

Type: DEE
Kind: SPECIAL INSTRUMENT (DEED)
Recorded: 10/22/2018 10:14:08 AM
Fee Amt: \$92.00 Page 1 of 10
Montgomery County, OH
Brandon C. McClain County Recorder
File# 2018-00062010

10

FIRST AMENDMENT

TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND BYLAWS FOR
BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION

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Me.

No plat required

The filing stamp of the County Auditor on the original of this Amendment is evidence that a copy of this Amendment has been filed with said Auditor on the date of that filing stamp.

DM

Table of contents for the First Amendment

(1)	PURPOSE	1
(2)	PREVIOUS RECORDING INFORMATION	1
(3)	NAME OF THE ASSOCIATION	2
(4)	RENTAL OF ASSOCIATION LOTS	2
(5)	REAL ESTATE SUBJECT TO THIS AMENDMENT	5

Signature of the President and Secretary/Treasurer of the Association, attesting and certifying, respectively, that this change in the Association Documents reflects the affirmative vote of not less than seventy-five percent (75%) of the Lot Owners pursuant to a written ballot (it is not necessary that the Lot Owners sign the actual amendment document), will follow at the end of this Amendment before it may be recorded.

FIRST AMENDMENT

TO THE DECLARATION OF ASSOCIATION OWNERSHIP FOR BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION, INC.

This Amendment is made and entered into by BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION, INC. and with the voted approval or written consent of Owners holding at least seventy-five percent (75%) of the voting power of the Association.

(1) PURPOSE

Common usage trends and Owner involvement in the management process has changed since the drafting of the original Association Documents. A change in the Association Documents is necessary in order to protect the equity of the Unit Owners, the marketability of the Association Units and to carry out the purpose for which the Association was formed, by preserving the character of the Association Property as a homogeneous predominantly owner-occupied residential community and by preventing the Association from assuming the character of a renter-occupied apartment complex. Maintaining a predominantly owner-occupied residential community status also enables greater private and governmental financing, as well as, purchase opportunities for both existing Owners and future purchasers.

(2) PREVIOUS RECORDING INFORMATION

The Association Documents and subsequent Amendments to those documents have been recorded in the Deed Records of Montgomery County, Ohio as follows:

<u>ITEM RECORDED</u>	<u>SECTIONS AND LOTS</u>	<u>DATE RECORDED</u>	<u>CORP NO.</u>	<u>DOCUMENT ID</u>
Articles of Inc.		06/11/15	2400742	2015- 16118943
of Lot Owners Association		with Sec. of State of Ohio	----- INSTRUMENT	PLAT <u>ENVEL</u> <u>OPE</u>
Declaration of Association and By-Laws and Articles of Incorporation	All	09/15/14	2015-050401	Dayton

(3) NAME OF THE ASSOCIATION

Article I, Section 1.06 of the Declaration of Association, entitled "Association" shall be amended by the addition of the following sentence at the end of the paragraph:

BROWNSTONES AT 2nd HOMEOWNERS' ASSOCIATION, INC., is sometimes referred to as, BROWNSTONES AT 2nd HOMEOWNER'S ASSOCIATION, INC., in various documents, notwithstanding, the use of either name, or any derivative thereof, shall be deemed to mean BROWNSTONES AT 2nd HOMEOWNERS' ASSOCIATION, INC., as placed of record in the Articles of Incorporation with the Secretary of the State of Ohio.

(4) RENTAL OF ASSOCIATION LOTS

Article XII of the Declaration, entitled "Architectural Control And Restrictions" shall be amended by the addition of the following Section:

12.04. Rental of Association Lots.

(a) The lease or rental of any Lot shall conform to the following requirements, except pursuant to one or more of the exceptions set forth below in Sections 12.04 (b-d):

(1) No Owner may lease or rent less than the entire Lot.

(2) No Lot shall be rented for transient or hotel purposes, which shall be defined as any rental in which the occupants of the Lot are provided customary hotel services, such as, room service for food and beverages, maid services, or the furnishing of laundry and linen.

(3) No Lot may be leased for any other purpose than as a private single family residential dwelling.

(4) No Lot, or any portion of a Lot, may be subleased.

(5) No Lot may be leased and no lease agreement may be for any duration of less than twelve (12) consecutive calendar months.

(6) All leases of any Lot shall be in writing.

(7) All such leases shall provide that they are subject to all of the

provisions of the Declaration, the By-Laws and the Rules and Regulations of the Association and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease.

(b) Current Leases Grandfathered (exempted) Exception.

If a Lot Owner is renting a Lot under a valid written lease, a Lot is occupied by a non-owner not under a valid written lease or a Lot is un-occupied (but has been rented any time under a valid written lease in the last Six (6) months immediately preceding the date of recording of this Amendment), on the date of recording of this Amendment, then said Lot Owner shall be permitted to continue to rent said Lot under terms which do not satisfy the lease restrictions set for herein until: (1) the expiration of the existing lease; or (2) one (1) year from the date of recording of this Amendment, whichever shall be the last to occur; but such lease shall otherwise be subject to the covenants and restrictions of the Declaration, By-Laws and the Rules and Regulations of the Association.

