association, Inc. (hereafter referred to as the "Association") is the homeowners association identified in the Declaration and existing and operating in the Abberley community;

WHEREAS, pursuant to Article XII of the Declaration, the Declaration may be amended with the approval of Members of the Association holding at least sixty-six and two-thirds (66-2/3%) percent of the total votes in the Association provided, however, that any amendment which alters, modifies, changes or rescinds the security title and interest of any mortgagee must be approved by such mortgagee;

WHEREAS, this Amendment does not alter, modify, change or rescind the security title and interest of any mortgagee; provided, however, in the event a court of competent jurisdiction

determines that this Amendment materially and adversely affects the security title and interest of any mortgagee, then this Amendment shall not be binding on the mortgagee so affected, unless it consents hereto; and if such consent is withheld, then the provisions of the Declaration in effect prior to this Amendment shall control with respect to the affected mortgagee;

WHEREAS, this Amendment has been approved by Members of the Association holding at least sixty-six and two-thirds (66 2/3%) percent of the total votes in the Association; and

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

1.

**Article VIII of the Declaration is hereby amended by adding the following Section 17 thereto:**

Section 17. Leasing. In order to protect the equity of the Owners within the community, to carry out the purpose for which the community was formed by preserving the character of the community as a residential property of predominantly owner-occupied homes, to prevent the community from assuming the character of a renter-occupied complex, leasing of Lots shall be governed by the restrictions imposed by this Section.

(a) Leasing. Leasing of Lots is permitted only as provided herein.

(b) Short Term Leasing. Notwithstanding anything to the contrary herein, short-term rentals, transient tenants, and any other services utilized to temporarily rent Lots as accommodations to guests or tenants (for example, Airbnb, VRBO, or other similar services) are expressly prohibited, and such rental arrangements shall be considered an impermissible business activity.

(c) Definitions. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include exclusive occupancy by the spouse, domestic partner, child, or parent of an Owner and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary dwelling.

If the Owner of a Lot is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person, the entity shall designate in writing to the Board of the Directors the name(s) of the natural person(s) who will occupy the Lot. To constitute a valid designation in accordance with this subsection, the natural person must have a substantial relationship to the legal entity, including, by way of illustration and not limitation, being a shareholder, director, or officer of the corporation, being a member of the limited liability company, being a partner in the partnership, or being a beneficiary of the trust. In no event shall the natural person(s) designated to occupy the Lot be changed more frequently than once every twelve (12) months.

If the entity Owner receives any consideration or benefit, including, but not limited to, rent, a fee, service, or gratuity from or on behalf of the designated person(s) occupying the Lot,

then such arrangement shall be considered leasing, and the Owner shall be required to comply with the entirety of this Section. The express purpose of this subsection is to ensure that entity Owners do not utilize the designation of a natural person to occupy the Lot in order to circumvent the leasing restriction contained within this Section 17. Entity Owners shall be eligible to be Grandfathered-Owners in the event any entity Owner complies with the grandfathering provisions within this Section.

(d) General. Any Owner who desires to lease such Owner's Lot may do so only if the Owner has applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease their 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 permits consistent with this Section. All permits shall be valid only as to a specific Lot Owner and shall not be transferable between either Lots or Lot Owners. No more than twenty percent (20%) of all Lots in the Abberley community may be leased or issued Leasing Permits at any time, except in cases of approved Hardship Leasing Permits or other applicable exceptions.

(e) Leasing Permits. In order to be qualified to lease, an Owner must have regularly occupied the Lot for which the Leasing Permit is requested as his or her primary residence for at least twelve (12) consecutive months. The purpose of this provision is to discourage the purchase of Lots by Owners for the sole purpose of renting the Lot as an investment property. Provided, however, if a deceased Lot Owner regularly occupied a Lot as his or her primary residence for at least twelve (12) consecutive months, such deceased Lot Owner's heir, devisee, or beneficiary shall be qualified to lease and considered to have met the twelve (12) consecutive months occupancy requirement.

An Owner's request for a Leasing Permit shall be approved if such Owner has regularly occupied the Lot for which the Leasing Permit is requested as his or her primary residence for at least twelve (12) consecutive months, and the current number of Lots leased is below twenty percent (20%). A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party; (2) the failure of a Lot Owner to lease his or her Lot within ninety (90) days of the Leasing Permit having been issued; (3) the failure of a Lot Owner to have his or her Lot leased for any consecutive ninety (90) day period thereafter; or (4) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

(f) Hardship Leasing Permits. If the failure to lease will result in a hardship, an Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the sole authority to issue or deny requests for Hardship Leasing Permits in its discretion. In making such a determination, the Board may take any factor into account, including: (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 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 term not to exceed one year. Owners may apply for additional Hardship Leasing Permits.

