

STATE OF GEORGIA
COUNTY OF COBB

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Deed Book 14438 Pg 5258
Filed and Recorded Jan-11-2007 10:37am
2007-0006259

Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

Cross Reference: Deed Book 13590, Page 6038.

(4) 14
**AMENDMENT TO THE DECLARATION OF COVENANTS AND
RESTRICTIONS FOR FLOWERY BRANCH SUBDIVISION**

This Amendment is made on the date hereinafter set forth by the Owners of Lots in Flowery Branch Subdivision (hereinafter referred to as "Owners").

WITNESSETH:

WHEREAS, that certain DECLARATION OF COVENANTS AND RESTRICTIONS FOR FLOWERY BRANCH SUBDIVISION was recorded in Deed Book 1359, Page 6038, Superior Court Records, Cobb County, Georgia (hereinafter referred to as "Declaration"); and

WHEREAS, Article X of the Declaration provides that it may be amended by signed agreement by at least sixty-seven (67%) percent of the Owners of Lots; and

WHEREAS, this Amendment was consented to in writing by at least sixty-seven (67%) of the Owners of Lots, as attested to by the below signed officers of the Association; and

WHEREAS, this amendment is not material with respect to first mortgagees in that it does 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 this amendment does materially and adversely affect the security title or interest of any first mortgagee without such first mortgagee's consent to this amendment, then this amendment shall not be binding on the first mortgagee so involved, unless such first mortgagee consents to this amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this amendment shall control with respect to the affected first mortgagees.

NOW, THEREFORE, for and in consideration of the premises, said Declaration is hereby amended as follows:

A new Section 14 shall be added to Article VIII of the Declaration as follows:

Section 14. Leasing Restrictions.

In order to protect the equity of the individual owners, and to carry out the purpose for which the Association was formed by preserving the character of Flowery Branch as a homogeneous residential community of predominantly owner-occupied homes and by preventing the community from assuming the character of a renter-occupied 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 a Lot (or dwelling thereon) shall be governed by the restrictions imposed by this Section (other than as provided herein for certain Mortgagees) as follows:

A. RESTRICTION ON LEASES. *Leasing is not allowed except as provided for in paragraph B below.*

B. NOTICE AND REGULATIONS. *The Board may allow temporary exceptions to the restriction on leases on the basis of hardship. Sub-leasing or renting a portion of a Lot may be allowed, with the Board's prior written approval, but only if the Owner will still be residing on the Lot. Application for a hardship exception or for approval of sub-leasing a portion of a Lot shall be submitted to the Board in writing and sent via certified mail. Any Owner making application to the Board to lease his Lot, or any portion thereof, shall give written notice to the Board stating the name and address of the intended lessee, the terms of the proposed lease and such other information as the Board may reasonably require. The Board shall have the sole discretion to approve or disapprove such applications and will do so within thirty (30) days from the date of receipt of said application.*

The Board shall have the authority to make and enforce reasonable Rules and Regulations regarding the restrictions for leasing, sub-leasing, and renting, including definitions, and the grounds for temporary exceptions to said restrictions, along with the right to impose fines constituting a lien upon the Lot being leased.

C. REQUIRED LEASE PROVISIONS. *The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for greater than one (1) year. All leases and lessees are subject to the provisions of the Declaration, Bylaws, Architectural Guidelines, and Rules. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of the below paragraphs lettered; (a) through (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:*

(a) Lessee acknowledges that promises made to Lessor, as contained in Article VII, Section 14, Paragraph C., Subparagraphs (a), (b), (c) and (d) of the Declaration of Covenants and Restrictions for Flowery Branch Subdivision, which govern the leased premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee 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 equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. 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.

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted by the Association pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges the violation by Lessee or any occupant or person living with Lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.

(c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments, special assessments, or fines, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of occupancy by Lessee; provided, however, 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 payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent 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 this lease agreement and any other period of occupancy by Lessee.

(d) Lessee's right shall be subject to all rights of the Association and any bona fide Mortgage or deed to secure debt which is now or may hereinafter be placed upon the Premises by Lessor.

D. ENFORCEMENT. *For the purpose of enforcing the provisions of this Section, which shall be incorporated in the provisions of any leases of a Lot, each Owner, by acceptance of a deed or other conveyance of a Lot, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Article VIII, Section 14, of this Declaration, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.*

E. EXPENSES OF EVICTION. *In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees actually incurred, and court costs, associated with*

the eviction shall be specifically assessed against the Lot, becoming a lien thereon subject to enforcement in accordance with Article V of this Declaration, and shall become the personal obligation of the Owner thereof, such being deemed hereby as an expense which benefits the Lot and the Owner thereof.

F. RIGHTS OF LESSEE. Any Lessee charged with a violation of the Declaration, Bylaws, or rules and regulations is entitled to the same rights to which the Owner is entitled as provided in the Association's Bylaws.

G. 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:

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

ALL OTHER PROVISIONS OF SAID DECLARATION SHALL REMAIN UNCHANGED.

IN WITNESS WHEREOF, the foregoing Amendment is executed by the undersigned duly authorized representative of the Association on this 15 day of December, 2006, and said representatives attest that the Amendment was consented to in writing by at least sixty-seven (67%) of the Owners of Lots.

FLOWERY BRANCH HOA, INC.

Lisa Dillman
BY: Lisa Dillman
TITLE: President.

ATTEST:

Julia A. Shaker
SECRETARY/TREASURER

Signed, sealed and delivered in the presence of:

Carla Schubert
NOTARY PUBLIC

