

Doc ID: 000461500010 Type: GLR
Filed: 08/21/2006 at 10:12:26 AM
Fee Amt: Page 1 of 10
Walker, Ga. Clerk Superior Court
BK 1432 PG 838-847

When recorded return to:
Womble Carlyle Sandridge & Rice, PLLC
1201 Peachtree Street, NE, Suite 3500
Atlanta, Georgia 30309
Attn: Carolyn S. Wilson, Esq.

STATE OF GEORGIA
COUNTY OF WALKER

CROSS REFERENCE:
(1) [Walker] DEED BOOK 932, PAGE 62; DEED BOOK 1109, PAGE 109; DEED BOOK 1111, PAGE 215; DEED BOOK 1168 PAGE 683; DEED BOOK 1291, PAGE 21; DEED BOOK 1392, PAGE 269; DEED BOOK 1392, PAGE 272, OFFICE OF THE CLERK OF SUPERIOR COURT FOR WALKER COUNTY, GEORGIA
(2) [Dade] DEED BOOK 330, PAGE 546 OFFICE OF THE CLERK OF SUPERIOR COURT FOR DADE COUNTY, GEORGIA

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

This SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Amendment") is made as of the 10th day of August, 2006 by THE TAUQUETA FALLS HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit corporation (the "Association"), and TAUQUETA DEVELOPMENT, LLC, a Georgia limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant, as successor by assignment from Carolina Development Resources, LLC is "Declarant" under that certain Declaration of Covenants, Conditions and Restrictions dated July 14, 1999, and recorded in Deed Book 932, Page 62, Office of the Clerk of Superior Court for Walker County, Georgia; as affected by that certain Assignment of Declarant's Rights, dated January 19, 2000, recorded in Deed Book 1109, Page 109, aforesaid records; as further affected by that certain Supplemental Declaration of Covenants, Conditions and Restrictions (for the purpose of annexing property into Tauqueta Falls) dated September 4, 2002, recorded in Deed Book 1111, Page 215, aforesaid records; as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions; Supplemental Declaration dated May 16, 2003, recorded in Deed Book 1168, Page 683, aforesaid records; as further affected by that certain Supplemental Declaration of Covenants, Conditions and Restrictions (for the purpose of releasing property from Tauqueta Falls) dated November 11, 2004, recorded in Deed Book 1291, Page 21, aforesaid records; as further affected by that certain Supplemental Declaration of Covenants, Conditions and Restrictions (for the purpose of annexing property into

Tauqueta Falls) dated November 11, 2004, recorded in Deed Book 330, Page 546, Office of the Clerk of Superior Court for Dade County, Georgia (as amended and affected, the "Declaration"); and

WHEREAS, Declarant desires to further amend the Declaration to remove the restriction that Multifamily Tracts (as defined in the Declaration) can only be located west of Georgia Highway 157; and

WHEREAS, the Association has duly called and held a meeting of its Members (as defined in the Declaration) for the purpose of proposing and voting on certain amendments to the Declaration as described in this Amendment; and

WHEREAS, Members holding at least sixty-seven percent (67%) of the votes in the Association desire to amend the Declaration to effect the changes described herein and so voted at the meeting, authorizing the Association to amend the Declaration accordingly on their behalf.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to Article 18.2(b) of the Declaration, the Association, with the consent of the Declarant, agrees to and does hereby amend the Declaration as follows:

1. Lot. Section 1.16 of the Declaration is hereby amended and restated in its entirety as follows.

1.16 "Lot": A (i) numbered platted lot, whether improved or unimproved, shown on any subdivision plat of the Properties, which is intended for development, use and occupancy as a residence for a single family, or (ii) condominium unit within a Unit-Assessed Multifamily Tract, shown on any condominium plat of the Properties, provided that a certificate of occupancy has been issued for such unit, which is intended for development, use and occupancy as a residence for a single family. The term "Lot" shall include the land, if any, which is part of the Lot as well as any improvements thereon. The term "Lot" shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

In the case of a parcel of vacant land which has not been platted, the parcel shall be deemed to contain the number of Lots designated for residential use on the site plan approved by the Declarant until such time as the parcel is shown on a subdivision plat.

