

CROSS REFERENCE

GEORGIA, FULTON COUNTY
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JUANITA HICKS
CLERK, SUPERIOR COURT

CROSS-REFERENCE:
Declaration Recorded in Deed Book 13736,
Page 193, Fulton County, Georgia records

FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
NESSIT LAKES

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR NESSIT LAKES is made this day of
September, 1991, by Brooks Horton Development Corporation of
Georgia, Inc., a Georgia corporation.

W I T N E S S E T H:

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

WHEREAS, Declarant now desires to amend said Declaration in
accordance with Articles 2.02 and 3.06 thereof, to submit Additional
Property, as defined therein, and as attached hereto as Exhibit "A",
which is incorporated herein by reference thereto, to the provisions
of said Declaration, pursuant to the limitations set forth herein;

WHEREAS, Declarant desires to submit to the Declaration that
certain property containing a lake thereon known as Whispering Wind
Lake, which lake is more particularly described on Exhibit "B"
attached hereto and incorporated herein by reference thereto, for
the sole use and enjoyment of the Owners of the lake lots being
submitted to the terms of the Declaration by this Amendment, and not
for any other lots previously or to be submitted; and

WHEREAS, Declarant now desires to create a "Lake
Association," as hereinafter defined, to maintain that certain lake
known as Whispering Wind Lake, which is adjacent to the Additional
Property being hereby submitted herein to the Declaration.

NOW, THEREFORE, pursuant to Articles 2.02 and 3.06 of the
Declaration, Declarant does hereby amend the Declaration as follows:

1. Declarant does hereby submit that certain property
described on Exhibit "A" of this Amendment to the provisions of the
Declaration of Covenants, Conditions and Restrictions for Nesbit
Lakes and does hereby declare that on and after the date of
recording of this Amendment 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. It is
intended that the provisions of this Amendment 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 First Amendment, as now stated or hereafter further amended.

2. Article 1.01 of the Declaration shall be amended by adding or modifying the following definitions:

(a) "Lake" shall mean and refer to that certain lake located upon the Property as shown upon a "Plat" (as that term is defined herein) as "Whispering Wind Lake".

(b) "Lake Association" shall mean and refer to the Georgia non-profit membership corporation, its successors, transfers and assigns, established to govern the use, operation and maintenance of the Lake and the dam or dams retaining such Lake, known as "Whispering Wind Lake Homeowners' Association."

(c) "Lake Common Area" shall mean and refer interchangeably to the Lake, and any and all spillways, dams, retaining walls, causeways or other natural or artificial structure located thereon, not to include, however, any piers or other structures placed within the Lake Common Area by individual Lake Lot Owners for the personal use of said Owner or other Lake Lot Owners, and not for the benefit of the Lake Association.

(d) "Lake Lot" shall mean and refer to any lot or dwelling which abuts any portion of the Lake, as such Lake and lots are indicated on the Plat.

(e) "Master Association" shall mean and refer to Nesbit Lakes Homeowners' Association, Inc., as further defined in the Declaration.

(f) "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 in reference to Nesbit Lakes.

(g) "Foreclosure" shall mean and refer to, without limitation, the exercise of the power of sale or the judicial foreclosure of a Mortgage, or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

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

3. Declarant hereby submits to the terms of the Declaration that certain lake known as Whispering Wind Lake subject to the express limitations set forth herein. The boundaries of Whispering Wind Lake, and any and all spillways, causeways, dams, retaining walls, or other structures, either naturally or artificially created or placed hereon, as set forth on Exhibit "B", attached hereto and incorporated herein by reference thereto (not to include, however, any piers or other structures placed within the boundaries thereof by individual Lake Lot Owners for the personal use of said Owner or

other Lake Lot Owners, and not for the benefit of the Lake Association), shall be considered the "Whispering Wind Lake Common Area" or "Lake Common Area" for the benefit, use, and enjoyment of the Lake Lot Owners of Whispering Wind Lake only; it being expressly intended that Whispering Wind Lake, as set forth on Exhibit "B" hereto, shall not be included as part of the "Common Area" subject to and a part of the Master Association as set forth in the original Declaration; it being further expressly intended by Declarant that no other Lot Owner, other than those Lake Lot Owners having an interest in any lot or dwelling which abuts any portion of Whispering Wind Lake, shall have any rights to and use of Whispering Wind Lake or to the Lake Association. Each Owner of a Lake Lot shall have a non-exclusive, perpetual easement for the use and enjoyment of the entire Lake, all or a portion of which abuts such Owner's Lake Lot. No easement shall exist for access to or use of the Lake by any other Owner, and, except as herein provided, the Owners of Lake Lots, and their families, guests and tenants, shall have the exclusive right to access and the use of the applicable Lake or Lakes.