(g) Leasing Provisions. All leasing within the Development shall be governed by the following provisions:

(i) Notice. Within twenty one (21) days from the execution of the lease by both parties thereto, the Owner shall provide the Board with a copy of the executed lease, the names and phone numbers of the lessees, and such other information as the Board may reasonably require.

(ii) General. Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. All leases shall be for a period of at least twelve (12) months, except with written approval from the Board. The Lot Owner must provide the tenant copies of the Declaration, Association's Bylaws, and Association Rules and Regulations.

(iii) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot shall be fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee 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 lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof; and the Owner shall not again lease the Owner's Lot to any person without the expressed written approval of the Board.

(iv) Exclusive Use of Common Areas. The Owner transfers and assigns to the lessee, for the term of the lease, the exclusive right and privilege to use the Common Areas, including, but not limited to, the use of any and all recreational facilities and other amenities. During the term of the lease, the Owner shall not utilize the Common Areas, including, but not limited to, the recreational facilities or other amenities.

(h) Leasing Administration Assessment. The leasing of Lots in Abberley creates administrative burdens for the Association, including, but not limited to, updating the Association's records, issuing access control devices, if any, to recreational facilities. Pursuant to this Declaration and the Act, the Association is authorized to assess individual Owners certain expenses benefiting less than all Lots. In accordance with this Declaration and the Act, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration and the Act, any Owner who leases a Lot will be required to pay to the Association an annual Lease Administration Fee. The Board of Directors, in its sole discretion, may set the initial fee and from time to time, may increase the annual Lease Administration Fee. The Lease Administration Fee shall constitute a specific special assessment pursuant to Article VI, Section 3 of this Declaration.

(i) Applicability of this Section (Grandfather Lots that are Currently Being Leased). Except as provided herein, the leasing restrictions within this Section 17 shall not apply to any Owner who is an Owner of a Lot on the date this Amendment is recorded in the Fulton County, Georgia land records if the Owner is leasing the Lot on such date in accordance with the terms of the Declaration (a "Grandfathered Owner"). The Grandfathered Owner may continue to lease the Lot in accordance with the terms of the Declaration as it existed prior to the date this Amendment is recorded in the Fulton County, Georgia land records; provided, however, upon the conveyance of ownership of the Lot for value, all leasing restrictions of this Section 17 shall apply. The expressed purpose of this grandfathering provision is to allow Owners who own, and who are leasing, Lots as of the date this Amendment is recorded in the Fulton County, Georgia land records (the "Effective Date") to continue to lease their Lots without a Leasing Permit, but to thereafter restrict leasing upon conveyance of ownership of the Lots (e.g., resales).

Grandfathered Owners shall, within ninety (90) days of the Effective Date, provide a copy of a fully executed lease evidencing that the Owner's Lot was leased as of the Effective Date. Failure to provide such lease shall create a presumption that the Lot was not leased on the Effective Date, and thus, does not create a Grandfathered Owner.

Any and all leases entered into by a Grandfathered Owner must comply with subsections (g) and (h) of this Section. Leasing pursuant to this Section shall be counted when calculating the total number of Lots issued Leasing Permits.

(j) Exemptions to General Leasing Requirements. An Owner of a Lot on the date this Amendment is recorded in the Fulton County, Georgia land records, who is not leasing the Lot on the date of recording, and is otherwise in compliance with all other provisions of this Section shall be eligible to receive a Leasing Permit irrespective of the number of Lots being leased. This exemption shall last for a period of 24 months after the date this Amendment is recorded. Such qualifying Owners shall be allowed to renew such Leasing Permits in perpetuity regardless of the number of Lots being leased, so long as such Owners continue to be in compliance with all other provisions of this Section.

2.

Any action to challenge the validity of any provision of this Amendment, including the passage of this Amendment, must be brought within one (1) year of the recording of this

Amendment in the Fulton County, Georgia land records. No action to challenge any provision of this Amendment or the passage thereof may be brought after such time.

IN WITNESS WHEREOF, the undersigned being the President and Secretary of Abberley Towneship Homeowners Association, Inc., have executed this instrument evidencing this Amendment was approved by Members of the Association holding at least sixty-six and two-thirds (66-2/3%) percent of the total votes in the Association, and that said approval was lawfully obtained and any notices required by law have been given.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ABBERLEY TOWNSHIP HOMEOWNERS  
ASSOCIATION, INC.

\_\_\_\_\_  
Signature of President

Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_

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

\_\_\_\_\_  
Signature of Secretary

Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_

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