

Return to:
NowackHoward, LLC
One Alliance Center, Suite 1650
3500 Lenox Road, NE
Atlanta, Georgia 30326
Attention: RFD

STATE OF GEORGIA

COUNTY OF DEKALB

Reference: Deed Book 78
Page 540

**AMENDMENT TO THE DECLARATION
OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
OF COVE LAKE AND SUBMISSION TO
THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT ("POAA")**

WHEREAS, Benchmark/Cove Lake, L.L.C., a Georgia limited liability company ("Declarant"), prepared a Declaration of Easements, Covenants, Conditions and Restrictions of Cove Lake, which was recorded with Dekalb County on June 26, 1998, in Deed Book 78, page 540, ("Original Declaration"); and

WHEREAS, Article VII, Section 3 of the Declaration provides for amendment to the Declaration by an instrument signed by not less than seventy-five percent (75%) of the members of the Association; and

WHEREAS, pursuant to Article VII, Section 3 of the Declaration at least seventy-five (75%) percent of the members have agreed to amend the Declaration by executing individual amendment agreement forms which are maintained in the Association's records and incorporated herein by reference as permitted in *Bowman v. Walnut Mountain Property Owners Association, Inc.*, 251 Ga. App. 91, 553 S.E.2d 389 (2001).

WHEREAS, for purposes of this amendment, the effective date ("Effective Date") shall mean the date this amendment takes effect as of recordation;

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

1.

Article I of the Declaration is hereby amended by adding the following new Sections 10 - 14 to the end thereof:

THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS DUE ON LOTS.

Section 10 "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44 3 220, *et seq.* (Michie 1982), as such Act may be amended from time to time.

Section 11 "Association Legal Documents" shall mean this Declaration and all exhibits hereto, the Bylaws, the Articles of Incorporation, the plats and all rules and regulations and architectural guidelines for the Association, all as may be supplemented or amended from time to time.

Section 12 "Common Expenses" shall mean the expenses incurred or anticipated to be incurred for the general benefit of all Lots and the Subdivision, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Area.

Section 13 "Occupant" shall mean any person occupying all or any portion of a Lot in the Community for any period of time, regardless of whether such person is a tenant of the Owner of such Lot. "Occupy" or "Occupancy" shall refer to the situation when a person occupies a Lot for any period..

Section 14 "Violator" shall mean any Owner who violates the Association Legal Documents and any Owner's family member, guest or occupant who violates such provisions; provided, however, if an Owner's family member, guest or occupant violates the Association Legal Documents, the Owner of the relevant Lot also shall be considered a Violator.

2.

Article II of the Declaration is hereby amended by adding the following Section 3 to the end thereof:

Section 3. All of the real property in the Subdivision shall be owned in fee simple and subject to the provisions of this Declaration and the Georgia Property Owners' Association Act, O.C.G.A., Section 44-3-220, *et seq.* The Property and Subdivision subjected to this Declaration constitutes a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie, 1982), as such act may be amended from time to time.

3.

The Declaration is hereby amended by deleting Article IV therefrom, in its entirety, and substituting therefore the following new Article IV:

ARTICLE IV
ASSESSMENTS

Section 1 **Purpose of Assessment.** The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be levied and used for any purpose the Board of Directors determines will benefit the Owners or the Property.

Section 2 **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments and other charges levied pursuant to this Declaration and the By-Laws, including annual assessments or charges, special assessments and specific assessments, which shall include fines. Except as provided below, or elsewhere in the Act, the amount of all Common Expenses shall be assessed against all the Lots equally.

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the person or entity who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot. The Association, in the Board's discretion, may record a notice of such lien in the DeKalb County, Georgia, land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority and may be foreclosed upon by the Association as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. No Owner may exempt him or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

Section 3 **Delinquent Assessments.** All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 10 days of the due date, or such later date as may be provided by the Board of Directors:

(a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;

(b) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;

(c) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(d) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Area are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

Section 4 **Computation of Operating Budget and Assessment.** To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the community, which may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 21 days before the due date of such assessment, or the first installment thereof. The budget and the assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

Provided, however, that the Board may not increase the annual assessment in any year by an amount greater than ten (10 %) percent of the prior year's annual assessment without first obtaining the approval of at least two-thirds (2/3rds) of those eligible Owners who are voting either by written consent or mail-in ballot without a meeting, or at least two-thirds (2/3rds) of those eligible Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

If the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine a new budget, the budget then in effect shall continue until a new budget is adopted as provided herein. The Board may adopt an adjusted budget at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses on which the Board establishes the Annual Assessment.

