

Deed Book 57096 Pg 568
Filed and Recorded Jan-13-2017 08:30am
2017-0008689
Real Estate Transfer Tax \$0.00
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

Return to:
Smith Cavin & Corbln, LLC
Attn: Beverly Colligan
750 Hammond Dr., Bldg. 11
Atlanta, GA 30328
(404) 256-9000

CROSS-REFERENCE:
Deed Book 13736, Page 193,
Fulton County, Georgia

**SUPPLEMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
NESBIT LAKES**

THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR NESBIT LAKES (this "Supplement") is made this 11th day of January, 2017, by NESBIT LAKES HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit corporation ("NLHOA") and by CALATLANTIC GROUP, INC., a Delaware corporation (together with any successor or assign who shall acquire any portion of the Briarstone Property, as defined below, for the purpose of development, construction or sale thereof and who is designated as Briarstone Owner in a recorded instrument executed by the immediately preceding Briarstone Owner, the "Briarstone Owner").

WITNESSETH:

WHEREAS, on September 29, 1990, that certain Declaration of Covenants, Conditions, and Restrictions for Nesbit Lakes was created by Brooks Horton Development Corporation of Georgia, Inc., a Georgia corporation (the "Developer"), which Declaration is recorded in Deed Book 13736, Page 193, et seq., of the Deed Records of Fulton County, Georgia (as amended, the "Declaration");

WHEREAS, the Developer no longer has the right to add additional property to the Declaration and no longer owns any Lot or Dwelling primarily for the purpose of sale, and thus the Developer's consent to any amendment to the Declaration is no longer necessary;

WHEREAS, pursuant to Section 2.05 of the Declaration, NLHOA has the right, without the consent of the members, to authorize the annexation and submission of the property described on Exhibit "A" attached hereto and incorporated herein (the "Briarstone Property") to the Declaration by the filing of this Supplement;

WHEREAS, NLHOA and the Briarstone Owner desire to submit the Briarstone Property to the provisions of the Declaration, as more particularly set forth herein;

WHEREAS, Briarstone Owner desires to create the "Briarstone Association," as hereinafter defined, to maintain that certain lake known as Briarstone Lake (defined below), the easement access to Briarstone Lake, and to perform such other functions on behalf of the Briarstone Lot Owners (defined below) as are more particularly set forth herein.

NOW THEREFORE, NLHOA does hereby amend the Declaration as follows:

1. NLHOA authorizes the submission of the Briarstone Property to the provisions of the Declaration pursuant to the terms set forth herein.

2. Submission. Briarstone Owner does hereby submit the Briarstone Property to the provisions of the Declaration and does hereby declare that on and after the date of recording of this Supplement in the deed records of Fulton County, Georgia, the land described in Exhibit "A" hereto shall be a part of the submitted Property as defined in said Declaration. Each Briarstone Lot shall also be a "Lot" as defined in the Declaration. It is intended that the provisions of this Supplement shall constitute additional covenants running with the land herein described, and that said land shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of the Declaration and this Supplement, as now stated or hereafter further amended.

3. Definitions. Article 1.01 of the Declaration shall be amended by adding the following definitions:

- a) "**Board of Directors of Briarstone Association**" shall mean the body responsible for the administration of the Briarstone Association, as provided in the bylaws of the Briarstone Association.
- b) "**Briarstone Association**" shall mean and refer to Briarstone at Nesbit Lakes Homeowners Association, Inc., a Georgia non-profit membership corporation, its successors, transfers and assigns, established to govern the use, operation and maintenance of Briarstone Lake and to perform such other functions as are set forth herein.
- c) "**Briarstone Builder**" shall mean any Person who purchases one (1) or more Briarstone Lots for the purpose of constructing improvements for later sale to consumers or who purchases one (1) or more parcels of land within the Briarstone Property for further subdivision, development and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Briarstone Improved Lot for residential purposes shall cease to be

considered a Briarstone Builder with respect to such Briarstone Improved Lot on the date of such occupancy of the Briarstone Improved Lot for residential purposes, notwithstanding that such Person originally purchased the Briarstone Lot for the purpose of constructing improvements for later sale to consumers.

