



JAY C. STEPHENSON
CLERK OF SUPERIOR COURT Cobb Cty. GA.

Return To: Lazega & Johanson, LLC
3520 Piedmont Road, N.E., Suite 415
Atlanta, Georgia 30305 Attn: MMR

[Space Above Reserved for Recording Data]

GEORGIA/COBB

Cross Reference: Deed Book 6830
Page 335

AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR BROOKSTONE III, A COUNTRY CLUB COMMUNITY

WHEREAS, the Declaration of Covenants, Conditions, Restrictions and Easements for Brookstone III, a Country Club Community, was recorded on September 8, 1992, in Deed Book 6830, Page 335, *et seq.*, Cobb County, Georgia records, as amended ("Declaration"); and

WHEREAS, Article XII, Section 12.03 of the Declaration provides for amendment of the Declaration with approval of owners of lots in Brookstone III holding a majority of the votes in the Brookstone III Homeowners Association, Inc. ("Association"); and

WHEREAS, owners holding a majority of the votes of the of the Association desire to amend the Declaration and have approved this Amendment; and

WHEREAS, approval of first mortgagees on lots at Brookstone III is not required for this Amendment, and this Amendment does not materially alter, modify, change or rescind any right, title, interest or privilege held by any first Mortgagee; provided, however, if a court of competent jurisdiction determines that any provision of this Amendment does so without such first Mortgagee's consent, then such provision of this Amendment shall not be binding on the first Mortgagee so involved, unless it consents hereto; and if such consent is not forthcoming, then the relevant provision of the Declaration prior to this Amendment shall control with respect to the affected first Mortgagee;

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

1.

Article I, Sections 1.10 and 1.19 each of the Declaration are hereby amended by adding the following to the end thereof:

This Declaration and the Property are hereby submitted to the Act. The Property 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.

2.

Article I of the Declaration is hereby amended by adding the following Section 1.22 thereto:

1.22 "**Act**" means 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. This Declaration and the Property are hereby

THIS AMENDMENT SUBMITS THE DECLARATION AND 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/CHARGES DUE ON HOMES AT BROOKSTONE III.

submitted to the Act. The Property constitutes a residential property owners development which hereby submits to the Act.

3.

Article VIII, Section 8.02 of the Declaration is hereby amended by adding the following new language to the end thereof:

In addition to all rights and powers afforded to the Board under this Declaration and the By-Laws, the Board shall have all rights and powers afforded under the Act and Georgia law. In any action taken by the Association to enforce the Declaration, By-Laws or Association rules, the Association shall be entitled to recover from the violating Owner all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

4.

Article IX, Sections 9.02, 9.07, 8.06, 8.08, 8.09, 8.10 and 8.11 of the Declaration are hereby amended by deleting those Sections in their entirety and substituting the following therefor:

9.02 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: (i) annual assessments or charges; (ii) special assessments provided for herein; and (iii) specific special assessments which may be assessed under this Declaration or as permitted under Section 44-3-225(a) of the Act, including, but not limited to, reasonable fines imposed by the Board for violations of the Declaration, Bylaws or Association rules.

All such assessments, together with charges, interest, costs, and reasonable attorneys' fees actually incurred, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot and Lot Owner against which each assessment is made. Such amounts shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment fell due. 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 as provided in the Act. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Cobb County, Georgia land records evidencing the lien created under the Act and this Declaration. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

When an Owner who is leasing his or her Lot fails to pay an assessment or any other charge to the Association when due, the delinquent Owner hereby consents to the assignment of any rent received from the lessee or Occupant during the period of the delinquency. In such case, upon request by the Board, the lessee or Occupant shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy. However, the lessee or Occupant 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's request. All such payments made by the lessee or Occupant shall reduce, by the same amount, the lessee's or Occupant's obligation to make monthly rental payments to the Owner. If the lessee or Occupant fails to comply with the Board's request to pay assessments or other charges, such failure shall be deemed a violation of the Declaration and, in addition to all other enforcement rights, the lessee or Occupant shall pay to the Association all amounts authorized under the Declaration as if the Occupant were the Owner of the Lot. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

9.07 Lien Priority. The lien provided for herein shall have priority as provided in the Act.

9.08 Effect of Nonpayment of Assessments; Remedies of the Association. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. If any assessment or other charge, or any part thereof, is not paid in full within 10 days of the due date, then: (1) the Board may accelerate any unpaid installments of the annual assessment or other assessments, if paid in installments; (2) 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; (3) interest at the rate of 10% per annum or such higher rate as may be permitted by the Act shall accrue from the due date; (4) the Board may suspend voting privileges and/or Common Property use privileges of the delinquent Owner, Lot and Occupants and common services provided by the Association to the Lot; (5) the Board may bring legal action against the Owner to collect all sums owed under this Declaration; and/or (6) the Board may take any other lawful action authorized under this Declaration, the Bylaws or Georgia law to collect all such amounts. The delinquent Owner shall be assessed and responsible for all reasonable attorneys' fees actually incurred by the Association in collecting any sums owed hereunder.

If part payment of assessments or other charges is made, the Board may apply the amount received 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.

9.09 Statement of Account. Any Owner, Mortgagee, or a person 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 sale or conveyance of any Lot or the issuance of any Mortgage on such Lot.

5.

Article XII, Sections 12.03 and 12.04 of the Declaration are hereby deleted in their entireties and the following new Sections 12.03 and 12.04 therefor:

12.03 Amendments by Association. This Declaration may be amended with the affirmative vote, written consent, or combination thereof, of Owners holding two-thirds (2/3) of the total eligible Association vote. 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 Cobb County, Georgia land records. Notwithstanding the above, the Board of Directors is authorized to amend the Declaration and/or Bylaws as necessary to comply with or conform to any applicable law. No person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration more than one year after the recording thereof in the Cobb County, Georgia land records.

In addition to approval by the Owners as provided above, amendments to this Declaration which materially and adversely alter, modify, change or rescind any right, title, interest or privilege herein granted to the holder of any first Mortgage on a Lot must be approved by such first Mortgage holder to be valid against such first Mortgage holder. Notwithstanding the above, the approval of any proposed amendment by such a first Mortgage holder shall be deemed implied and consented to if the first Mortgage holder fails to submit a response to any written proposal for an amendment within 30 days after the first Mortgage holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

12.04 Duration. The covenants and restrictions of this Declaration shall run with and bind the real property in the Property perpetually to the extent provided in the Act.

IN WITNESS WHEREOF, the undersigned officers of Brookstone III Owners Association, Inc., hereby certify that the above Amendment to the Declaration was duly adopted by owners holding at least a majority of the votes at Brookstone III, with any required notices properly given, this 28 day of August, 2012

Sworn to and subscribed to before me this 28 day of AUGUST, 2012.

Shawn Bunker
Witness

Mary McLaughlin
Notary Public

[Notary Seal]

BROOKSTONE III OWNERS ASSOCIATION, INC.

By: B.L. Smith (Seal)
President

Attest: Wesley P. Heflin (Seal)
Signature/Title Secretary
[Corporate Seal]