4. Each such Owner, upon the conveyance of a Lake Lot, shall be a member of the Whispering Wind Lake Homeowners' Association, Inc., established to govern the use, operation and maintenance of the Lake. The Lake Association is hereby established to govern the use, operation and maintenance of the Lake, but in no event shall there be more than one such Lake Association governing any particular Lakes to be submitted by Declarant pursuant to future amendments to the Declaration. An Owner, by virtue of owning a Lake Lot which abuts a portion of more than one Lake, may be a member of more than one Lake Association. Membership in such Lake Association or Lake Associations shall be appurtenant to and may not be separated from the ownership of any such Lake Lots. It is expressly intended that each member of the Lake Association shall also be a member of the Master Association and be governed by all terms of the original Declaration. 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 Lake Lot, and the granting of a security interest in any Lake Lot shall not terminate or otherwise impair or impact upon an Owner's membership. The Lake Association shall have the same assessment (both annual and special), collection and lien rights given to the Association in Article IX of the Declaration; provided however, that the lien for assessments granted to the Lake Association shall be inferior to the lien for assessments of the Master Association. Such assessments by the Lake Association shall also be inferior in all instances to the lien of first priority mortgages. Assessments may be collected as and when the Lake Association sees fit. In addition, the Lake Association shall have additional requirements with respect to insurance to insure against possible flood and drainage problems. Pursuant to the Georgia Non-Profit Corporation statutes, the Lake Association shall be governed by its By-Laws.

5. The Lake 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 the Lake governed by such Association by its members; provided, however, that in all

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instances the following restrictions, rules and regulations shall govern the Lake Association, and shall take precedence over any restrictions, rules and regulations established by such Lake Association:

(a) Each Lake Lot shall be permitted no more than one (1) boat for occupancy by persons in the Lake or Lakes all or a portion of which are contained in or abut such Lake Lot. No boat shall be longer than fourteen feet.

(b) No boats with motors of any kind shall be permitted in or to operate on any Lake.

(c) No docks of any kind may be constructed or caused to be constructed by any Owner on the Lake. No floating docks will be allowed. Gazebos may be constructed above the high water mark by each Owner of a Lake Lot upon compliance with the provisions of Article X of the Declaration and upon the prior written approval of the Architectural Control Committee of the Master Association and the Lake Association of the plans and specifications for such gazebo. No other structure in, on, or contiguous to such Lake shall be constructed.

(d) The Lake Association shall keep, maintain and repair the dam or dams retaining the Lake or Lakes governed by such Lake Association, which dams are located on the Lots indicated on the Plat recorded at Plat Book 170, Page 127, of the records of Fulton County, Georgia. The Lake Association may assess the Owners of Lake Lots abutting any portion of the Lake or Lakes governed by such Lake Association a charge for the costs and expenses incurred or to be incurred to keep and maintain said dams in good working order and repair, such assessments to be on such terms and conditions as may be determined by the Board of Directors of such Lake Association. Moreover, the Lake Association shall comply 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 12-5-400, et seq.

(e) No boat canal or other canal shall be dug or excavated in any Lake, except with the prior written approval of the appropriate Lake Association of the plans and specifications for such digging or excavation.

(f) No bulkheading, barge, piling or other structure shall be constructed or erected adjacent to or upon any Lake, except upon compliance with the provisions of Article X of the Declaration and with the prior written approval of the appropriate Lake Association of the plans and specifications for such structure.

(g) 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 any Lake.

(h) Except as provided in this Amendment to the Declaration, no Lake shall be used for irrigation purposes without the prior written approval of the Association.

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(i) Ice skating and swimming shall not be permitted on or in any Lake.

(j) Each Owner of a Lake Lot shall maintain all grass, plantings and other lateral support to prevent erosion adjacent to the Lake or Lakes all or a portion of which are contained within or abut such Owner's Lake Lot.