- d) "**Briarstone Common Areas**" shall mean, singularly or collectively, as applicable, all land, improvements and other properties that hereafter shall be deeded to, or acquired by, the Briarstone Association for the common use and enjoyment of the Briarstone Lot Owners.
- e) "**Briarstone Improved Lot**" shall mean a Briarstone Lot (i) which has been improved with a Briarstone Residence, (ii) sold to a Person who is not the Briarstone Owner or a Briarstone Builder, and (iii) not being used as a Briarstone Model Home.
- f) "**Briarstone Lake**" shall mean and refer to that certain lake [the Seydel Property Lake and Detention Pond as shown on Ex. G to the Development Agreement] located upon the Briarstone Property as shown upon a "Briarstone Plat" (as that term is defined herein) as "Briarstone Lake", together with any and all spillways, dams, retaining walls, causeways or other natural or artificial structure located thereon or appurtenant thereto, and together with the easement access thereto for use, enjoyment, inspection, maintenance, repair and replacement as set forth herein.
- g) "**Briarstone Lake Lot**" shall mean and refer to any Briarstone Lot which abuts any portion of Briarstone Lake, as such Briarstone Lake and Briarstone Lots are indicated on the Briarstone Plat.
- h) "**Briarstone Lot**" shall mean and refer to each portion of the Briarstone Property which may be independently owned and conveyed and which is intended for development, use and occupancy as a detached residence for a single family.
- i) "**Briarstone Lot Owner**" shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Briarstone Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be a Briarstone Lot Owner.

- j) "**Briarstone Model Home**" shall mean a structure used by the Briarstone Owner or a Briarstone Builder to show a prospective buyer what a similar housing type will look like when constructed on a Briarstone Lot.
- k) "**Briarstone Mortgage**" shall mean a deed or other document by means of which title to any Briarstone Lot is conveyed or encumbered to secure a debt of first priority.
- l) "**Briarstone Primary Builder**" shall mean **CALATLANTIC GROUP, INC.**, a Delaware corporation, and any other entity designated as a "Briarstone Primary Builder" by the Briarstone Owner by a written instrument recorded in the Fulton County, Georgia real property records. Each Briarstone Primary Builder shall be entitled to those rights and exemptions granted to a Briarstone Builder, as well as such further rights and exemptions specifically granted to Briarstone Primary Builder herein.
- m) "**Briarstone Residence**" shall mean the structure on each Briarstone Lot for which a certificate of occupancy has been issued by the applicable government authority.
- n) "**Briarstone Plat**" shall mean and refer to an approved subdivision plat recorded in the records of Fulton County, Georgia which has been or is hereafter recorded in the aforesaid public records with respect to all or any portion of the Briarstone Property.
- o) "**Control Period**" shall have the definition given to it in Section 8 below.
- p) "**Person**" shall mean a natural person, corporation, trust, partnership or any other legal entity.

To the extent that any definitions set forth in the Declaration conflict with the terms of the amendments set forth hereinabove, the Definitions contained in this Supplement shall control.

4. Briarstone Lake Use Rights. Briarstone Lake shall be conveyed to and owned by Briarstone Association for the benefit, use, and enjoyment of all of the Briarstone Lot Owners, whether or not such Owner is a Briarstone Lake Lot Owner, but is not and shall not be included as part of the "**Common Area**" subject to and a part of NLHOA as set forth in the Declaration; it is expressly intended by NLHOA and the Briarstone Owner that no Lot Owner other than a Briarstone Lot Owner shall have any rights to or use of Briarstone Lake or membership in Briarstone Association. Each Briarstone Lot Owner shall have a non-exclusive, perpetual easement for the use and enjoyment of the entire Briarstone Lake. No easement shall exist for access to or use of Briarstone Lake by any Owner other than a Briarstone Lot Owner, and,

except as herein provided, the Briarstone Lot Owners, and their families, guests and tenants, shall have the exclusive right to access and the use of Briarstone Lake.

