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CROSS REFERENCE: Deed Book: 40146  
Page: 504

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AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR BETHANY COMMONS

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BETHANY COMMONS ("Amendment") is made this \_\_\_\_ day of \_\_\_\_\_ 2023 by **BETHANY COMMONS HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter called the "Association").

W I T N E S S E T H:

**WHEREAS**, Bethany Holdings, LLC, a Georgia limited liability company, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions for Bethany Commons, which was recorded on June 6, 2005 in Deed Book 40146, Page 504, *et seq.*, Fulton County, Georgia records; as amended by that certain Amendment to the Declaration of Covenants, Conditions and Restrictions for Bethany Commons, recorded November 30, 2015 in Deed Book 55613, Pages 80-90, aforesaid records, which amendment submitted the Community to the provisions of the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, *et seq.* (as amended and/or supplemented from time to time, hereinafter 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 to have the power and authority set forth therein; and

**WHEREAS**, pursuant to Article 14, Section 14.2(b) of the Declaration, the Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association,

including sixty-seven percent (67%) of the Class "A" votes held by members other than the Declarant, and, during the Development Period, the written consent of the Declarant; and

**WHEREAS**, there are no Eligible Holders of first mortgages to Homesites that would require additional approval procedures be met pursuant to Article 12 of the Declaration; and

**WHEREAS**, the Development Period has terminated in accordance with Article 1, Section 1.17 of the Declaration; and

**WHEREAS**, Declarant no longer owns any real property in the community that is subject to this Declaration, no Builder owns a Homesite primarily for development and/or resale that was purchased from Declarant, and Declarant no longer has the right to annex additional property to the community; and

**WHEREAS**, this Amendment does not alter, modify, change or rescind any right, title, interest or privilege granted or afforded to the holder of any mortgage encumbering a Homesite or Common Property; and

**WHEREAS**, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the Secretary of the Association, which sworn statement states that: (a) at least sixty-seven (67%) percent of the total Class "A" votes of the Association agreed to the foregoing Amendment; (b) the consent of at least sixty-seven (67%) percent of the total Class "A" votes of the Association was lawfully obtained; and (c) that any notices required under the Declaration, By-Laws and the Act were given;

**NOW THEREFORE**, the Association hereby adopts this Amendment to the Declaration of Covenants, Conditions and Restrictions for Bethany Commons, 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 10, Section 10.4, entitled "**Leasing.**" in its entirety and replacing it with a new Article 10, Section 10.4 to read as follows:

**10.4. Leasing.** In order to protect the equity of the individual Owners of Homesites, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential neighborhood of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, leasing of Homesites shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Homesites shall be prohibited. The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with this Amendment, the Declaration and By-Laws, in order to enforce the provisions of this Section. Any lease which does

not comply with this Section shall be voidable at the option of the Board of Directors. Except as provided herein, the leasing of Homesites shall be prohibited.

(a) Definitions.

(i) Leasing means the regular, exclusive occupancy of a Homesite by any Person(s) other than the Owner for which the Owner received any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. For purposes hereof the following shall not constitute leasing: (A) occupancy of the Homesite by a family member of an Owner; (B) occupancy of the Homesite by a roommate of an Owner-occupant; (C) occupancy of the Homesite by one or more wards if the Homesite is owned by their legal guardian; or (D) occupancy of the Homesite by one or more beneficiaries of a trust if the Homesite is owned in trust by the trustee.

(ii) Applicability - Grandfathered Homesite. Grandfathered Homesite means any Homesite being leased as of the Effective Date. Grandfathered Homesites may continue to be leased until title to said Homesite is conveyed to any Person or entity other than the Person or entity holding record title as of the Effective Date and the tenant shall comply with all regulations pertaining to the use of the Homesite set forth in the Declaration and any amendments thereto, the By-Laws and any rules and regulations of the Association. All Owners of Grandfathered Homesites shall file a copy of the lease agreement in effect with the Board within thirty (30) days of the Effective Date. Upon the transfer of title described in this subparagraph, the Owner of a Grandfathered Lot shall no longer be permitted to lease his or her Lot except as provided below for cases of undue hardship.

(iii) Effective Date means the date this Amendment is recorded in the Fulton County, Georgia land records.

(b) General. No Owner of a Lot that is not a Grandfathered Lot may lease his or her Lot except as provided in subsection (c) below for cases of undue hardship.

(c) Hardship Leasing Permits. If an Owner must lease such Owner's Homesite to avoid an undue hardship, the Owner shall apply to the Board in writing for a hardship leasing permit. The Board may issue or deny requests for hardship leasing permits in its discretion after considering the following factors, which include, but are not limited to: (A) the nature, degree and likely duration of the hardship; (B) the harm, if any, which will result to the community if the hardship leasing permit is approved; (C) the number of hardship leasing permits which have been issued to other Owners; (D) the Owner's role in causing the hardship or ability

to cure the hardship; and (E) whether previous hardship leasing permits have been issued to the Owner.

