

UPON RECORDING RETURN TO:

Benjamin Ost
DOROUGH & DOROUGH, LLC
Attorneys At Law
160 Clairemont Avenue, Suite 650
Decatur, Georgia 30030
(404) 687-9977

CROSS REFERENCE: Deed Book: 914
Page: 435

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR SHEPHERDS POND SUBDIVISION

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHEPHERDS POND SUBDIVISION ("Amendment") is made by **SHEPHERDS POND HOMEOWNERS ASSOC., INC.**, a Georgia nonprofit corporation, (hereinafter called the "Association") on the date set forth herein.

W I T N E S S E T H

WHEREAS, Union Hill Associates, Inc., a Georgia corporation executed that certain Declaration of Covenants, Conditions and Restrictions for Shepherds Pond Subdivision, which was recorded November 14, 1995 at Deed Book 914, Page 435, *et seq.*, Forsyth County, Georgia records; as amended by that certain Amendment to the Declaration of Covenants, Conditions, and Restrictions for Shepherds Pond Subdivision by Extending the Same to Include Shepherds Pond Subdivision Phase II, recorded in Deed Book 1029, Page 288, aforesaid records; and that certain Amendment to the Declaration of Covenants, Restrictions for Shepherds Pond Subdivision by Extending the Same to Include Shepherds Pond subdivision Phase III recorded in Deed Book 1198, Page 122, aforesaid records; and that certain Amendment to the Declaration of Covenants, Conditions and Restrictions for Shepherds Pond Subdivision, recorded September 24, 2009, at Deed Book 5534, Page 40, *et seq.*, aforesaid records; and as amended by that certain Amendment to the Declaration of Covenants, Conditions and Restrictions for Shepherds Pond Subdivision, recorded September 25, 2013 at Deed Book 6839, Page 217, *et seq.*, in the aforesaid records; as affected by that certain Scrivener's Affidavit, recorded November 20, 2013 at Deed Book 6896, Page 636, *et seq.*, aforesaid records (hereinafter as supplemented and/or amended from time to time, collectively referred to as the "Declaration"); and

WHEREAS, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code to be the Association named in the Declaration as having the power and authority set forth therein; and

WHEREAS, pursuant to Article VII, Section 3 of the Declaration, the Declaration may be amended upon the affirmative vote, written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots; and

WHEREAS, Article VII, Section 5 of the Declaration provides that as long as there is a Class B Membership, amendments of the Declaration shall require the prior approval of the Federal Housing Administration or the Veterans Administration; and

WHEREAS, Section 14-3-708 of the Georgia Nonprofit Corporation Code provides that any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot in writing or by electronic transmission to every member entitled to vote on the matter; and

WHEREAS, Owners of at least two-thirds (2/3) of the Lots agreed by written ballot to amend the Declaration as provided herein; and

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the incumbent Secretary of the Association, which sworn statement certifies that the consent of Owners of at least two-thirds (2/3) of the Lots was lawfully obtained and that any notices required by the Declaration, Bylaws and Georgia law were obtained; and

WHEREAS, the Class B Membership has terminated and the rules and regulations of the Federal Housing Administration and the Veterans Administration in effect as of the date of the recording of this Amendment in the Forsyth County, Georgia land records do not require the prior consent to amendments to the Declaration; and

WHEREAS, the Association and Owners desire to amend the Declaration as set forth herein and intend for this Amendment to be prospective only;

NOW THEREFORE, the undersigned hereby adopt this Amendment to the Declaration of Covenants, Conditions and Restrictions for Shepherds Pond Subdivision hereby declaring that all of the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration amended as follows:

1.

The Declaration is hereby amended by deleting Article IV, Section 3 of the Declaration, entitled "Initiation Fee and Maximum Annual Assessment," in its entirety and replacing it with a new Section 3 to read as follows:

Section 3. Initiation Fee and Maximum Annual Assessment. Upon each and every sale of a Lot, an initiation fee in an amount equal to the amount of the

annual assessment applicable to the Lot for the year of such conveyance, shall be collected from the new Owner at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association.

The initiation fee shall constitute a special assessment against a particular Lot, shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose which provides a direct benefit to the Association, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the initiation fee shall not apply to 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, but shall apply to the Owner acquiring title to the Unit from the foreclosing Mortgagee.