5. Membership in Briarstone Association. Each Briarstone Lot Owner, upon the acceptance of the conveyance of a Briarstone Lot, shall be a member of the Briarstone Association. Membership in the Briarstone Association shall be appurtenant to and may not be separated from the ownership of a Briarstone Lot. Each member of the Briarstone Association shall also be a member of NLHOA and be governed by all terms of the Declaration, as amended by this Supplement. The foregoing is not intended to include persons or entities who hold an interest merely as security for performance of an obligation, such as the holder of a deed to secure debt or other security instrument encumbering any Briarstone Lot, and the granting of a security interest in any Briarstone Lot shall not terminate or otherwise impair or impact upon a Briarstone Lot Owner's dual membership. The Briarstone Association shall have the assessment, collection and lien rights given in this Supplement; provided however, that the lien for assessments granted to the Briarstone Association shall be inferior to the lien for assessments of NLHOA. Such assessments by the Briarstone Association shall also be inferior in all instances to the lien of first priority mortgages. Assessments may be collected as and when the Briarstone Association sees fit. Pursuant to the Georgia non-profit corporation statute, the Briarstone Association shall be governed by its bylaws.

6. ASSESSMENTS AND OTHER CHARGES

- a) Creation of Lien and Personal Obligation. Each Briarstone Lot Owner, by acceptance of a deed or other conveyance for a Briarstone Lot, covenants and agrees to pay to the Briarstone Association all assessments and charges which are levied by the Briarstone Association against the Briarstone Lot(s) owned by such person in accordance with the terms and provisions of this Supplement, the bylaws of the Briarstone Association, and any rules and regulations of the Board of Directors of Briarstone Association promulgated hereunder.
- b) All sums lawfully assessed by the Briarstone Association against any Briarstone Lot and the Briarstone Lot Owner thereof, together with interest thereon, late fees in the amount of 10% of the sums owed or \$10.00, whichever is higher, and all costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Briarstone Lot Owner, and the Briarstone Lot Owner's heirs, devisees, legal representatives, successors and assigns, of such Briarstone Lot and constitute a continuing lien in favor of the Briarstone Association on such Briarstone Lot prior and superior to all other liens whatsoever except: (1) liens for ad valorem taxes on the Briarstone Lot; (2) The lien of any Briarstone Mortgage covering the Briarstone Lot and the lien of any Briarstone Mortgage

recorded prior to the recording of this Supplement; (3) The lien of any secondary purchase money mortgage covering the Briarstone Lot, provided that neither the grantee nor any successor grantee of such mortgage is the seller of the Briarstone Lot and (4) the lien for assessments of NLHOA. The covenant to pay assessments herein stated is and shall be a covenant running with the land.

- c) Purposes of Assessments and Charges. The assessments and charges levied by the Briarstone Association pursuant to this Section 6 shall be used to pay the costs and expenses which the Briarstone Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Supplement, the articles of incorporation and the bylaws of Briarstone Association and for such other purposes as the Board of Directors of Briarstone Association shall deem necessary or desirable to promote the health, safety and welfare of the Briarstone Association and its members. The costs and expenses collected on an annual basis are herein referred to as the "Briarstone Annual Expenses."
- d) Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Briarstone Association or at any time it deems best (said fiscal year being specified in the bylaws of the Briarstone Association), the Board of Directors of Briarstone Association shall estimate the total amount of the Briarstone Annual Expenses which are anticipated to be incurred by the Briarstone Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Briarstone Association. The Board of Directors of Briarstone Association shall thereupon adopt a budget for the Briarstone Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the members of the Briarstone Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Briarstone Annual Assessment"). The assessments provided for herein shall commence as to a Briarstone Lot on the date that a Briarstone Lot becomes a Briarstone Improved Lot, with all Briarstone Improved Lots being assessed equally, except as may be specifically set forth otherwise herein. No Briarstone Annual Assessment shall be assessed against any Briarstone Lot owned by Briarstone Owner or a Briarstone Primary Builder or against any Briarstone Lot while it is being used as a Briarstone Model Home, unless required as a matter of law or by separate agreement with Briarstone Owner or a Briarstone Primary Builder. The Board of Directors of Briarstone Association shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Briarstone

Annual Assessment so determined for such fiscal year and the amount of such Briarstone Annual Assessment which shall be levied against each Briarstone Lot, to the Briarstone Lot Owner of every Briarstone Lot. The amount of such Briarstone Annual Assessment which shall be levied against each Briarstone Lot shall be due and payable to the Briarstone Association in such installments as the Board of Directors of Briarstone Association shall determine and shall be paid to the Briarstone Association when due without further notice.

