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 Fee Amt: \$26.00 Page 1 of 8
 Forsyth County, GA
 Greg G. Allen Clerk Superior Ct

BK **7354** PG **178-185**

Ret

After recording, please return to:
 Rachel E. Conrad
 Dorough & Dorough, LLC
 160 Clairemont Avenue, Suite 650
 Decatur, Georgia 30030
 (404) 687-9977

CROSS REFERENCE: Deed Book: 4306
 Page: 374

**AMENDMENT TO THE DECLARATION OF COVENANTS AND
 RESTRICTIONS FOR PROVENCE**

THIS AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR PROVENCE (hereinafter referred to as "Amendment") is made this 21st day of Aprile, 2015 by **PROVENCE HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as "Association") and **ASHTON ATLANTA RESIDENTIAL, L.L.C.**, a Georgia limited liability company (hereinafter referred to as "Ashton" or "Declarant").

WITNESSETH

WHEREAS, Eastbrooke Properties Stoney Point, LLC ("Eastbrooke Properties"), as Declarant, executed that certain Declaration of Covenants and Restrictions for Provence, which was recorded on June 7, 2006 in Deed Book 4306, page 374, *et seq.*, Forsyth County, Georgia land records (hereinafter as amended and/or supplemented from time to time referred to as the "Declaration"); and

WHEREAS, Eastbrooke Properties assigned all of its rights, title, interest and powers as Declarant arising under the Declaration to Portofino Management Corp., a Georgia corporation, ("Portofino Management") pursuant to that certain Assignment of Rights of Declarant under the Declaration of Covenants and Restrictions for Provence, recorded March 9, 2009, in Deed Book 5349, page 20, *et seq.*, Forsyth County, Georgia land records; and

WHEREAS, Portofino Management assigned all of its rights, title, interest, powers, privileges and immunities as Declarant arising under the Declaration to GDCI GA 4, L.P., a Georgia limited partnership ("GDCI GA 4"), pursuant to that certain Assignment of Rights of

Declarant under the Declaration of Covenants and Restrictions for Provence, recorded November 13, 2012 in Deed Book 6475, Page 759, *et seq.*, Forsyth County, Georgia land records; and

WHEREAS, GDCI GA 4, L.P. assigned all of its rights, title, interest, powers, privileges and immunities as Declarant arising under the Declaration to Ashton pursuant to that certain Assignment of Rights of Declarant Under the Declaration of Covenants and Restrictions for Provence, recorded September 3, 2014 in Deed Book 7162, Page 429, *et seq.*, Forsyth County, Georgia land records; and

WHEREAS, the Association is a non-profit 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 X of the Declaration, the Declaration may be amended upon the approval of: (a) those members of the Association who own in the aggregate no fewer than sixty-seven percent (67%) of the Lots not owned by the Declarant; and (b) the Declarant, if the Declarant shall then own any Lot or any other portion of The Provence Property; and

WHEREAS, further pursuant to Article X of the Declaration, the approval of any amendment by the members of the Association shall be given by such member by either casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such member signing a written approval of such amendment after the date on which such meeting was held; and

WHEREAS, members of the Association who own in the aggregate no fewer than sixty-seven percent (67%) of the Lots not owned by Declarant agreed to amend the Declaration as hereinafter provided; 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 states: (a) members of the Association who own in the aggregate no fewer than sixty-seven percent (67%) of the Lots not owned by Declarant approved the foregoing Amendment; and (b) that the consent of such members was lawfully obtained; and

WHEREAS, the Declarant hereby consents to this Amendment, as evidenced by the signature attached hereto and by this reference incorporated herein; and

WHEREAS, the Association and the members thereof 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 and Restrictions for Provence, 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 4.2 in its entirety and replacing it with a new Section 4.2 to read as follows:

4.2. In addition to the foregoing, the Board of Directors shall also have the authority to levy specific assessments ("Specific Assessments") against any member of the Association as provided herein. The failure of the Board 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's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. By way of explanation and not limitation, the following shall constitute Specific Assessments under the Declaration: (a) fines levied pursuant to this Declaration; (b) the Initiation Assessment as provided in Article V, Section 6; and (c) the cost of maintenance performed by the Association for which an owner is responsible.

