

BK 34345 PG 0098

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STATE OF GEORGIA  
COUNTY OF GWINNETT

Cross Reference: Deed Book 16276  
Page 0081

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS, AND EASEMENTS FOR  
BRENTWOOD ESTATES SUBDIVISION UNITS 1 AND 2**

WHEREAS, Jimwall Development, LLC, a Georgia Limited Liability Corporation, recorded a Declaration of Covenants, Restrictions, and Easements for Brentwood Estates Subdivision Units 1 and 2 on June 29, 1998 in Deed Book 16276, Page 0081 et seq., Gwinnett County, Georgia Record (herein after referred to as "Original Declaration"); and

WHEREAS, the Original Declaration was amended by that First Amendment to Declaration of Covenants, Restrictions, and Easements for Brentwood Estates Subdivision recorded on September 21, 1998 in Deed Book 16801, Page 0180, Gwinnett County, Georgia, records; and

WHEREAS, Article IX, Section 9.03 of the amended Declaration provides for the amendment of the Original Declaration by members holding at least two-thirds (2/3) of the total vote in the Association; and

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26

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

WHEREAS, these amendments do not alter, modify, change, or rescind any right, title, interest, or privilege held by any first mortgage holder. Provided, however, in the event a court of competent jurisdiction determines that these amendments do alter, modify, change, or rescind any right, title, interest, or privilege held by any first mortgage holder without such first mortgage holder's consent inviting to these amendments, then these amendments shall not be binding on the first mortgage holder so involved, unless such first mortgage holder consents to these amendments; and if such consent is not forthcoming, then the provisions of the Original Declaration effective prior to these amendments shall control with respect to the effected first mortgage holder;

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

1.

**Article VI of the Declaration is hereby amended by adding a new Section 6.26 thereto as follows:**

Section 6.26. Leasing is prohibited. In order to protect the equity of the individual Lot Owners at the Property, to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogeneous residential community of predominantly owner-occupied homes and by preventing the Property from assuming the character of a renter-occupied apartment 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 Lots shall be governed by the restrictions imposed by this Paragraph. Except as provided herein, the leasing of Lots shall be prohibited.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however,

leasing shall not include: (a) exclusive occupancy by the child or parent of an Owner, (b) Occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence, or (c) the occupancy by a former Owner for a period of not more than one hundred and twenty (120) days after the closing on the sale of a Lot to a third-party.

If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or agent of such other legal entity shall be deemed an Owner of such Lot for purposes of this Paragraph. Such person's designation as an Owner of such Lot pursuant to this Paragraph shall terminate automatically upon the termination of such person's relationship with the entity holding record title of the Lot.

(b) Exceptions to the Leasing Prohibition for Undue Hardship. The Board shall be empowered to allow reasonable leasing of Lots, upon written application, to avoid undue hardship upon an Owner. By way of illustration, and not by limitation, examples of circumstances which would constitute "undue hardship" are those in which (1) an Owner must relocate his or her residence for employment purposes and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot for a price no greater than the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every six (6) months for renewal of the hardship exception.

Those Owners who have demonstrated that the inability to lease their Lot would result in undue hardship and have obtained the requisite approval of the Board may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship, but which shall not be more than six (6) months as Owners must re-apply for extensions of the Undue Hardship approval every six (6) months which extensions are not required to be granted by the Board, but may be approved at the Board's discretion based upon the facts and circumstances presented by the Owner.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When leasing is approved, a copy of the lease, signed by the lessee and lessor, shall be submitted to the Board within ten (10) days after it has been signed by both parties.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this subparagraph shall be voidable at the option of the Board of Directors.

(c) Leasing Provisions. Such leasing as is permitted at Brentwood Estates for undue hardships as outlined herein shall be governed by the following provisions:

Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease, the name, address, and home and business telephone numbers of the proposed lessee and the names of all other people occupying the Lot, the Owner's address other than at the Lot, and such other information as the Board may

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BK 34345 PG 0102

reasonably require. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto. Within ten (10) days from the execution of the approved lease by both parties, the Owner shall provide the Board with a copy of the executed lease.

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. No transient tenants may be accommodated in a Lot. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases shall be for a period of not more than six (6) months, except with written Board approval. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot in the Property shall be deemed to contain the following provisions, whether or not expressly therein stated, and 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 a lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Liability for Assessments. Lessee agrees to be personally obligated for the payment of all annual and special assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions

BK 34345 PG 0103

of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, 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 Board'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 lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late 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 the agreement and any other period of occupancy by lessee.

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 are 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 constitute a lien against the Lot as provided for herein. 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 Brentwood Estates Homeowners Association, Inc., 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.

BK 34345PG0105

Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.

Applicability of this Paragraph. Those Owners who are Owners upon the effective date of this Declaration may lease their Lots and shall not be required to demonstrate undue hardship as a prerequisite to the leasing of their Lots for so long as they own said Lots. However, upon any conveyance or transfer of the Lot, any grantee thereof shall be subject to the provisions of this Paragraph, in addition to all other provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

Leases executed after the date on which this Declaration is recorded in the Gwinnett County, Georgia, records are subject to the terms of this Paragraph. Leases existing on the date which this Declaration is recorded in the Gwinnett County, Georgia, records shall not be subject to the terms of Paragraph; such leases may continue in accordance with the terms of the Original Declaration as it existed prior to the recording date of this Declaration. Any Owner of a Lot which is leased on the Effective Date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Gwinnett County, Georgia records.

Inapplicability to Holders of First Mortgages. This Paragraph 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.

IN WITNESS WHEREOF, the undersigned officers of the Brentwood Estates Homeowners Association, Inc. hereby certify that members holding at least two-thirds (2/3) of



BK 34345 PG 0106

the total vote of the Association have approved these amendments and they shall become effective immediately upon recording in the Gwinnett County, Georgia, land records.

This 9 day of August, 2003.

BRENTWOOD ESTATES HOMEOWNERS  
ASSOCIATION, INC.

By: *James A. Tolson*  
President

Attest: *W. Charles Ross*  
Secretary

[CORPORATE SEAL]

Sworn to and subscribed to  
before me this 14 day of  
August, 2003.

Witness

*Lena E. O'Brien*  
Notary Public

Notary Public for Gwinnett County, Georgia

My Commission Expires: 10-25-06