Section 5 **Special Assessments.** In addition to the all other assessments and charges provided for herein, the Board of Directors may levy a special assessment against all Owners for any purpose. Special assessments must first be approved by at least two-thirds (2/3rds) of those eligible Owners who are voting either by written consent or mail-in ballot without a meeting, or at least two-thirds (2/3rds) of those eligible Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

Section 6 **Specific Assessments.** In addition to the all other assessments and charges provided for herein, the Board of Directors may levy specific special assessments as provided for in this Declaration, including reasonable fines, and pursuant to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. By way of illustration, but not limitation, the Board may specifically assess for the following Common Expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association:

- (a) Common Expenses which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and
- (b) Common Expenses which benefit all Lots, but which do not provide equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received; and
- (c) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot(s) may be specifically assessed by the Board of Directors against such Lot(s) based upon the conduct committed which occasioned any such Common Expenses.

Additionally, fines, costs of self-help and/or abatement, the Capital Contribution Assessment, and other charges assessed against less than all the Lots shall be deemed specific assessments.

Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

Section 7 **Capital Budget and Contribution.** The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

Section 8 **Statement of Account.** Any Owner, Mortgagee, or a person or entity having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

Section 9 **Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

Section 10 **Capital Contribution Assessment Upon Transfer of Lots.** In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Lot, other than to the spouse or heir of the Owner or the Owner of any other Lot, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment").

The Capital Contribution Assessment shall be an amount not to exceed the annual assessment applicable to such Lot at the time of such conveyance or transfer, which amount shall be established by the Board of Directors annually as part of the budget process under Section 4 of this Article. The Capital Contribution Assessment shall not constitute an advance payment of the annual assessment, any special assessment or any other assessment hereunder. The Capital Contribution Assessment shall constitute a specific assessment against such Lot pursuant to Section 6 hereof, a continuing lien against such Lot, and a personal obligation of the Owner of such Lot.

4.

Article V of the Declaration is hereby amended by deleting therefrom Section 5 thereof, entitled "Fines", in its entirety.

5.

Article VII of the Declaration is hereby amended by deleting Sections 1 and 7 therefrom in their entirety, and substituting for the deleted Section 1 the following new Section 1:

Section 1 **Enforcement**

(a) Compliance with Association Legal Documents.

All Owners, Occupants and their guests shall comply with the Association Legal Documents. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Association Legal Documents directly against all Violators. However, if an Owner's family member, guest or Occupant violates the Association Legal Documents, the Association, in its sole discretion, is permitted to enforce the terms of the Association Legal Documents against: (1) only the Owner; (2) only the violating family member, guest or Occupant; or (3) both the Owners and the violating family member, guest or Occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, Occupants and guests of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Association Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the Violator before the Association intervenes and commences enforcement action against such Violator.

(b) Types of Enforcement Actions.

In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:

- (1) Suspend all Violators' rights to use the Common Area;
- (2) Suspend the voting rights of a violating Owner;
- (3) Impose reasonable fines against all Violators, which shall constitute a lien on the violating Owner's Lot;
- (4) Use self-help to remedy the violation;
- (5) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (6) Record in the DeKalb County land records a notice of violation identifying any uncured violation of the Association Legal Documents regarding the Lot.

(c) Suspension and Fining Procedure.

