

STATE OF GEORGIA  
COUNTY OF COBB

Return To:  
Rome & Associates, P.C.  
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Cross Reference: Deed Book 5510, Page 44.

(Space Above Reserved for Recording Data)

**AMENDMENT TO THE DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS FOR BURNT HICKORY LAKES**

This Amendment to The Declaration of Covenants, Restrictions and Easements for Burnt Hickory Lakes subdivision ("Amendment") is made on the date hereinafter set forth by Burnt Hickory Lakes Homeowner's Association, Inc. (hereafter referred to as the "Association").

**WITNESSETH**

**WHEREAS**, the Declaration of Covenants, Conditions, and Restrictions for Burnt Hickory Lakes Subdivision was recorded on October 17, 1989, in Deed Book 5510, Page 44, *et seq.*, in the public land records of Cobb County, Georgia, as may have been amended (hereinafter collectively referred to as the "Declaration"); and

**WHEREAS**, Article IX, Section 9.03 provides for the amendment of the Declaration by members holding at least two-thirds (2/3) of the total votes in the Association; and

**WHEREAS**, the Lot Owners wish to submit the Declaration to the provisions of the Georgia Property Owners Association Act, O.C.G.A. Sections 44-3-220, *et seq.*; and

**WHEREAS**, members holding at least two-thirds (2/3) of the total votes in the Association consented in writing to the following amendments affirmed to by the attached signature of the Association President, and attested to by the Association Secretary; and

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

**CLOSING ATTORNEYS AND TITLE EXAMINERS MUST CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.**

**WHEREAS**, the amendments provided for herein are not material with respect to first Mortgagees in that they do not materially and adversely affect the security title or interest of any first Mortgagee; provided, however, in the event a court of competent jurisdiction determines that these amendments do materially and adversely affect the security title or interest of any first Mortgagee without such first Mortgagee's consent to these amendments, then these amendments shall not be binding on the first Mortgagee so involved, unless such first Mortgagee consents to these amendments; and if such consent is not forthcoming, then the provisions of the Declaration prior to these amendments shall control with respect to the affected first Mortgagees.

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

1.

The following sentence is added to the last paragraph of the introductory remarks on page one of the Declaration:

*The Community 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.

A new Section 1.00 is added to Article I, **DEFINITIONS**, is added as follows:

*1.00 Act. "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.*

3.

Section 4.01, **Covenant for Assessments and Creation of Lien and Personal Obligation**, of Article IV, **ASSESSMENTS**, is hereby deleted in its entirety, and the following is substituted in its place:

**Section 4.01. Creation of the Lien and Personal Obligation for Assessments.**

*Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association for each Lot owned: (a) annual assessments or charges; (b) special assessments, such assessments to be*

established and collected as hereinafter provided; (c) parcel assessments, such assessments to be established and collected as hereinafter provided; and (d) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration or Bylaws. The Association, in the Board's discretion, may, but shall not be obligated to, record a Statement of Delinquent Assessments & Notice of Statutory Lien on the County lien records. The lien provided for herein shall have priority as provided in the Act.

All such assessments, together with late charges, interest, costs, and reasonable attorney fees actually incurred (including post-judgment attorney fees), and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Other than provided below, the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the association as provided in Section 4.10, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the property owners' association Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or in the event that any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments or under any instrument chargeable to the Lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from the grantor/prior owner, and his or her successors, successors-in-title, and assigns.

No Lot owner other than the association shall be exempted from any liability for any assessment under any instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his or her Lot or any part of the common area, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided by the Board, annual assessment shall be paid on the first day of the Association's fiscal year. If the Board so elects, assessments may be paid in installments, but if any Owner is delinquent in the payment of any assessments or other charges the Board may require any unpaid installments to be paid in full immediately.

#### 4.

Section 4.09, Effect of Nonpayment of Assessments, of Article IV, ASSESSMENTS, is hereby deleted in its entirety, and the following is substituted in its place:

#### 4.09 Effect of Nonpayment of Assessments: Remedies of the Association.

##### (a) Late Charges, Interest and Other Collection fees

Any assessments or installments thereof, which are not paid when due shall be considered delinquent, and shall incur a late charge equal to the greater of ten dollars (\$10.00) or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act. The delinquent assessments, including late charges, shall incur simple interest at the rate of ten percent (10%) per annum, or such higher amounts as may be authorized by the Act.

The Association shall also be entitled to costs of collection, including court costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees); the expenses required for the protection and preservation of the Lot, and the fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until judgment rendered in the action is otherwise satisfied.

The Association may levy other fees provided or permitted by law, including charges for returned check. The Association may also file a Statement of Delinquent Assessments & Notice of Statutory Lien on the county lien records. If the Board permits payment of the annual assessments in installments, and any assessment or other charge is not paid in full within ten (10) days of the due date, then the Board may accelerate and declare immediately due and payable any remaining installments of the annual assessment.

##### (b) Partial Payments.

Partial payments shall not constitute payment in full, unless agreed to in writing by the Association. Any partial payments shall be applied in the following order of priority: post-judgment reasonable attorney's fees, costs, and expenses actually incurred, then to reasonable attorney's fees and costs actually incurred and 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 which are created by the application of current payments to outstanding delinquent assessments or charges. All of the foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, including an offer of accord and satisfaction in settlement of a bona fide dispute. The Association may, but shall not be obligated to, allow any delinquent assessments, fines, or fees to be paid in installments, and may charge a reasonable service fee thereon.