2. Owner. Section 1.24 of the Declaration is hereby amended and restated in its entirety as follows.

1.24 "Owner": One (1) or more Persons who hold the record title to any tract of land in Properties, including, without limitation, a Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a tract is under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. Where the content of the use of the term

“Owner” in this Declaration is that of residential properties or residential owners only, “Owner” shall mean the owner of a Lot rather than of another type of property (Multifamily Tract, Golf Course, etc.).

3. Multifamily Tract. Section 1.32 of the Declaration is hereby amended and restated in its entirety as follows.

1.32 “Multifamily Tract”: A tract of property within the Properties intended to be developed as a multifamily property (condominiums or the like). The property comprising a Multifamily Tract shall be governed by all provisions under the Declaration specifically concerning Multifamily Tract property or generally concerning the Properties. Unless designated by Declarant as a Unit-Assessed Multifamily Tract, Multifamily Tracts shall not be governed as Lots under the Declaration. Declarant may treat any property designated as a Multifamily Tract as a Neighborhood as described in Section 2.2 of this Declaration, including without limitation by establishing additional covenants and restrictions for such property, designating Exclusive Common Area for such property, and creating a Neighborhood Association or Neighborhood Committee to govern such property. Any property designated as a Multifamily Tract can be designated for another use if the Declarant, the Association and any owners of such property consent thereto in an instrument recorded in the appropriate public records.

4. Unit-Assessed Multifamily Tract. Article I of the Declaration is hereby amended by adding the following definition:

1.34 “Unit-Assessed Multifamily Tract”: A Multifamily Tract that is designated by Declarant as a Unit-Assessed Multifamily Tract. Units within a Unit-Assessed Multifamily Tract shall be deemed a Lot and shall be assessed on a unit-by-unit basis in the same manner and amount as a Lot. Each owner of a condominium unit within a Unit-Assessed Multifamily Tract shall be responsible for assessments and shall have voting rights equal to that of any other Owner, i.e., one vote per Lot (and shall in fact be an “Owner”). A Multifamily Tract that is not a Unit-Assessed Multifamily Tract may be assessed as provided in Section 1.32 hereof.

5. Assessments.

(a) Section 10.13 of the Declaration is hereby amended in its entirety to read as follows:

10.13 Assessment of Non-Lot Properties. Initially, assessments shall be levied only against Lots in Tauqueta Falls, and any contribution to the maintenance, repair, renovation or replacement of Roadways or other Common Areas in Tauqueta Falls deemed appropriate from the owners of Multifamily Tracts not designated as Unit-Assessed Multifamily Tracts, Commercial Tracts or the Golf Course shall be established in a Covenant to Share Costs. However, the Declarant reserves the right to establish assessments upon such properties, with the consent of the owners thereof (if not the Declarant), and if so established, such assessments shall operate and be enforced in accordance with the terms of this Article, even if the amounts of such

assessments or other features of the assessments are not the same as for the Lots. Such assessments may be established in a Neighborhood Declaration or a recorded instrument executed by the owner of the property to be assessed and by the Declarant during Class "B" membership or by the Association thereafter.

(b) A new Section 10.14 of the Declaration is hereby inserted immediately after Section 10.13:

10.14 Assessment of Multifamily Tracts not designated as Unit-Assessed Multifamily Tracts. Any assessments to be levied by the Association for a Multifamily Tract not designated as a Unit-Assessed Multifamily Tract shall be set at a rate determined by the Board of Directors of the Association in its discretion. Such assessments shall not be levied against a dwelling unit until a certificate of occupancy has been issued for such dwelling unit. A Multifamily Tract's voting rights in the Association shall be deemed to be pro rata with its portion of the total assessments in Tauqueta Falls. Alternatively, the Association may enter into a Covenant to Share Costs with a Multifamily Tract, and the Association and the owner(s) of the applicable Multifamily Tract shall determine in such agreement the amount of the costs to be assessed upon the Multifamily Tract, the manner in which such costs will be levied and enforced, whether any voting rights in the Association shall be established in connection with the obligation to pay costs and what those voting rights, if any, shall be.