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

2.

The Declaration is hereby amended by adding to the end of Article IV a new Section 10, entitled "Specific Assessments", to read as follows:

Section 10. Specific Assessments. The Board of Directors shall have the power to levy specific assessments as provided herein. The failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board of Director's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section. By way of

explanation and not limitation, fines levied pursuant to this Declaration and the cost of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be specifically assessed equitably among all Lots according to the benefit received; and (c) expenses incurred by the Association which are attributable to the conduct of a particular Owner or the occupants, guests, invitees or licensees of such Owner may be specifically assessed against the Lot of said Owner.

3.

The Declaration is hereby amended by deleting Article VII, Section 1, entitled "Enforcement", in its entirety and replacing it with a new Section 1 to read as follows:

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations adopted by the Board of Directors and use restrictions, as amended or modified from time to time and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Property and in the deed to such Owner's Lot, if any. The failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association or an aggrieved Owner. The failure by the Association, Architectural Committee or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, rules and regulations or use restrictions and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose occupants are responsible) for violating the foregoing.

(a) Fines. The Association, acting through the Board of Directors, may impose fines or other sanctions for violations of the foregoing in accordance with this Declaration, which fines shall be a specific assessment and collected as provided herein for the collection of assessments; provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by the Association for the same violation; and provided, further, the Association may count each day a violation continues after notice thereof as a separate violation.

The Board of Directors shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(i) Written notice shall be delivered to the member by personal delivery at the address for the Lot or first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

(A) the nature of the violation, the fine to be imposed and the date, not less than ten (10) days from the date of the notice, that the fine will take effect;

(B) that the violator may, within ten (10) days from the date of the notice, request a hearing in writing before the Board of Directors regarding the fine imposed;

(C) the name and address of a person to contact to request a hearing;

(D) that any statements, evidence, and witnesses may be produced at the hearing; and

(E) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(ii) If a hearing is requested, it shall be held before the Board of Directors in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The fine shall run from the date that a decision is made by the Board of Directors at the conclusion of the hearing or such later date as the Board of Directors may determine.

(iii) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the violation recurs, the Board of Directors may, upon notice stating the nature of the violation and delivered to the member by first class or certified mail sent to the address of the member shown on the Association's records, impose a fine.

4.

The Declaration shall be amended by adding to the end of Exhibit "A" to the Declaration a new Paragraph 22 to read as follows:

22. No driveway may be painted and no driveway may be otherwise altered without approval by the Architectural Committee in accordance with Article V of these covenants.

5.

Unless otherwise defined herein, the words used in this Amendment shall have the same meaning as set forth in the Declaration.

6.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Forsyth County, Georgia and shall be enforceable against current Owners of Lots subject to the Declaration.

7.

Except as herein modified, the Declaration shall remain in full force and effect.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Association hereby executes this instrument under seal,
this _____ day of _____, 2019.

ASSOCIATION: **SHEPHERDS POND HOMEOWNERS
ASSOC., INC.**, a Georgia nonprofit
corporation

By: _____
Name: _____
President

Attest: _____
Name: _____
Secretary

Signed, sealed and delivered
in the presence of:

[AFFIX CORPORATE SEAL]

WITNESS

NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

EXHIBIT "A"

Sworn Statement of Secretary of
Shepherds Pond Homeowners Assoc., Inc.

STATE OF GEORGIA

COUNTY OF FORSYTH

Re: Shepherds Pond Homeowners Assoc., Inc.

Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

1. Deponent is the President of Shepherds Pond Homeowners Assoc., Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his/her own personal knowledge.
3. The foregoing Amendment to the Declaration of Covenants, Conditions and Restrictions for Shepherds Pond Subdivision was approved by Owners of at least two-thirds (2/3) of the Lots as provided by law and Article VII, Section 3 of the Declaration.
4. Any notices required by the Declaration, Bylaws and Georgia law were given.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-3-226.

This the ____ day of _____, 2019.

By: _____
Name: _____

Sworn to and subscribed before
me, this ____ day of _____, 2019

Notary Public

[AFFIX NOTARY SEAL]