6. Declarant reserves the non-exclusive rights and easements, but not the obligations, (a) to install a pump or pumps on any Lake Lot in order to provide water from Lake or Lakes for the irrigation of the Common Areas and any rights-of-way within, adjacent to or passing through the Property or the Additional Property, and (b) to enter upon the Lakes and any and all Lake Lots in order to keep, maintain and repair the dam or dams retaining the Lakes and to remove trash and other debris, and to charge the appropriate Lake Association for the full costs thereof. Declarant's rights with respect to such pump or pumps shall be transferred to the Master Association at such time as Declarant shall cease to be a Class B member, or such earlier time as Declarant may decide, in its sole discretion. There is reserved herein and hereby a perpetual, non-exclusive easement upon the aforesaid Lake Lots for the benefit of the Declarant, the Master Association and its members for the sole purpose of installing, keeping, maintaining, replacing and repairing said pump or pumps. The Lake Association shall have an easement over and across each of the Lake Lots abutting any portion of any Lake or Lakes governed by such Lake Association for the purpose of allowing such Lake Association to exercise its rights and responsibilities as herein and otherwise set forth, including its obligations to keep, maintain and repair the dam or dams, provided, however, such Lake 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 Declarant, the Master Association and the Lake Association, a perpetual, non-exclusive right and easement (but not the obligation) from time to time and at any time upon each and every Lake Lot; (c) to flood and back water upon and maintain water over those areas at or below the maximum water elevation shown on the Plat; (d) to drain, fill and refill each Lake; (e) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the Lakes; (f) to maintain and landscape the slopes and banks pertaining to the Lakes; and (g) to enter onto and across any Lake Lots for the purpose of exercising its or their rights under this Section.

7. Each Lake Association shall have two (2) distinct classes of voting membership. Those two (2) classes are as follows:

Class A Members. Class A members shall be all Owners of Lake Lots abutting any portion of the Lake or Lakes governed by such Lake Association, with the exception of Declarant so long as Declarant is a Class B member of such Lake Association, and such Class A members shall be entitled to one (1) vote for each Lake Lot owned by each such Class A member. When more than one person holds a fee simple interest in any such Lake Lot, all such persons shall be members.

The vote for such Lake Lot shall be exercised as those persons determine, but in no event shall more than one vote be cast with respect to any such Lake Lot. When title to a Lake Lot is held by a corporate entity one person shall be designated to cast the vote for such entity by virtue of a duly executed corporate resolution, submitted to and kept on file with the Board of Directors of such Lake Association.

Class B Member. The Class B member shall be Declarant, and Declarant shall be entitled to three (3) votes for each Lake Lot or Dwelling Unit owned by Declarant abutting any portion of the Lake or Lakes governed by such Lake Association. The Class B membership shall cease, and shall be converted to Class A membership, on the earliest occurrence of any of the following events:

(a) when one hundred percent (100%) of the total votes of such Lake Association are held by Owners other than Declarant, or less if set forth in a written declaration by Declarant and recorded in the real estate records of Fulton County, Georgia; or

(b) when Declarant, in its sole discretion, terminates the Class B membership in such Lake Association by a written instrument recorded in the public records of Fulton County, Georgia.

8. The Lake Association shall be created with the same formality as was the Master Association, as set forth in the original Declaration; and all other terms and conditions set forth in the original Declaration for the operation, rights, obligations, liabilities, and further requirements of the Master Association shall be deemed to apply also to the Lake Association, as herein created, except as to any such requirements of the Master Association set forth in the original Declaration which may conflict with their specific terms of the Lake Association set forth in this Amendment; it being expressly intended that any such explicit derivation from the terms of the original Declaration as set forth in this Amendment shall supersede any such terms as set forth in the original Declaration.

9. The Lake Association shall maintain the Lake Common Area pursuant to the 1990 Erosion and Sedimentation Control Act, and other applicable laws, ordinances, regulations, and statutes. In the event that the Lake Association at any time is dissolved, becomes insolvent or inoperative, or for any reason fails to fulfill its responsibilities under this paragraph, these areas shall become the responsibility of the Lake Owners. The Lake Association (or the Lake Owners in the event the Lake Association should fail to fulfill its responsibilities hereunder) shall (a) preserve the aesthetics of the Lake Common Area; (b) perform all preventative and remedial maintenance work required to insure the continued operations of any appurtenant structures intended to be a part of the Lake Common Area and located within the Lake Common Area, in a safe and fully functional condition; (c) remove or upgrade the Lake if deemed necessary by a federal, state, or local or other authority as a result of change in conditions; (d) maintain proper records of all activities associated with the upkeep of the Lake and appurtenances, and make such records available to all governmental agencies as required; (e) obtain permission from the Director of Fulton County