- e) Special Assessments. If for any reason, including non-payment of any assessments to the Briarstone Association by the persons liable therefor, the budget adopted by the Board of Directors of Briarstone Association for any fiscal year shall prove to be inadequate to defray the Briarstone Annual Expenses for such fiscal year, or if the Board of Directors of Briarstone Association shall determine that it is in the best interests of the Briarstone Association to levy a special assessment to pay the costs of any capital improvements or capital repairs; the Board of Directors of Briarstone Association shall have the authority to levy a special assessment against the Briarstone Lots and the Briarstone Lot Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors of Briarstone Association pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors of Briarstone Association shall determine. Each Briarstone Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Briarstone Association pursuant to the provisions of this section; provided that in no event shall Briarstone Owner or a Briarstone Primary Builder be obligated to pay any special assessment.

- f) Specific Assessments. The Board of Directors of Briarstone Association may levy specific assessments against individual Briarstone Lot Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Briarstone Common Areas, or of any monument, landscaping, detention pond, amenity or other thing maintained by the Briarstone Association, which is occasioned by the act(s) of individual Briarstone Lot Owner(s) and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Briarstone Lot Owner relative to such Briarstone Lot Owner's failure to comply with the terms and provisions of this Supplement, the bylaws of the Briarstone Association, or any rules or regulations promulgated hereunder; or (iii) for any common expenses, other than expenses for the maintenance of the Briarstone Common Areas, which benefit less than all of the Briarstone Lots or which significantly disproportionately benefit all

Briarstone Lots (which expenses may be specially assessed equitably among all of the Briarstone Lots benefited according to the benefit received); provided that in no event shall Briarstone Owner or Briarstone Primary Builder be obligated to pay any specific assessment, nor shall a specific assessment be assessed against any Briarstone Lot while it is being used as a Briarstone Model Home. Failure of the Board of Directors of Briarstone Association to exercise its authority under this section shall not be grounds for any action against the Briarstone Association or the Board of Directors of Briarstone Association and shall not constitute a waiver of the Board of Directors of Briarstone Association's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board of Directors of Briarstone Association shall send written notice of the amount and due date of such specific assessment to the affected Briarstone Lot Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

- g) Suspension of Services and Utilities Provided by Briarstone Association. In the event any assessment, fine or other charge, or any portion or installment thereof, is delinquent for ninety (90) days or more, in addition to all other rights provided in this Supplement, the Briarstone Association shall have the right, upon ten (10) days written notice, subject to the suspension standards and notice requirements imposed on the institutional providers providing such services to the Briarstone Property, if any, to suspend any utility or service, the cost of which is paid for by the Briarstone Association as a common expense, which shall include, without limitation, water service provided to a Briarstone Lot, until such time as the delinquent assessments and all costs permitted under this Section, including, without limitation, reasonable attorneys' fees actually incurred and any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such utility service or other services, are paid in full. Said utility services shall not be required to be restored until such delinquent assessments and costs, including, without limitation, any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such services, are paid in full. Any Briarstone Lot Owner whose utility or service has been suspended shall not be entitled to use any such utility or service paid for as a common expense from any source and any such unauthorized use shall be considered a theft of services under O.C.G.A. Section 16-8-5. All Briarstone Association expenses for terminating and/or restoring any services pursuant to this Section, including reasonable attorneys' fees actually incurred, shall be

a specific assessment and shall be collected as provided herein for the collection of assessments.

The notice requirement of this Section shall be deemed complied with if the notice is sent by certified mail, return receipt requested, to the address of the Briarstone Lot and to any other address the Briarstone Lot Owner has designated in writing to the Briarstone Association. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions, except as provided herein.