(c) Family/Friends Rentals; Family and Friends Shared Lots Exception.

Notwithstanding the above, a Lot Owner may lease or grant the use of a Lot, or any part thereof, to an immediate family member, which is defined as a grandparent, parent, son, daughter, sibling or grandchild, provided that said lease or use shall comply with the other provisions of this Section. Joint occupancy with an owner, part owner or family member with a roommate or partner, whether or not expenses are shared, shall not be deemed a rental or lease, so long as the roommate or partner's occupancy of the premises does not arise out of a rental agreement with a third party.

(d) Undue Hardship Exception.

Notwithstanding the foregoing, the Board of the Association, at its sole and absolute discretion, shall be empowered to allow reasonable leasing of Lots, upon written application, in the event of "Undue Hardship". Undue Hardship may include, but is not limited to: (i) when a Lot Owner must relocate his or her residence and has been unsuccessful in selling the Lot, after having made reasonable efforts to do so, for a period of at least one hundred eighty (180) consecutive days from the date the Lot was placed on the market (i.e. the Lot must be listed for sale with a multiple listing service); (ii) a Lot Owner dies and said Lot is being administered by his or her estate; or (iii) where a Lot Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot. If a Lot Owner believes that he, she, they or it must lease a Lot in order to avoid Undue Hardship, then said Lot Owner must submit a written application to the Board which sets forth the circumstances necessitating the leasing, the name of the proposed lessee, if available, a copy of the lease which shall be of a term of not less than (3) months, and such other information as the Board may reasonably require. In the event the hardship condition, as set forth above, should continue for a period of time longer than the term granted for the initial hardship period,

the owner may re-apply to the Board for an additional Undue Hardship consideration, which may be extended, at the Board's option, for one (3) additional terms up to a twelve (12) month period.

(e) Approval of Exempted Leases Required (Procedure):

Any Owner who intends to lease or continue an existing lease of a Lot, on terms that do not comply with Section 12.4 (a), must first send a written request to the Board, indicating with particularity if special circumstances exist that would qualify for exemptions (Grandfathered Rentals, Family/Friends Rentals, or Undue Hardship Rentals).

(1) A request must be sent for each new lease agreement, lease renewal and/or lease modification.

(2) Written requests by an Owner to lease will be reviewed on a first come, first serve basis. The Board shall notify the Owner in writing within ten (10) business days of receipt of the request, if additional information is required or whether the lease is accepted or denied. Each Board request for additional information shall extend the review response time by an additional ten (10) business days following receipt of the information requested by the Board.

(3) No exempted lease will be valid until and unless the Board approves the Owner's request in writing prior to the Owner entering into the lease (except existing grandfathered leases as defined above).

(4) A copy of each lease shall be given to the Board immediately after it is executed and in no event later than ten (10) days thereafter. Failure to provide the Board an executed copy of any lease within said time period, shall result in the lease being deemed as a violation of the Rental Restrictions of the Declaration.

(f) Remedies for Breach:

Any transaction or situation which does not comply with this Section 12.04(a) shall result in the Lot Owner(s) and/or the Lot being subject to (but not limited to) one or more of the following remedies: (1) the transaction shall be voidable at the option of the Board; (2) such reasonable fines and penalties, assessments and liens as the Board may authorize in accordance with the Association Documents; Eviction of the lessee by the Association and/or (3) injunctive relief. All remedies and actions shall be cumulative in nature.

(g) Burden Of Proof:

(1) The burden of proof of an exemption from the leasing restrictions of Section 12.04(a) shall always be upon the Lot Owner. The existence of an exemption from this Section shall be deemed to not exist until the Lot Owner

has made application to the Board of the Association for an exemption, proves such proof of qualification for the exemption to the Board, as the Board may reasonably require, and the Lot Owner has received written approval of the asserted exemption. An approved exemption shall automatically terminate upon the happening of any of the following events:

- (a) A change in Ownership Interest of the Lot, other than that which is permitted in Section 12.04(h);
 - (b) The expiration of time granted by the Board for the exemption;
 - (c) The failure of any condition required by the Board;
- and/or,
- (d) A change in circumstances, which would not qualify for the exemption originally requested.

(2) Upon the expiration or termination of an approved exemption, continued exempt status shall require the submission and approval of a new application for exemption status.

(h) Ownership Interest:

For purposes of this Section 12.04(g)(1), a Lot Owner's ownership of a Lot shall be deemed to be continuous even if part or all of the interest therein is transferred to a spouse or related entity (i.e., the form or manner of ownership is changed), so long as the Lot is still effectively owned by such Lot Owner. In respect to trust ownership, a lease or occupancy of a Lot to or by the grantor or the beneficiary of the trust shall be deemed as an Owner, however a transfer of ownership or lease to a nominal minority (interest of less than 10%) interest Owner from a majority interest holder in a Lot shall be deemed a sham Ownership or lease, until reasonable evidence is provided to the Board of an arms length valid lease or interest has been entered into by the parties.

