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STATE OF GEORGIA  
COUNTY OF FULTON

Cross Reference: Deed Book 10905  
Page 336

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
SOMERSET AT HENDERSON VILLAGE**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Somerset at Henderson Village was recorded on June 29, 1987, in Deed Book 10905, Page 336, *et seq.*, Fulton County, Georgia Records (“Declaration”); and

WHEREAS, the Declaration has been previously amended by those amendments recorded in the Fulton County, Georgia records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
June 30, 1987	10911/377, <i>et seq.</i> ;
June 30, 1987	10911/371, <i>et seq.</i> ;
June 30, 1987	10911/374, <i>et seq.</i> ;
October 9, 1987	11113/001, <i>et seq.</i> ;
October 9, 1987	11113/003, <i>et seq.</i> ;
October 9, 1987	11113/005, <i>et seq.</i> ;
December 14, 1988	12118/138, <i>et seq.</i> ;
November 14, 1988	12046/008, <i>et seq.</i> ; and

WHEREAS, Article VIII, Section 4 of the Declaration provides for amendment of the Declaration by an agreement signed by at least seventy-five percent (75%) of the Owners of record of lots at Somerset at Henderson Village; and

WHEREAS, at least seventy-five percent (75%) of the Owners of lots at Somerset at Henderson Village have approved and executed this amendment; and

WHEREAS, this amendment does not alter, modify, change or rescind any right, title, interest or privilege held by the holder of any mortgage on a Lot; provided, however, in the event a court of competent jurisdiction determines that this amendment does alter, modify, change or rescind any right, title, interest or privilege held by any such mortgage holder without such mortgage holder’s consent in writing to this amendment, then this amendment shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this amendment; and if such consent is not forthcoming, then the provisions of the

Declaration prior to this amendment shall control with respect to the affected mortgage holder;

NOW THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Somerset at Henderson Village is hereby amended as follows:

1.

Article I of the Declaration is hereby amended by adding the following Section 10 thereto:

Section 10. "Act" shall refer to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq., and amendments thereto.

2.

Article I of the Declaration is hereby amended by adding the following Section 11 thereto:

Section 11. Common Expenses shall mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Area and otherwise for the benefit of all Lots.

3.

Article I, Section 2 of the Declaration is hereby amended by adding the following thereto:

The Community is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act O.C.G.A. § 44-3-220, et seq. (Michie, 1982).

4.

Article I, Section 5 of the Declaration is hereby deleted in its entirety and the following shall be substituted therefore:

Section 5. "Common Area" shall mean all property, real or personal, owned by the Association for the common use and enjoyment of the Owners and those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person or entity become the responsibility of the Association, including but not limited to the recreational property more fully described in Exhibit "D". In addition, public rights-of-way within or adjacent to the Property, may be part of the Common Area.

5.

Article II, Section 1(a) of the Declaration is hereby deleted in its entirety and the following shall be substituted therefor:

(a) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common

Area, to limit the number of guests of Owners and tenants who may use the Common Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, an Owner's family, tenants, guests and invitees;

6.

Article II, Section 1 of the Declaration is further amended by adding the following subsection (d) thereto:

(d) All Owners' property rights and easements of enjoyment set forth in this Article II, Section 1 shall be subject to the right of the Association to grant to persons who are not members of the Association the right to use the recreational facilities, as described more fully in Article IX.

7.

Article III, Section 2 of the Declaration is hereby deleted in its entirety and the following shall be substituted therefor:

Section 2. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. The right to vote may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice or in the event more than one (1) Person seeks to enter a vote on behalf of only one Lot, the Lot's vote shall be suspended.

8.

Article III, Section 4 of the Declaration is hereby deleted in its entirety.

9.

Article IV, Section 1 is hereby deleted in its entirety and the following shall be substituted therefor:

Section 1. Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration and the Act, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration and the By-Laws; and (iv) annual assessments to enable the Association to pay all assessments and costs due to any other master associations, including the Henderson Village Property Owners' Association, Inc.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted under the Act, shall be a charge on the Lot and

shall be a continuing lien upon the Lot 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. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, 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.

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) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding twenty-five (\$25.00) dollars or any higher amount authorized by 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.

10.

Article IV, Section 2 is hereby deleted in its entirety and the following shall be substituted therefor:

Section 2. Purpose of Assessments and Allocation of Liability for Common Expenses. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents on the Property and for the improvements and maintenance of the Common Area situated on the Property, and for such other matters as may be provided for herein. Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots submitted to the Declaration.

(b) The Board of Directors shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility under the Association Legal Instruments, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited according to the benefit received.

ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot or Lots.

For purposes of subparagraph (b) of this Section, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

11.

Article IV, Section 3 is hereby deleted in its entirety and the following shall be substituted therefor:

Section 3. Computation of Operating Budget and Assessment.