- h) Special Assessment for Working Capital Reserve. Upon the first transfer of title to a Briarstone Improved Lot (or, in the case of a Briarstone Model Home, the thirtieth (30th) day after the Briarstone Lot ceases to be used as a Briarstone Model Home) and upon each resale of a Briarstone Improved Lot thereafter, there may be levied against such Briarstone Improved Lot and paid to the Briarstone Association a special assessment as set from time to time by Briarstone Owner or the Board of Directors of Briarstone Association. Such amount shall not be greater than the total amount of the Briarstone Annual Assessment which shall have been levied against Briarstone Improved Lots for the calendar year in which such transfer of title shall take place. Briarstone Owner (or Briarstone Builder, if the Briarstone Lot is owned by a Briarstone Builder) shall endeavor to collect such special assessment at the closing of the initial purchase of the Briarstone Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment. Neither Briarstone Owner nor a Briarstone Builder shall be liable for the payment of such special assessment.
- i) Effect of Non-Payment of Assessments, Charges or other Fees; Remedies of the Association.
 - i. In the event that any member of the Briarstone Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special, or specific assessment, or any installment of any such assessments which is payable by him to the Briarstone Association, or any charges, fees or other such sums which may be due to the Briarstone Association, the entire amount of such assessment or sum, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors of Briarstone Association to be immediately due and payable in full to the Briarstone Association. All such amounts so declared by the Board of Directors of Briarstone Association to be due and payable in full to the Briarstone Association shall be secured by

the lien of the Briarstone Association on every Briarstone Lot owned by the delinquent member, which lien shall bind such Briarstone Lot or Lots in the hands of the then Briarstone Lot Owner, and his heirs, devisees, successors and assigns. The Briarstone Association may, but shall not be obligated to, file a notice of lien in the land records of the county where the Briarstone Lot is located. In addition to the lien rights, the personal obligation of the then Briarstone Lot Owner to pay such sums shall remain his personal obligation and shall also pass to his successors in title. Such Briarstone Lot Owner shall nevertheless remain as fully obligated as before to pay to the Briarstone Association any and all amounts which said Briarstone Lot Owner was obligated to pay immediately preceding the transfer; and such Briarstone Lot Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Briarstone Lot Owner and successors in title creating any indemnification of the Briarstone Lot Owner or any relationship of principal and surety as between themselves.

- ii. All amounts which the Board of Directors of Briarstone Association shall declare to be due and payable pursuant to this section shall be subject to late fees in the amount of 10% of the sums owed or \$10.00, whichever is higher, and shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law. The Briarstone Association may bring legal action against the member of the Briarstone Association personally obligated to pay the same, or foreclose its lien upon the Briarstone Lot or Lots of such member, in either of which events such member shall also be liable to the Briarstone Association for all costs and attorneys' fees which the Briarstone Association shall incur in connection with the collection of such delinquent amounts.
- j) Budget Deficits during Control Period. Briarstone Owner may advance funds to the Briarstone Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Briarstone Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Briarstone Association in favor of the Briarstone Owner and shall be paid back to Briarstone Owner if and to the extent that sufficient funds are generated by assessments in future years until such time as Briarstone Owner no longer has the authority to appoint the directors and officers of the Briarstone Association.

- k) Failure to Assess. The failure of the Board of Directors of Briarstone Association to fix the assessment amounts, to deliver to each Briarstone Lot Owner an assessment notice, or to collect any sums due shall not be deemed a waiver, modification or release of any Briarstone Lot Owner of the obligation to pay assessments or any other sums due the Briarstone Association. In the event of any assessments owed, each Briarstone Lot Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Briarstone Association.

7. Relationship with NLHOA. The Briarstone Association shall be created with the same formality as was NLHOA, as set forth in the Declaration; and as Briarstone Lot Owners will be members of the NLHOA as with current members of the NLHOA, all other terms and conditions set forth in the Declaration, including but not limited to, for the operation, rights, obligations, liabilities, use restrictions and further requirements of the Declaration and NLHOA shall be deemed to apply also to the Briarstone Lot Owners, the Briarstone Lots and the Briarstone Association, as herein created, except as to any such requirements of NLHOA set forth in the Declaration which may conflict with the terms set forth below or any other specific terms of the Briarstone Association as set forth in this Supplement; it being expressly intended that any such explicit derivation from the terms of the Declaration as set forth in this Supplement shall supersede any such terms as set forth in the Declaration.