6. Designation of Canyon Villas Condominium. Declarant hereby designates the real property described on Schedule 1 attached hereto ("Canyon Villas Condominium") as a Unit-Assessed Multifamily Tract. No other Multifamily Tracts are currently designated within Tauqueta Falls, but the Declarant reserves the right to so designate a portion or portions of Tauqueta Falls as such by recording an instrument or a plat so stating.

7. Miscellaneous Amendments.

(a) The first paragraph of the Declaration is amended by inserting "(this "Declaration")" between the word "RESTRICTIONS" and the words "is made".

(b) The recitals for the Declaration are hereby amended by deleting the first and third recitals thereto in their entirety.

(c) Section 1.26 of the Declaration is hereby amended and restated in its entirety as follows:

1.26 "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational, commercial and related purposes, including without limitation the Golf Course and any other facility owned by Canyon Ridge Golf Club, LLC.

(d) The first word of the fifth paragraph of Section 10.1 of the Declaration (being "On") is hereby deleted and in its stead the word "No" is inserted, such that the first sentence of

the fifth paragraph of Section 10.1 begins: “No Owner may waive or otherwise exempt himself or herself....”

8. Effect of Amendment. The foregoing recitals and the definitions contained therein are by this reference incorporated as terms of this Amendment. Any capitalized term not otherwise defined herein shall be given the meaning assigned thereto in the Declaration. Except as specifically amended by this Amendment, the Declaration is unchanged and shall continue in full force and effect in accordance with its terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Association and the Declarant have executed this Amendment under seal.

ASSOCIATION:

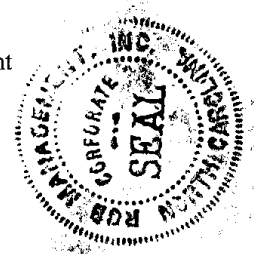
THE TAUQUETA FALLS HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit corporation

Signed, sealed and delivered in the presence of:

Wasson
Unofficial Witness

By: *[Signature]*
Randy C. Baker, President

[CORPORATE SEAL]



Sherry Marie Hobbs
Notary Public
[NOTARIAL SEAL]
My Commission Expires: _____

Notary Public, Walker County, Georgia
My Commission Expires September 4, 2007

DECLARANT:

TAUQUETA DEVELOPMENT, LLC, a Georgia limited liability company

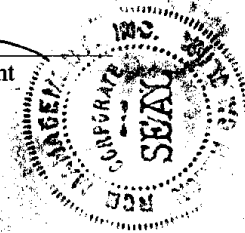
Signed, sealed and delivered in the presence of:

Wasson
Unofficial Witness

By: RCB Management, Inc., its Manager

By: *[Signature]*
Randy C. Baker, President

[COMPANY SEAL]