Department of Public Works prior to any modification to the Lake or appurtenant structures, any land disturbance activities around or within the Lake (as defined in the 1988 Erosion and Sediment Control Ordinance, and any amendment thereto) or any large scale release of impounded water; (f) provide county-approved alternate facilities to insure free development of storm water runoff quantities if detention capability is lost by breaching or other means; and (g) indemnify and hold harmless Fulton County from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of all claims relating in any reasonable manner to the Lake. Such agreement shall also provide that Fulton County shall have the right to: (i) periodically inspect the Lake and other appurtenant structures; (ii) require specific maintenance or repairs by the Lake Association; and (iii) in the event that the Lake Association fails to expeditiously perform its obligations, cause such work to be performed by alternate means and hold a lien on all properties constituting the Lake Association, which shall be released only after full payment. Said lien shall be apportioned equally among all Lake Lot Owners.

10. Greenbelt Management, Inc., or an affiliate thereof, shall be employed as the Manager of the Lake Association for such period of time as Declarant has the right to appoint and remove officers and trustees of the Lake Association, with the option on the part of Greenbelt Management, Inc., or its affiliate, to renew such employment for two successive one-year terms from and after the termination of such appointment and removal rights. Every grantee of an interest in the Lake Lots and Lake Association, by acceptance of a deed or other conveyance of such interest, shall be deemed to ratify such management agreement.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Amendment to Declaration under seal, as of the day and year first above written.

Signed, sealed and delivered in the presence of:


Unofficial Witness


Notary Public

NOTARIAL SEAL

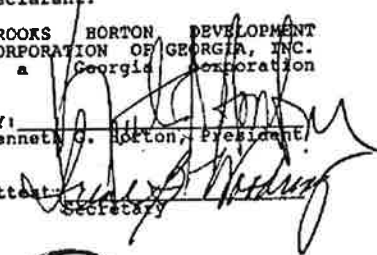
Commission Expires:

Notary Public, Fulton County, Georgia
My Commission Expires 01-25-1997



Declarant:

BROOKS HORTON DEVELOPMENT CORPORATION OF GEORGIA, INC.
a Georgia Corporation

BY: 
Kenneth G. Horton, President

Attest: 
Secretary



CORPORATE SEAL

EXHIBIT "A"

ADDITIONAL PHASES OF NESBIT LAKES SUBDIVISION

All that tract or parcel of land lying and being in Land Lots 732, 733, 734, 764, 765, 766, 786, and 787 of the 1st District, 2nd Section of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin located at the corner common to Land Lots 711, 712, 731, and 732; thence North 01 degree 06 minutes 40 seconds west, along the west boundary line of Land Lot 732, 1347.00 feet to an iron pin located at the corner common to Lots 710, 711, 732, and 733; thence North 00 degrees 12 minutes 30 seconds west, along the west boundary line of Land Lot 733, 1031.19 feet to an iron pin located at the common corner to Land Lots 709, 710, 733, and 734; thence North 88 degrees 57 minutes 00 seconds east, along the north boundary line of Land Lot 733, 1423.08 feet to an iron pin; thence North 89 degrees 51 minutes 04 seconds east, along the north boundary line of Land Lot 733 and 764, 360.00 feet to an iron pin; thence South 02 degrees 00 minutes 00 seconds east, 275.00 feet to an iron pin; thence South 28 degrees 00 minutes 00 seconds east, 255.00 feet to an iron pin; thence South 09 degrees 00 minutes 00 seconds east, 170.00 feet to an iron pin; thence South 14 degrees 00 minutes 00 seconds east, 175.00 feet to an iron pin; thence South 37 degrees 00 minutes 00 seconds west, 165.00 feet to an iron pin; thence South 64 degrees 00 minutes 00 seconds west, 240.00 feet to an iron pin; thence South 17 degrees 00 minutes 00 seconds west, 270.00 feet to an iron pin; thence South 46 degrees 00 minutes 00 seconds west, 185.00 feet to an iron pin; thence South 43 degrees 00 minutes 00 seconds east, 330.00 feet to an iron pin; thence North 53 degrees 00 minutes 00 seconds east, 505.00 feet to an iron pin; thence South 77 degrees 00 minutes 00 seconds east, 590.00 feet to an iron pin; thence North 76 degrees 00 minutes 00 seconds east, 45.00 feet to an iron pin; thence South 27 degrees 14 minutes 51 seconds east, 325.00 feet to an iron pin; thence South 77 degrees 15 minutes 42 seconds west, 182.47 feet to an iron pin; thence South 59 degrees 28 minutes 53 seconds west, 51.83 feet to an iron pin; thence southwesterly, along the northwesterly right of way line of Club Walk Trace (a 44 foot right of way), an arc distance of 84.27 feet, which arc is subtended by a chord bearing and distance of South 18 degrees 43 minutes 58 seconds west, 83.52 feet; thence southwesterly, along the northwesterly right of way line of Club Walk Trace, South 32 degrees 00 minutes 00 seconds west, 105.73 feet to an iron pin; thence southeasterly, along the southwesterly right of way line of Nesbit Lakes Landing (a 50 foot right of way), an arc distance of 22.02 feet, which arc is subtended by a chord bearing and distance of South 60 degrees 14 minutes 23 seconds east, 22.02 feet; thence southeasterly, along the southwesterly right of way line of Nesbit Lakes Landing, South 58 degrees 00 minutes