It shall be the duty of the Board at least thirty (30) days prior to the beginning of the Association's fiscal year to prepare a budget covering the estimated costs of operating the Community and the Association during the coming year, including contributions to reserves. The Board shall cause the budget and notice of the assessments to be levied against each Lot for the following year to be delivered to each member at least fifteen (15) days prior to the beginning of the fiscal year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a Majority of the total Association membership; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the By-Laws for special meetings, the new budget and assessment shall take effect without a meeting of the members.

12.

Article IV, Section 4(b) is hereby amended by deleting the phrase: “the votes of each class of members” and substituting therefor the phrase: “all members of the Association eligible to vote” so that Article IV, Section 4(b) reads as follows:

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, including fixtures and personal property related thereon, provided that any such assessment shall have the assent of two-thirds (2/3) of all members of the Association eligible to vote who are voting in person or by proxy at a meeting duly called for this purpose.

13.

Article IV, Section 6 is hereby deleted in its entirety and the following is substituted therefor:

Section 6. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney’s fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. The lien provided for herein shall have priority as provided in the Act.

14.

Article IV, Section 7 is hereby deleted in its entirety and the following is substituted therefor:

Section 7. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If any monthly installment of annual assessments or any part thereof or any other charge is not paid in full within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten (10%) percent per annum or such higher rate as may be permitted by the Act shall accrue from the due date.

(b) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorney’s fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(c) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after

the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law and suspend the Owner's and occupant's right to use the Common Property (provided, however, the Board may not limit ingress or egress to or from the Lot).

15.

Article V, Section 3 of the Declaration is hereby amended by deleting the last sentence of this Section 3 which reads as follows:

The provisions of this section do not apply to the Declarant; and any builder who acquires a Lot from Declarant for the purpose of constructing a dwelling thereon, rather than complying with this section, must submit to and have its plans and specifications approved by Declarant, as Declarant in its sole discretion may determine.

16.

Article V, Section 7 of the Declaration is hereby amended by deleting the last sentence of this Section 7 and substituting the following therefor:

Except that the Board has the authority to approve, in writing, other reasonable signs and the Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

so that Article V, Section 7 of the Declaration reads as follows:

Section 7. Signs and Billboards. No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Lot or which may be visible from outside a dwelling except one sign not more than five (5) square feet in surface area advertising the particular Owner's property on which the sign is situated for sale or rent. Except that the Board has the authority to approve, in writing, other reasonable signs and the Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

17.

Article VII of the Declaration is hereby deleted in its entirety and reserved for future use.

18.

Article VIII, Section 3 of the Declaration is hereby deleted in its entirety and the following shall be substituted therefor:

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

19.

Article VIII, Section 4 of the Declaration is hereby deleted in its entirety and the following shall be substituted therefor:

Section 4. Amendments. Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds percent (66-2/3%) of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Fulton County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

20.

Article VIII, Section 7 of the Declaration is hereby deleted in its entirety.

21.

Article IX of the Declaration is hereby deleted in its entirety and the following shall be substituted therefor:

ARTICLE IX  
RECREATIONAL PROPERTY

The Association shall have the right to grant to persons who are not members of the Association the right to use the recreational facilities owned by the Association, being more particularly described in Exhibit "D" to this Declaration. The extent and



duration of nonmember use and the recreation fee to be charged therefor shall be determined by the Board of Directors of the Association.

The Association may grant nonmember use rights to individuals as an easement appurtenant to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property or may grant transferable, non-easement, use rights.

The recreation fee shall be paid in one annual payment or in equal monthly or quarterly installments, as determined by the Board of Directors. The amount of the recreation fee may be increased each year by the Association so long as the percentage increase (as compared to the previous year's recreation fee) does not exceed the percentage increase in the annual assessment levied against members of the Association. All fees not paid when due shall be delinquent and shall be subject to a late charge equal to the greater or \$10.00 or ten percent (10%) of the amount due and unpaid and interest at the maximum legal rate.

All nonmember users of the Association's recreational facilities are required to comply with the reasonable rules and regulations determined and posted by the Association. If a nonmember does not timely pay the recreation fee or in any way violates the rules and regulations, the Association, upon ten (10) days written notice, may terminate such use and/or easement rights, or may exercise such other powers or rights as are set forth in any agreement with such user granting use rights. Nonmember users of the recreational facilities shall not be members of the Association and shall have no voting rights in the Association.

IN WITNESS WHEREOF, the undersigned officers of Somerset at Henderson Village Homeowners' Association, Inc. hereby certify that the above amendment to the Declaration was duly adopted by the required majority of the Association members.

This \_\_\_\_\_ day of \_\_\_\_\_, 1994.

SOMERSET AT HENDERSON VILLAGE  
HOMEOWNERS' ASSOCIATION, INC.

By: \_\_\_\_\_  
It's President

Attest: \_\_\_\_\_  
It's Secretary

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

Sworn to and subscribed to  
before me this \_\_\_\_ day of  
\_\_\_\_\_, 1994.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
[NOTARY SEAL]