Sherry Marie Hobbs
Notary Public
[NOTARIAL SEAL]
My Commission Expires: _____

Notary Public, Walker County, Georgia
My Commission Expires September 4, 2007

CONSENT OF LENDER TO DECLARATION

POINT CENTER FINANCIAL, INC. ("Lender") is the owner and holder of a promissory note from Tauqueta Development, LLC secured by the following recorded documents: (1) Deed to Secure Debt, Assignment of Rents and Security Agreement, dated July 3, 2006, filed July 21, 2006, and recorded in Deed Book 1426, Page 275, Walker County, Georgia records; (2) UCC notice filing, filed July 21, 2006, and recorded in Deed Book 1426, Page 324, Walker County, Georgia records; (3) Deed to Secure Debt, Assignment of Rents and Security Agreement, dated July 3, 2006, filed July 24, 2006, and recorded in Deed Book 363, Page 186, Dade County, Georgia records; and (4) UCC notice filing, filed July 24, 2006, and recorded in Deed Book 363, Page 235, Dade County, Georgia records (collectively, "Security Instruments") hereby joins in and consents to the Declaration, as amended or supplemented according to its terms, including foregoing Second Amendment to Declaration of Covenants, Conditions, and Restrictions by The Tauqueta Falls Homeowners Association, Inc. and Tauqueta Development, LLC. The Lender hereby consents to the execution, delivery and recording of the Amendment, and agrees that any subsequent foreclosure of the Security Instruments shall not extinguish the Declaration as amended by the Amendment, and that the Security Instruments, and the Lender's interest in the property described therein by virtue of the Security Instruments are, and shall be, subject and subordinate to the Declaration as amended by the Amendment and the provisions thereof.

IN WITNESS WHEREOF, the undersigned, as Lender has caused this Consent to be executed under seal by its duly authorized officer this 11th day of August, 2006.

Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My Commission Expires:

12-25-2008

LENDER:

POINT CENTER FINANCIAL, INC., a California corporation

By: [Signature]

Name: DAN J. HARKEY

Title: President

[NOTARIAL SEAL]



JOINDER AND CONSENT OF LOT OWNERS

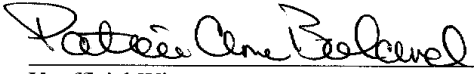
The undersigned, being the duly elected Secretary of TAUQUETA FALLS HOMEOWNER'S ASSOCIATION, INC., a Georgia corporation ("Association"), does hereby certify the following:

1. Written notice to all lot owners was transmitted in accordance with the terms and conditions of that certain Declaration for Tauqueta Falls Country Club, dated July 14, 1999, as amended and supplemented (collectively "Declaration") and the Bylaws of the Association, a special meeting of all members of the Association was duly held in Rising Fawn, Georgia, at 10:00 a.m. on May 26, 2006.
2. A quorum was present at said special meeting, and upon a motion duly made and seconded the lot owners, representing 67% or more of the total votes in the Association, unanimously adopted the following resolution:

"RESOLVED, the Second Amendment to Declaration is hereby approved and the lot owners hereby join in and consent to the execution, delivery, and recording of said Second Amendment and agree to be bound thereby."

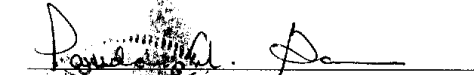
Certified and executed under seal this 10th day of August, 2006.

Signed, sealed and delivered in the presence of:


Unofficial Witness

 (SEAL)
Secretary

[CORPORATE SEAL]


Notary Public
[NOTARIAL SEAL]
Commission Expiration Date:
Notary Public, Walker County, Georgia
My Commission Expires March 24, 2009

Schedule 1

Designation of Multifamily Tract

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 260, 280, and 281, 11th District, 4th Section, Lookout Mountain, Walker County, Georgia being more particularly described as follows:

BEGINNING AT A POINT, said point being the corner of Land Lots 260, 261, 280, and 281; thence along the north line of Land Lot 280, North 89 degrees 48 minutes 22 seconds East, a distance of 1367.74 feet to a point on the west line of Fairway Seventeen, thence along the west line of Fairway Seventeen the following courses and distances: South 00 degrees 20 minutes 07 seconds West a distance of 74.11 feet to a point, South 60 degrees 19 minutes 37 seconds West a distance of 582.39 feet to a point on the south line of Fairway Seventeen; thence along the south line of Fairway Seventeen the following courses and distances: South 37 degrees 50 minutes 32 seconds East a distance of 216.65 feet to a point, North 69 degrees 09 minutes 02 seconds East a distance of 533.11 feet to a point, South 20 degrees 50 minutes 58 seconds East a distance of 112.12 feet to a point on the west line of Practice Range; thence along the west line of Practice Range the following courses and distances: South 33 degrees 05 minutes 42 seconds West a distance of 295.69 feet to a point, South 33 degrees 05 minutes 42 seconds West a distance of 460.45 feet to a point, South 21 Degrees 32 minutes 45 seconds West a distance of 75.62 feet to a point, South 05 degrees 33 minutes 52 seconds West a distance of 125.01 feet to a point on the north right of way line of Tauqueta Trail; thence along the north right of way line of Tauqueta Trail the following courses and distances: along the arc of a curve to the right having a length of 256.76 feet, a radius of 1570.00 feet, an angle of 9 degrees 22 minutes 13 seconds and a tangent of 128.67 feet to a point; thence North 74 degrees 13 minutes 58 seconds West a distance of 632.90 feet to a point; thence along the arc of a curve to the right having a length of 7.51, a radius of 370.00 feet, an angle of 1 degree 9 minutes 48 seconds and a tangent of 3.76 feet to a point; thence leaving the north right of way line of Tauqueta Trail North 21 degrees 44 minutes 05 seconds East, a distance of 154.54 feet to a point on the east line of Fairway Sixteen; thence along the east line of Fairway Sixteen the following courses and distances: South 74 degrees 34 minutes 12 seconds East a distance of 101.54 feet to a point, South 65 degrees 31 minutes 27 seconds East a distance of 89.74 feet to a point, North 85 Degrees 45 minutes 22 seconds East a distance of 88.84 feet to a point, North 50 degrees 59 minutes 53 seconds East a distance of 103.27 feet to a point, North 15 degrees 26 minutes 46 seconds East a distance of 97.23 feet to a point, North 15 degrees 17 minutes 26 seconds West a distance of 64.19 feet to a point on the north line of Fairway Sixteen; thence along the north line of Fairway Sixteen the following courses and distances: North 40 Degrees 40 minutes 29 seconds West a distance of 221.73 feet to a point, North 42 degrees 34 minutes 16 seconds West a distance of 359.81 feet to a point, North 62 degrees 33 minutes 54 seconds West a distance of 850.94 feet to a point on the east line of Fairway Fifteen; thence along the east line of Fairway Fifteen the following courses and distances: North 04 degrees 28 minutes 33 seconds East a distance of 87.00 feet to a point, North 12 degrees 24 minutes 03 seconds East a distance of 772.75 feet to a point; thence leaving the east line of Fairway Fifteen North 18 degrees 28 minutes 23 seconds West, a distance of 45.78

feet to a point; thence North 45 degrees 15 minutes 16 seconds West, a distance of 55.31 feet to a point; thence North 38 degrees 50 minutes 15 seconds East, a distance of 151.89 feet to a point; thence along the arc of a curve to the left an arc distance of 124.05 feet, a radius of 330.00 feet, an angle of 21 degrees 32 minutes 18 seconds and a tangent of 62.77 feet to a point; thence North 55 degrees 09 minutes 03 seconds West, a distance of 15.79 feet to a point on the easterly right-of-way line of Clubhouse Drive; thence along the aforesaid right-of-way line North 29 degrees 06 minutes 28 seconds East, a distance of 169.96 to a point; thence leaving said right-of-way line North 79 degrees 59 minutes 59 seconds East, a distance of 177.83 feet to a point; thence North 88 degrees 55 minutes 55 seconds East, a distance of 138.35 feet to a point on the easterly boundary line of Land Lot 260; continuing thence along said easterly boundary line of said Land Lot South 00 degrees 40 minutes 42 seconds West a distance of 1,442.25 feet to THE POINT OF BEGINNING, containing 38.78 acres and depicted as Tract 1 as shown on that certain Land Title Survey for Tauqueta Development, LLC, dated April 4, 2005 and certified to United Community Bank and Fidelity National Title Insurance Company by W. M. James, GRLS No. 2035 of Betts Engineering Associates, Inc.