Each Briarstone Lot temporarily waives its voting rights in NLHOA in exchange for the non-payment of yearly assessments to NLHOA until such time as a certificate of occupancy or similar documents (the "CO") as to a dwelling on such Lot is issued by the City of Roswell.

Upon the initial sale of each Briarstone Improved Lot, the initial purchaser (owner/occupant) shall (as with all NLHOA Owners upon each and every sale of a Lot with a dwelling) pay an initiation fee not to exceed \$1,200 to the NLHOA (as determined by the NLHOA).

Briarstone Association shall have complete architectural control rights in the Briarstone Property during the Control Period. After the expiration or termination of the Control Period, architectural control rights shall, at the option of NLHOA, either remain with the Briarstone Association or transfer to a NLHOA committee composed solely of residents of the Briarstone Property.

Neither Briarstone Owner nor any Briarstone Builder shall be subject to any NLHOA rules or fines or subject to any covenants regarding architectural review or any time frames for completion of construction.

NLHOA shall not amend, or consent to an amendment to, the Declaration which modifies any element of this Supplement, the Development Agreement between the parties hereto dated March 9, 2015, or Briarstone Owner's rights hereunder or thereunder, or the rights of the Briarstone Lot Owners without the consent of Briarstone Owner until after the Control Period. During the Control Period, any further amendment, modification or supplement to this Supplement shall require the written approval of NLHOA and the Briarstone Owner, but shall not otherwise require the approval or consent of any Briarstone Lot Owner. After the Control Period, any modification of this Supplement shall solely require the written approval of the Briarstone Association and the NLHOA.

After the Control Period, NLHOA shall maintain all property shown on the Briarstone Plat other than (i) Briarstone Lake, and (ii) the Briarstone Lots (such property being referred to herein as the "New Common Areas") at a standard equal to or greater than the standard of maintenance being provided by Briarstone Owner at the end of the Control Period.

After the Control Period, the Briarstone Lot Owners shall have the right, by majority vote, to request a higher level of service (such as Lot lawn maintenance) from NLHOA (with the cost therefor to be assessed against all of the Briarstone Lot Owners as a special/specific assessment). If NLHOA elects not to provide the higher level of service requested, the Briarstone Association shall have the right to provide such service (with the cost therefor to be assessed against all of the Briarstone Lot Owners as an additional Briarstone Association assessment).

This document establishes Briarstone Association as a mandatory membership homeowners association according to the terms hereof, but it does not submit Briarstone Association to, and it is not intended for Briarstone Association to be governed by, the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq. (the "POA"). However, after the Control Period, the Board of Directors of Briarstone Association, without the vote of the Briarstone Lot Owners or the approval of any other person or entity, may amend this Supplement for the sole purpose of electing that Briarstone Association and its members to be governed by the provisions of the POA.

8. Right to Appoint Directors of Briarstone Association. Briarstone Owner shall have the exclusive right to appoint and remove the member or members of the Board of Directors of Briarstone Association, with or without cause, until such time as the earlier of the following dates shall occur: (i) the date which the Briarstone Owner may so designate by notice in a writing delivered to Briarstone Association and NLHOA, (ii) the date on which one hundred (100%) percent of the Briarstone Lots are improved with a residence and sold to a person who is not a developer or builder or (iii) ten (10) years from the date hereof. The period of time during which the Briarstone Owner has the right to appoint or remove directors is herein referred to as the "Control Period." The directors appointed by the Briarstone Owner need not be Owners or

residents of the Briarstone Property or any other portion of the property subject to the Declaration.

9. Rules for Use of Briarstone Lake. The Briarstone Association shall be entitled to establish such reasonable rules and regulations as it deems desirable or necessary to provide for the optimum use and enjoyment of Briarstone Lake by its members; provided, however, that in all instances the following restrictions, rules and regulations shall govern the Briarstone Association, and shall take precedence over any restrictions, rules and regulations established by the Briarstone Association:

- a) No boat shall be longer than fourteen feet.
- b) No boats with motors of any kind shall be permitted in or to operate on Briarstone Lake.
- c) No dock or other structure may be constructed or caused to be constructed in, on or contiguous to Briarstone Lake. No floating docks are permitted. Gazebos may be constructed above the high water mark by each Owner of a Briarstone Lake Lot upon compliance with the provisions of Article X of the Declaration and upon the prior written approval of the plans and specifications for such gazebo by the association having the architectural control rights at the time of such request (as more particularly described in Section 7 above) (the "Applicable Association").
- d) No rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse of any kind shall be placed or disposed of on or into Briarstone Lake.
- e) Except as provided in this Supplement, Briarstone Lake shall not be used for irrigation purposes without the prior written approval of the Applicable Association.
- f) Ice skating and swimming shall not be permitted on or in Briarstone Lake.
- g) Each Owner of a Briarstone Lake Lot shall maintain all grass, plantings and other lateral support to prevent erosion adjacent to Briarstone Lake.

10. Rights and Easements. Briarstone Owner reserves the non-exclusive rights and easements, but not the obligations, (a) to install, keep, inspect, maintain, repair and replace a pump or pumps on any Briarstone Lake Lot in order to provide water from Briarstone Lake for the irrigation of [the pathway providing access to Briarstone Lake], and (b) to enter upon Briarstone Lake and any and all Briarstone Lake Lots in order to keep, maintain and repair the

dam or dams retaining Briarstone Lake and to remove trash and other debris, and to charge the Briarstone Association for the full costs thereof. Briarstone Owner's rights herein shall be transferred to the Briarstone Association at the end of the "Control Period", or at such earlier time as Briarstone Owner may decide, in its sole discretion. Briarstone Association shall have an easement over and across each of Briarstone Lake Lots for the purpose of exercising its rights and responsibilities as herein and otherwise set forth, including its obligations to keep, maintain and repair the dam or dams, provided, however, that Briarstone Association shall use reasonable care in the exercise of such easement and shall repair any damage caused in the exercise of said easement. There is further reserved herein and hereby, for the benefit of Briarstone Owner, the Briarstone Association, and its members, a perpetual, non-exclusive right and easement (but not the obligation) from time to time and at any time upon each and every Briarstone Lake Lot, (a) to flood and back water upon and maintain water over those areas at or below the maximum water elevation shown on the Plat; (b) to drain, fill and refill Briarstone Lake; (c) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain Briarstone Lake; (d) to maintain and landscape the slopes and banks pertaining to Briarstone Lake; and (e) to enter onto and across any of Briarstone Lake Lots for the purpose of exercising its or their rights under this Section.

11. Lake Maintenance. The Briarstone Association shall keep, maintain and repair Briarstone Lake in good working order and repair and in compliance with all applicable federal, state and local statutes, ordinances, rules and regulations, including, but not limited to the Georgia Safe Dams Act of 1978 at O.C.G.A. Sec 12-5-370, et seq. The Briarstone Association may assess the Briarstone Lot Owners a charge for the costs and expenses incurred or to be incurred to keep and maintain Briarstone Lake in good working order and repair, including but not limited to such insurance with respect thereto as may be required by law or otherwise deemed prudent or desirable by the Board of Directors of Briarstone Association, with such assessments to be paid in such installments and at such times as may be determined by the Board of Directors of Briarstone Association.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the President of NLHOA and such other officer signing below states unequivocally that the agreement of the required parties was lawfully obtained as of the day and year first above written and any required notices were duly given.


NLHOA:

Sworn to and subscribed before me this
11 day of Jan, 2017:



NOTARY PUBLIC NOTARIAL SEAL
COBB COUNTY, GEORGIA
NOVEMBER 25, 2016

THE NESBIT LAKES HOMEOWNERS
ASSOCIATION, INC.

BY: 
Its: President

Attest: _____
Its: _____
CORPORATE SEAL

BRIARSTONE OWNER:

Sworn to and subscribed before me this
____ day of _____, 20____:

Unofficial Witness

Notary Public NOTARIAL SEAL

CALATLANTIC GROUP, INC.
BY: _____ (SEAL)
RICHELLE LOSCH
Vice President Finance

CORPORATE SEAL

IN WITNESS WHEREOF, the President of NLHOA and such other officer signing below states unequivocally that the agreement of the required parties was lawfully obtained as of the day and year first above written and any required notices were duly given.