00 seconds east, 47.58 feet to an iron pin; thence South 26 degrees 55 minutes 13 seconds west, 150.59 feet to an iron pin; thence North 72 degrees 06 minutes 14 seconds west, 80.00 feet to an iron pin; thence North 89 degrees 05 minutes 51 seconds west, 65.00 feet to an iron pin; thence South 42 degrees 14 minutes 33 seconds west, 135.00 feet to an iron pin; thence South 07 degrees 00 minutes 00 seconds west, 360.00 feet to an iron pin located on the north boundary of Land Lot 766; thence South 89 degrees 50 minutes 26 seconds west, along the north boundary of Land Lot 766, 65.00 feet to an iron pin; thence South 00 degrees 50 minutes 26 seconds west, 660.31 feet to an iron pin; thence North 89 degrees 47 minutes 45 seconds west, 659.00 feet to an iron pin located on the west boundary line of Land Lot 766; thence North 00 degrees 56 minutes 36 seconds east, along the west boundary of Land Lot 766, 639.96 feet to an iron pin located at the corner common to Land Lots 766, 765, 731 and 732; thence North 89 degrees 25 minutes 59 seconds west, along the north boundary of Land Lot 731, 1391.42 feet to an iron pin and THE POINT OF BEGINNING, said tract or parcel being shown on that certain survey dated December 21, 1989, last revised March 26, 1990, prepared by Watts & Browning Engineers and certified by G. M. Gillespie, Georgia Registered Land Surveyor No. 2121. LESS AND EXCEPT that certain parcel designated as "Lake" on that certain plat of survey prepared by Watts & Browning Engineers, G. M. Gillespie, Registered Land Surveyor No. 2121, dated May 29, 1991 and recorded at Plat Book 170, Page 127 of Fulton County, Georgia records.

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EXHIBIT "B"

All that tract or parcel of land lying and being in Land Lots 765 and 766 of the 1st District, 2nd Section of Fulton County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at an iron pin located at the intersection of the southwesterly right of way line of Waters Reach Court and the westerly right of way line of Nesbit Lakes Drive (a 50 foot right of way); thence northwesterly, along the southwesterly right of way line of Waters Reach Court, 98.76 feet to an iron pin; thence South 31 degrees 53 minutes 29 seconds West, 214.98 feet to an iron pin and THE TRUE POINT OF BEGINNING; thence North 38 degrees 30 minutes 00 seconds West, 195.00 feet to an iron pin; thence North 30 degrees 30 minutes 00 seconds West, 300.00 feet to an iron pin; thence North 14 degrees 00 minutes 00 seconds West, 150.00 feet to an iron pin; thence South 50 degrees 30 minutes East, 75.00 feet to a point; thence South 34 degrees 34 minutes 33 seconds West, 310.00 feet to a point; thence North 71 degrees 10 minutes East, 130.00 feet to a point; thence South 44 degrees 16 minutes East, 375.0 feet to a point; thence South 16 degrees 05 minutes 42 seconds West, 140.0 feet to a point; thence South 76 degrees 00 minutes East, 75.00 feet to a point; thence North 16 degrees 05 minutes 42 seconds East, 60.00 feet to an iron pin; thence South 30 degrees 13 minutes 36 seconds East, 135.00 feet to an iron pin; thence North 29 degrees 00 minutes 00 seconds East, 115.00 feet to an iron pin and THE POINT OF BEGINNING, said property being shown and delineated as "Lake" and containing 2.1 acres, more or less, on that certain plat of survey of Unit Two, Phase One of Nesbit Lakes, prepared by Watts & Browning Engineers, Inc., G.M. Gillespie, Registered Land Surveyor No. 2121, recorded at Plat Book 170, Page 127 of Fulton County, Georgia records and dated May 29, 1991.

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