A hardship hereunder shall include, but not be limited to, the following situations: (A) an Owner dies and the Homesite is being administered by the Owner's estate; (B) an Owner must relocate outside metropolitan Atlanta and cannot, within six (6) months from the date that the Homesite was placed on the market, sell the Homesite except at a price below the current appraised market value, after making reasonable efforts to do so; or (C) an Owner takes a leave of absence or temporarily relocates out of the metropolitan Atlanta area and intends to return to reside in the Homesite within one year.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may reapply for additional hardship leasing permits at the expiration of a hardship leasing permit in accordance with the procedures set forth herein.

(d) Leasing Provisions. Leasing authorized under this Section shall be governed by the following provisions:

(i) Notice. Within ten (10) days after executing a lease agreement for the lease of a Homesite, the Owner shall provide the Board of Directors with the following information: (A) a copy of the fully executed lease agreement; (B) the name of the lessee and all other people occupying the Homesite; (C) the phone number of the lessee; (D) the Owner's address and telephone number other than at the Homesite; and (E) other such information as the Board may reasonably require.

(ii) General. Homesites may be leased only in their entirety; rooms, basements or fractions or portions of a Homesite may not be leased without the prior written approval of the Board of Directors. All leases shall be in writing. There shall be no subleasing of Homesites or assignment of leases unless approved in writing by the Board of Directors. All leases must be for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee with copies of the Declaration, By-Laws, and the rules and regulations and architectural standards of the Association, if any, and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, By-Laws, and the Association's rules and regulations and architectural standards.

(iii) Compliance; Liability for Assessments. If a Homesite is leased or occupied in violation of this Section 10.4, then the Board of Directors shall be authorized, in addition to all other available remedies, to terminate the lease and occupancy, to suspend all voting rights and the right to use and enjoy

the Common Property of the Owner and any unauthorized tenants(s) or occupant(s), and to impose fines in accordance with this Declaration.

Each Owner covenants and agrees that any lease of a Homesite shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Homesite, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Declaration, By-Laws and Rules and Regulations and Architectural Standards. Lessee shall abide by and comply with all provisions of the Declaration, By-Laws, and rules and regulations and architectural standards adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Homesite in order to ensure such compliance. The Owner agrees to cause all occupants of the Owner's to comply with the Declaration, By-Laws, and the rules and regulations and architectural standards adopted pursuant thereto and is responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of the Homesite are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations and architectural standards adopted pursuant thereto.

In the event that the lessee or a person living with the lessee violates the Declaration, By-Laws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the 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 Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Homesite.

Any violation of the Declaration, By-Laws or rules and regulations and architectural standards adopted pursuant thereto by the lessee, any occupant, or any guest of the lessee, is deemed to be a default under 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 the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from violations of the Declaration, By-Laws or rules and regulations of the Association adopted thereunder, including the power and authority to terminate the lease without liability upon such violation(s) and to evict the lessee and/or the occupant(s) as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof, it being hereby agreed that in such instance the Association shall have standing to terminate the lease and initiate dispossessory proceedings against the lessee and/or the occupant(s). In the event the Association proceeds to evict

the lessee and/or the occupant(s) of a Homesite, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Homesite.

(B) Liability for Assessments; Assignment of Rent. If an Owner who is leasing such Owner's Homesite fails to pay any annual, special or specific assessment or any other charge owed to the Association for a period of more than thirty (30) days after it is due and payable, then the delinquent 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, special and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. 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 of Director'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 of Director's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which such Owner would otherwise be responsible.

(C) Right to 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.

(e) Mortgagee Exemption. This Section shall not apply to any leasing transaction entered into by the Association or an institutional holder of any first mortgage on a Homesite who becomes the Owner of a Homesite through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such first mortgage.

(f) Transient Rentals. Notwithstanding anything herein to the contrary, under no circumstances shall a Homesite be leased, rented or used for short-term transient or hotel purposes or rented through short-term internet rental services, including, without limitation, VRBO, Airbnb, HomeAway, or such other similar rental services.

2.

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

3.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Fulton County, Georgia and shall be enforceable against the current Owner of any Homesite subject to the Declaration.

4.

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

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Association has caused this Amendment to be executed under seal the day and year first above written.

**ASSOCIATION:**

**BETHANY COMMONS  
HOMEOWNERS ASSOCIATION, INC.,**  
a Georgia nonprofit corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Secretary

[CORPORATE SEAL]

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[AFFIX NOTARY SEAL]



EXHIBIT "A"

Sworn Statement of Secretary of  
Bethany Commons Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF FULTON

Re: Bethany Commons Homeowners Association, Inc.

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

1. Deponent is the Secretary of Bethany Commons Homeowners Association, 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 Bethany Commons was approved upon the affirmative vote or written consent of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association as provided by law and Article 14 of the Declaration, which approval was lawfully obtained.
4. Any notices required by the Declaration, By-Laws and the Act were properly given.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-3-226.

This the \_\_\_\_ day of \_\_\_\_\_ 2023.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[AFFIX NOTARY SEAL]