NLHOA:

Sworn to and subscribed before me this day of , 20 : THE NESBIT LAKES HOMEOWNERS ASSOCIATION, INC.

Unofficial Witness

BY: _____
Its: President

Notary Public NOTARIAL SEAL

Attest: _____
Its: _____

CORPORATE SEAL

BRIARSTONE OWNER:

Sworn to and subscribed before me this 11 day of July, 2017: CALATANTIC GROUP, INC.

Unofficial Witness

BY: Richelle Losch (SEAL)
RICHELLE LOSCH
Vice President Finance

Notary Public NOTARIAL SEAL



EXHIBIT "A"

All that tract or parcel of land lying and being located in Land Lots 786, 765, 732, 764 and 787 of the 1st District, 2nd Section, Fulton County, Georgia and being more particularly described as follows:
TO FIND THE POINT OF BEGINNING, begin at an iron pin located at the intersection of the northwestern most side of Scott Road (60 foot right-of-way) and the western most side of Nesbit Ferry Road (60 foot right-of-way); running thence in a northeasterly direction along the western most side of Nesbit Ferry Road and following the curvature thereof the following courses and distances: north 00°16'40" east a distance of 51.32 feet to a point; an arc distance of 181.76 feet (said arc being subtended by a chord line running north 01°38'46" east a distance of 181.74 feet) to a point and having a radius of 3805.015 feet; an arc distance of 215.66 feet (said arc being subtended by a chord line running north 07°34'24" east a distance of 215.43 feet) to a point and having a radius of 1355.248 feet; an arc distance of 128.30 feet (said arc being subtended by a chord line running north 12°51'47" east a distance of 128.30 feet) to a point and having a radius of 5029.07 feet; an arc distance of 48.62 feet (said arc being subtended by a chord line running north 13°52'15" east a distance of 48.62 feet) to a point and having a radius of 5029.07 feet; run thence north 14°08'52" east a distance of 239.49 feet to an iron pin placed; run thence leaving the right-of-way on Nesbit Ferry Road in a northwesterly direction north 89°43'53" west along the southern line of the property now or formerly owned by Howard L. Hawkins a distance of 407.00 feet to an iron pin found and THE POINT OF BEGINNING; from the POINT OF BEGINNING; running thence north 00°12'08" east a distance of 802.03 feet to an iron pin found; running thence north 88°53'06" west along the line dividing Land Lots 787 and 788 of said District, Section and County a distance of 1020.52 feet to the common corner of Land Lots 787, 788, 764 and 763 of said District, Section and County to an iron pin found; thence running south 89°51'04" west along the line dividing Land Lots 764 and 763 of said District, Section and County a distance of 844.60 feet to a point; thence leaving the north line of Land Lot 764 and running thence south 02°00'00" east a distance of 275.00 feet to a point; running thence south 28°00'00" east a distance of 255.00 feet to a point; running thence south 09°00'00" east a distance of 170.00 feet to a point; running thence south 14°00'00" west a distance of 175.00 feet to a point; running thence south 37°00'00" west a distance of 165.00 feet to a point; running thence south 64°00'00" west a distance of 240.00 feet to a point; running thence south 17°00'00" west a distance of 270.00 feet to a point; running thence south 46°00'00" west a distance of 185.00 feet to a point; running thence south 43°00'00" east a distance of 330.00 feet to a point; running thence north 53°00'00" east a distance of 505.00 feet to a point; running thence south 77°00'00" east a distance of 590.00 feet to a point; running thence north 76°00'00" east a distance of 435.00 feet to a point; running thence north 23°00'00" east a distance of 210.00 feet to a point; running thence south 88°00'00" east a distance of 90 feet to a point; running thence in a northeasterly direction along a clockwise arc a distance of 685.59 feet to an iron pin found (said arc being subtended by a chord line of 634.14 feet running north 48°56'59" east) to an iron pin found and having a radius of 505.00 feet and said point being the POINT OF BEGINNING. Said tract being shown as Tract Two on a certain plat prepared by Watts and Browning Engineers dated December 21, 1989, revised March 26, 1990, and again revised on May 3, 1990; the above described Tract containing 58.441 acres.