##### (c) Suit and Foreclosure of Lien.

In the event that the assessment, fine or other charges, or any part thereof, remain unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien, and may recover all costs and reasonable attorney fees actually incurred up to the extent allowed by the Act and Georgia law. Each Owner, by acceptance of a deed or as a party to

any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, and as provided by the Act. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, or convey the same.

**(d) Rent Deduction for Delinquent Assessments.**

When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot 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 demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided that 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 Association'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 the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

5.

Section 4.10, Certificate of Payment, of Article IV, ASSESSMENTS, is hereby deleted in its entirety, and the following is substituted in its place:

**4.10 Statement of Account/Estoppel Letter.**

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 due and unpaid, including any late charges, interest, fines, or other charges against a Lot.

The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as authorized under the Act 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.

If the Association does not require payment of the fee as a prerequisite to providing the statement of account, or if the statement of account is requested within a period shorter than five (5) business days, the Association, or its agent, may subsequently charge a reasonable fee in an amount larger than the maximum amount set by the Act, including any late payment fees, or other related costs including but not limited to fax, overnight delivery, research fee, and reasonable attorney fees actually incurred. If the statement of account is requested within a period shorter than three (3) business days, the Association or its agent may also charge a rush fee.

The Association, or its agent, may charge for ancillary expenses unrelated to providing the statement of account, including but not limited to: title transfer fees, providing copies of the governing documents, and providing completed lender questionnaires. If any of the above-related fees are not paid in full the Association shall not be obligated to release any liens. The unpaid fees and costs shall be the responsibility of the Seller/Owner, shall be considered an assessment on the Lot, and may be collected as provided in these covenants for other assessments, including the filing of a Statement of Delinquent Assessments & Notice of Statutory Lien on the county records.

6.

Section 8.01, Right of Enforcement, Section 8.03, Specific Performance, Section 8.04, Collection of Assessments and Enforcement of Lien, and Section 8.05, No Waiver, of Article VIII, ENFORCEMENT, are hereby deleted in their entirety, and the following new Section 8.01 is substituted in their place:

**8.01 Enforcement.**

**(a) Compliance.**

The Property shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, By-Laws, and any Association Rules, Regulations and Guidelines, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Declaration, By-Laws, and any Association Rules, Regulations and Guidelines, including an action for damages and/or injunctive relief. In addition to any rights the Association may have against an Owner's family, guests, tenants or occupants, as a result of such person's violation, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or occupants.

**(b) Fines, Suspensions, & Notices of Non-Compliance.**

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote and/or to use the Common Property for violation of any duty imposed under the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines. To the extent any assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after becoming due, the Owner's and Occupant's rights to vote and use the Common Property shall be automatically suspended until all amounts owed are paid in full. However, nothing herein shall authorize the Association or the Board of

Directors to deny ingress and egress to or from a Lot. The Association shall also have the right to record a Notice of Non-Compliance on the County records regarding any outstanding violations of the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines.

**(c) Suspension of Services.**

In addition, if any assessment, fine or other charge is delinquent for thirty (30) days or more, the Association shall have the right upon thirty (30) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services paid for as a Common Expense, until such time as the delinquent assessments and all costs incurred by the Association pursuant to this Section, including reasonable attorney fees actually incurred, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnection any utility or other service, including reasonable attorney fees actually incurred, shall be an assessment against the Lot.

**(d) Application to Owner and Occupant.**

If any occupant of a Lot violates the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines, any fines or suspensions may be imposed against the Owner and/or Occupant. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines shall not be deemed a waiver of the right of the Board to do so thereafter.

**(e) Failure of Enforcement.**

Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has filed to do so.

**(f) Costs and Attorney Fees for Enforcement.**

In any enforcement action taken by the Association, including the abatement of any violation, the Association shall be entitled to any costs incurred against an Owner and/or Occupant, including reasonable attorney's fees actually incurred, whether or not a legal proceeding in law or equity is filed in connection with the violation, shall constitute a specific assessment against the Lot.

7.

Section 8.02, Right of Abatement, of Article VIII, ENFORCEMENT, is hereby deleted in its entirety, and the following is substituted in its place:

**8.02 Right of Abatement.**

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Such action on behalf of the Association or its duly authorized agents shall not constitute a trespass. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice via certified mail of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed from common property after reasonable notice. All costs of self-help, including any administrative fee on behalf of the Association, interest in the amount of ten 10% percent and reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments. Any contractor, subcontractor, agent, employee, or other invitee of an Owner, who fails to comply with the terms of the covenants, rules, or guidelines, may be excluded by the Board from the Community, subject to the notice procedures contained in the Bylaws. In such event, neither the Association, the ACC, the Board, nor the officers, directors, members, agents, and employees of any of them, shall be held liable to any Person due to the exercising of the rights granted herein.

8.

All of Article IX, DURATION AND AMENDMENT, is hereby deleted in its entirety, and the following is substituted in its place:

**ARTICLE IX**  
**AMENDMENT AND DURATION.**

The covenants and restrictions of this Declaration shall run with and bind the Properties perpetually to the extent provided for in the Act. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3rds) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration.

If legal action is not instituted to challenge the validity of any amendment to the Declaration within one (1) year of the recording thereof in the Cobb County, Georgia land records, then any such amendment shall be presumed to be validly approved and adopted. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance, hereby agrees that the Declaration may be amended as provided for in this Section.

**ALL OTHER PROVISIONS OF SAID DECLARATION FOR  
BURNT HICKORY LAKES SHALL REMAIN UNCHANGED.**