In addition to the foregoing, 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 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 of the Association which are incurred as a result of the conduct of an owner or the occupants, tenants, guests or invitees of an owner may be specifically assessed against the Lot of such owner.

2.

The Declaration is hereby amended by adding a new Section 6 to the end of Article VI, entitled "Design Guidelines," to read as follows:

Section 6. Design Guidelines. The Board of Directors, with the consent of the Declarant, shall have the right to adopt architectural and landscaping guidelines for the Community ("Design Guidelines"). The Board shall have the sole and full authority to prepare, amend, expand or modify, from time to time the Design Guidelines and the Board shall distribute to the owners and occupants the Design Guidelines or any amendments or revisions thereto prior to the date that they are to become effective. The Design Guidelines or any amendments, modifications or revisions thereto shall thereafter be binding upon all owners and occupants until and unless overruled, canceled or modified by a majority of the total Association vote and the Declarant. The Board shall make the Design Guidelines available to Owners and occupants who seek to engage in construction upon all or any portion of the Community and such owners and occupants shall

conduct their operations strictly in accordance therewith and with the provisions of this Article VI.

3.

The Declaration is hereby amended by deleting Article XI, Section 6 of the Declaration, entitled "Enforcement", in its entirety and replacing it with a new Section 6 to read as follows:

Section 6. Enforcement. Each owner, occupant, invitee, guest, and tenant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in the Declaration, the Subdivision Plat(s) and in the deed to such owner's Lot, if any. Failure to comply with this Declaration, the Bylaws, the rules and regulations or Design Guidelines, if any, shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorneys' fees actually incurred, maintainable by the Association or an aggrieved owner. Failure by the Association or any owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

(a) Fines. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as a Specific Assessment as provided herein.

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 days from the date of the notice, request a hearing before the Board of Directors regarding the fine imposed;

(C) the name, address and telephone numbers 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 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 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.

(b) Notice of Violation. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Design Guidelines and to assess the cost of recording and removing such notice against the owner who is responsible (or whose occupants are responsible) for violating the foregoing. Failure by the Association or by any owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

The enforcement rights set forth in this Article XI, Section 6 shall be in addition to, not in lieu of, any other rights reserved for the Board under this Declaration.

4.

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

5.


This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Forsyth County, Georgia.

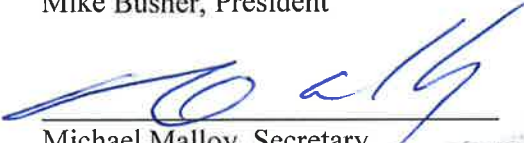
6.

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

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

ASSOCIATION: **PROVENCE HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: 
Mike Busher, President

Attest: 
Michael Malloy, Secretary

Signed, sealed and delivered in the presence of


Witness


Notary Public

[AFFIX CORPORATE SEAL]




[AFFIX NOTARY SEAL]

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IN WITNESS WHEREOF, Ashton, as the Declarant, hereby consents to this Amendment under seal this 21st day of April, 2015.

DECLARANT: ASHTON ATLANTA RESIDENTIAL, L.L.C., a Georgia limited liability company

By:  (SEAL)
Bruce Van Stee, as Attorney-In-Fact pursuant to that certain Limited Power of Attorney, recorded at Deed Book 5539, Page 773, Forsyth County, Georgia land records

Signed, sealed and delivered in the presence of:


Witness


Notary Public

[AFFIX NOTARY SEAL]



EXHIBIT "A"

Sworn Statement of Secretary of
Provence Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF FULTON


Re: Provence 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 Provence Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his or her own personal knowledge.
3. The foregoing Amendment to the Declaration of Covenants and Restrictions for Provence was approved by the affirmative vote or written consent of members of the Association who own in the aggregate sixty-seven (67%) percent of the Lot not owned by the Declarant.
4. The consent of members of the Association who own in the aggregate sixty-seven (67%) percent of the Lot not owned by the Declarant was lawfully obtained.
5. The foregoing Amendment was approved by the Declarant, as evidenced by the signature attached hereto and by this reference incorporated herein.
6. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20 and Article X of the Declaration.

This the 21st day of April, 2015.

By:
Name:


Michael Malloy

Sworn to and Subscribed
before me this 21st day of April, 2015.



Notary Public

[AFFIX NOTARY SEAL]