(6) REAL ESTATE SUBJECT TO THIS AMENDMENT

This Amendment affects all of the real estate described in the recording set forth in paragraph No. 2, entitled, Previous Recording Information, being all of the lots within BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION, INC.

All of the terms and conditions of the Declaration, as amended, are hereby reaffirmed.

IN WITNESS WHEREOF, on this 15th day of October, 2018, this Amendment was signed by the President of the BROWNSTONES AT 2nd

HOMEOWNERS' ASSOCIATION, INC., attesting to the change and the Secretary/Treasurer of the Association, who certifies that the Board of the Association has received the voted approval or written consent of Lot Owners holding at least seventy-five percent (75%) of the voting power of the Association.

By: Joan Longhin Howard
JOAN LONGHIN HOWARD, President

By: Julianne Patel
JULIANNE PATEL, Secretary/Treasurer

STATE OF OHIO,
COUNTY OF MONTGOMERY, SS;

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State on this 15th day of October, 2018, by JOAN LONGHIN HOWARD, President, of BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit Association, on behalf of said Corporation.

(notarial seal or stamp)

William J. Leibold
Notary Public
WILLIAM J. LEIBOLD, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

STATE OF OHIO,
COUNTY OF MONTGOMERY, SS;

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State on this 15th day of October, 2018, by JULIANNE PATEL, Secretary/Treasurer, of BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit Association, on behalf of said Corporation.

(notarial seal or stamp)

William J. Leibold
Notary Public
WILLIAM J. LEIBOLD, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

C:\C on SEC1 Backup\CONDO\Amendment First Brownstones at 2nd PUD (Rental Limitations) 10-15-18

EXHIBIT A

REAL ESTATE SUBJECT TO THE FIRST AMENDMENT

Tract I

Situated in the City of Dayton, County of Montgomery and State of Ohio and being Lot Numbered Seven Hundred Thirty Two (732) of the revised and consecutive numbers of lots on the plat of the City of Dayton, Ohio.

Parcel Number: R72 00710 0006

Tract II

Situated in the City of Dayton, County of Montgomery and State of Ohio and being Lots Numbered Seven Hundred Thirty Three (733) and Seven Hundred Thirty Four (734) of the revised and consecutive numbers of lots on the plat of the City of Dayton, Ohio.

Parcel Number: R72 00710 0005 and R72 00710 0004

Tract III

Situated in the City of Dayton, County of Montgomery and State of Ohio and being Lot

Numbered Seven Hundred Thirty Five (735) of the revised and consecutive numbers of lots on the plat of the City of Dayton, Ohio and that part of Lot Numbered Seven Hundred Thirty Six (736) of the consecutive numbers of lots on the revised plat of the said City of Dayton, Ohio, more particularly described as follows, to wit:

Beginning at a point in the South line of said Lot Forty-Four (44) feet East of the Southwest corner of said Lot, running thence Northwardly parallel with the West line of said Lot Fifty-Six (56) feet; thence Eastwardly parallel with the South line of said Lot Five and One-Half (5 ½) feet to the East line of said Lot; thence Southwardly along the East line of said Lot Fifty-Six (56) feet to the Southeast corner of said Lot; thence Westwardly along the South line of said lot Five and One-Half (5 1/2) feet to the Place of Beginning.

Parcel Number: R72 00710 0003

Tract IV

Situated in the City of Dayton, County of Montgomery and State of Ohio and being part of Lot Numbered Seven Hundred Thirty Six (736) of the revised and consecutive numbers of lots on the plat of the City of Dayton, Ohio, bounded and described as follows: Beginning at a point 50 feet North of the Southwest corner of said Lot Numbered 736, said point being in the West line of said Lot; thence North along the West line of said Lot 6 feet; thence East parallel with the South line of said Lot 44 feet; thence South parallel with the West line of said Lot 6 feet; thence West parallel with the South line of said Lot 44 feet to the Place of Beginning.

Parcel Number: R72 00710 0029

Tract V

Situated in the City of Dayton, County of Montgomery and State of Ohio and being part of Lot Numbered Seven Hundred Thirty Six (736) of the revised and consecutive numbers of lots on the plat of the City of Dayton, Ohio, bounded and described as follows:

Beginning at the Southwest corner of said Lot; thence North along the West line of said Lot 50 feet; thence East parallel with the South line of said Lot 44 feet; thence South parallel with the west line of said Lot 50 feet to the South line of said Lot; thence West along the South line of said lot 44 feet to the Place of Beginning.

Parcel Number: R72 00710 0002

Tract VI

Situated in the City of Dayton, County of Montgomery and State of Ohio and being part of Lot Numbered Seven Hundred Thirty Six (736) of the revised and consecutive numbers of lots on the plat of the City of Dayton, Ohio, excepting, however, Fifty-Six (56) feet taken by parallel lines off of the South end thereof.

Parcel Number: R72 00710 0001

Prior Inst. No.: 2015-016630

All Common area and means of ingress and egress which is a part of BROWNSTONES AT 2ND HOMEOWNERS' ASSOCIATION, INC., as such areas has been created through recording the above listed documents and drawings.