Except as provided below, before imposing fines or suspending right to use the Common Area or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

(1) Violation Notice

The written violation notice to the Violator shall:

- (a) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (b) Advise the Violator of the right to request a violation hearing before the

Board of Directors to contest the violation or request reconsideration suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(2) **Violation Hearing**

If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(3) **No Violation Notice and Hearing Required**

No violation notice or violation hearing shall be required to:

- (a) impose late charges on delinquent assessments;
- (b) suspend a violating Owner's voting rights if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Owner of the subject Lot's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (c) suspend a Violator's right to use the Common Area if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Violator's right to use the Common Area shall be automatic (which shall allow the Association to tow and/or boot a Violator's vehicle located on the Common Area without complying with the Suspension and Fining Procedures described above);
- (d) engage in self-help in an emergency;
- (e) impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or
- (f) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

(d) **Self-Help.**

In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Association Legal Documents by self-help without the necessity for compliance with the Suspension and Fining Procedures described above.

By way of example and not limitation, the Association or its duly authorized agent shall have the authority to enter a Lot or any portion of the Common Area to abate or remove any structure, thing or condition

that violates the Association Legal Documents. Unless an emergency exists, before exercising self-help on a Lot, the Association shall give the Violator at least two (2) days prior written notice. Such notice shall request that the Violator remove and abate the violation and restore the Lot to substantially the same condition that existed prior to the structure, thing or condition being placed on the Lot and causing the violation. Such removal, abatement and restoration shall be accomplished at the Violator's sole cost and expense. Notwithstanding any other provision in this Declaration to the contrary, if the same violation occurs again on the same Lot, the Association may exercise self-help without any further notice to the Violator.

(e) Injunctions and Other Suits at Law or in Equity.

All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or correct any violation.

(f) Costs and Attorneys' Fees for Enforcement Actions.

In any action taken by the Association to enforce the Association Legal Documents, the Association shall be entitled to recover from the Violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a specific assessment and lien against the violating Owner's Lot.

(g) Failure to Enforce.

The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Association Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

- (1) the Association's position is not strong enough to justify taking enforcement action;
- (2) a particular violation is not of such a material nature as to be objectionable to a reasonable person;
- (3) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;
- (4) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or
- (5) the Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest or Occupant.

6.

Article VII of the Declaration is hereby amended by deleting therefrom Section 3 in its entirety, and substituting therefore the following new Section 3:

Section 3 Duration and Amendment. This Declaration and the covenants, restrictions and easements contained herein shall run with and bind the Community perpetually to the extent and as provided

in the Act.

Except where a higher vote is required for action under any other provisions of the Declaration, these By-Laws or by the Act, this Declaration may be amended by the agreement of Owners of Lots to which two-thirds (2/3) of the total votes in the Association pertain. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the DeKalb County, Georgia land records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law including, but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the DeKalb County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

7.

Article VI of the Declaration is hereby amended by adding the following to the end thereof:

Section 9 SECURITY. THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY IN THE SUBDIVISION. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE SECURITY FOR THE SUBDIVISION. FURTHERMORE, THE ASSOCIATION DOES NOT REPRESENT THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE SUBDIVISION AND COMMIT CRIMINAL ACTS NOR DOES THE ASSOCIATION REPRESENT THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY SYSTEM OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTIES, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY AND SUBDIVISION ASSUMES ALL RISKS OR PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES AND/OR OTHER OWNERS AND OCCUPANTS.

IN WITNESS WHEREOF, the undersigned officers of Cove Lake Homeowners Association, Inc. hereby certify that this Amendment to the Declaration was duly adopted by the required majority of members and that individual declaration agreement instruments are maintained in the corporate records in accordance with Bowman v. Walnut Mountain Property Owners Association, Inc., 251 Ga.App. 91; 553 S.E.2d 389 (2001).

This 11 day of January, 2022

SWORN TO AND SUBSCRIBED
BEFORE ME this 11 day
of January, 2022

COVE LAKE HOMEOWNERS
ASSOCIATION, INC.

Jeannette Parks
Witness

By: Marty Garrison [SEAL]
President

Hazel Hughes
Notary Public

Attest: Fred Throter [SEAL]
Secretary

[NOTARY SEAL]
HAZEL HUGHES
NOTARY PUBLIC
DeKalb County, Georgia
My Commission Expires 4/27/2023

[CORPORATE SEAL]
Cove Lake Home Owners Assoc.
Official Document

Date January 11, 2022

HAZEL HUGHES
NOTARY PUBLIC
DeKalb County, Georgia
My Commission Expires 4/27/2023