

STATE OF GEORGIA  
COUNTY OF PAULDING

Treva W. Shelton  
Clerk Superior Court, Paulding County, Ga.  
Bk 02931 Pg 0112-0120

**Return To:**

Rome & Associates, P.C.  
707 Whitlock Ave., Ste E-15  
Marietta, Georgia 30064  
(770) 428-6002

*Cross Reference: Deed Book 2109, Page 740.*

(Space Above Reserved for Recording Data)

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAS AT BLACKBERRY RUN**

This Amendment to the Declaration of Covenants, Conditions, and Restrictions for The Villas at Blackberry Run subdivision ("*Amendment*") is made on the date hereinafter set forth by Villas at Blackberry Run Homeowners Association, Inc. ("*Association*").

**WITNESSETH**

**WHEREAS**, Windsong Properties, LLC, a Georgia limited liability company, recorded that certain Declaration of Covenants, Conditions, and Restrictions for The Villas At Blackberry Run subdivision, on March 14<sup>th</sup>, 2006 in Deed Book 2109, Page 740, *et seq.*, in the public land records of Paulding County, Georgia, ("*Original Declaration*"); and

**WHEREAS**, Section 14.2(b) of the Original Declaration provided for submission to the Georgia Property Owners' Association Act (O.C.G.A. 44-3-220, *et. seq.*) by vote of the Board of Directors for The Villas at Blackberry Run Homeowners Association, Inc.; and

**WHEREAS**, after a properly noticed meeting and required quorum was obtained, the Board of Directors voted to submit the Original Declaration to the Georgia Property Owners' Association Act (O.C.G.A. 44-3-220, *et. seq.*) ; and

**WHEREAS**, Section 14.2(b) also requires the written consent of Windsong Properties, LLC and Temco Associates, LLC, a Georgia limited liability company; and

**WHEREAS**, Windsong Properties, LLC and Temco Associates, LLC have provided their express, written consent as evidenced by the attached signatures of their duly authorized agents; and

**THIS AMENDMENT HERBY SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTIONS 44-3-220, ET. SEQ., CLOSING ATTORNEYS AND TITLE EXAMINERS MUST CONTACT THE ASSOCIATION FOR INFORMATION REGARDING LIENS, DELINQUENCIES, AND OTHER COVENANT VIOLATIONS.**

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

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

**1.**

**The last paragraph of the introduction on page one is deleted in its entirety, and the following is substituted in its place:**

*The Community constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such act may be amended from time to time.*

**2.**

**A new Section 1.0 is added to Article I, DEFINITIONS, as follows:**

*1.0. "Act": The Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.*

**3.**

**Section 8.1, entitled Creation of Assessments is hereby deleted in its entirety, and the following is substituted in its place:**

*8.1 Creation of the Lien and Personal Obligation of Assessments.*

*Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association for each Lot owned: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. The Association, in the Board's discretion, may, but shall not be obligated to, record a Statement of Delinquent Assessments & Notice of Statutory Lien on the County lien records. The lien provided for herein shall have priority as provided in the Act.*

*All such assessments, together with late charges, interest, costs, and reasonable attorney fees actually incurred (including post-judgment attorney fees), and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made.*

*Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Other than provided below, the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot.*

*The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as authorized under the Act as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any mortgage on such Lot. If the Association does not require payment of the fee as a prerequisite to providing the statement of account, or if the statement of account is requested within a period shorter than five (5) business days, the Association, or its agent, may subsequently charge a reasonable fee in an amount larger than the maximum amount set by the Act, including any late payment fees, or other related costs including but not limited to fax, overnight delivery, research fee, and reasonable attorney fees actually incurred. If the statement of account is requested within a period shorter than three (3) business days, the Association or its agent may also charge a rush fee.*

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

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

*Assessments shall be paid in such manner and on such dates as may be fixed by the Board, which may include discounts for early payment or similar time/price differentials. The Board may require advanced payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment.*

*Unless otherwise provided by the Board, annual assessment shall be paid on the first day of the Association's fiscal year. If the Board so elects, assessments may be paid in two (2) or more installments, but if any Owner is delinquent in the payment of any assessments or other charges the Board may require any unpaid installments to be paid in full immediately.*

*No Lot Owner other than the Association shall be exempted from any liability or any assessments or under any instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his or her Lot or any part of the common area.*

4.

**Section 8.6 entitled Lien for Assessments is hereby deleted in its entirety, and the following is substituted in its place:**

**8.6 Effect of Nonpayment of Assessments: Remedies of the Association.**

***(a) Late Charges, Interest and Other Collection Fees***

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

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

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

***(b) Partial Payments.***

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

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

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

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

*(d) Rent Deduction for Delinquent Assessments.*

*When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided that lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.*

**5.**

**Section 14.1 entitled Duration is hereby deleted in its entirety, and the following is substituted in its place:**

*14.1 Duration.*

*The covenants and restrictions of this Declaration shall run with and bind the Properties perpetually to the extent provided for in the Act.*

**6.**

**Section 14.1(c) entitled (Amendment) By Members is hereby deleted in its entirety, and the following is substituted in its place:**

*(c) Amendment By Members.*

*This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3rds) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration.*

7.

**Section 14.1(d) entitled (Amendment) Validity and Effective Date is hereby deleted in its entirety, and the following is substituted in its place:**

*(d) Validity.*

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

**ALL OTHER PROVISIONS OF SAID DECLARATION FOR THE VILLAS AT  
BLACKBERRY RUN SHALL REMAIN UNCHANGED.**

***[SIGNATURES ON NEXT PAGE]***

IN WITNESS WHEREOF, this Amendment to the Declaration is executed by the undersigned Officers of the Association, and said Officers hereby attest under oath that after a properly noticed meeting and required quorum was obtained, the Board of Directors voted to submit the Original Declaration to the Georgia Property Owners' Association Act (O.C.G.A. 44-3-220, et. seq.) as per the above provisions.

This 6th day of September, 2011.

*The Villas at Blackberry Run Homeowners Association, Inc.*

Signature: Carl Swanson  
BY: CARL SWANSON, President  
(Print Name)

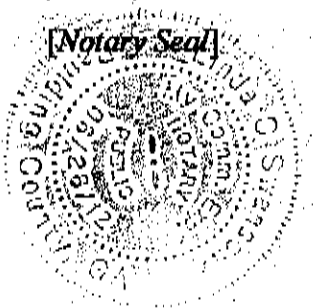
ATTESTED TO BY:

Signature: Margaret E Freeman  
MARGARET E FREEMAN, Secretary  
(Print Name)

[Corporate Seal]

Sworn to and subscribed to  
before me this 6th day of  
September, 20 11:

Linda Swanson  
NOTARY PUBLIC



**THE FOLLOWING EXPRESSLY CONSENTS TO THE ADOPTION OF  
THE FOREGOING AMENDMENT:**

*Windsong Properties, LLC*

Signature:   
As Authorized Agent for Windsong  
Properties, LLC

(Print Name) Mark L. Carruth

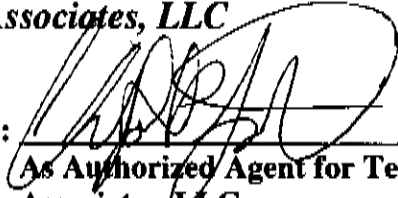
(Print Title) Member

DATE: August 11, 2011

**THE FOLLOWING EXPRESSLY CONSENTS TO THE ADOPTION OF  
THE FOREGOING AMENDMENT:**

*Temco Associates, LLC*

Signature: \_\_\_\_\_



**As Authorized Agent for Temco  
Associates, LLC  
Christopher Smith  
President - Seven Hills HOA  
September 6, 2011**