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BOOK 6947 PAGE 387  
*Anne M. Lencan*

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Attn: JMH

STATE OF GEORGIA 17814  
COUNTY OF CHEROKEE

Reference: Deed Book 748  
Page 20

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR ROSE CREEK**

WHEREAS, Manchester Properties Company, a Georgia limited partnership, recorded the Declaration of Covenants, Conditions, Restrictions and Easements for Rose Creek ("Declaration"), on October 20, 1988 in Deed Book 748, Page 20 et seq., Cherokee County, Georgia Records; and

WHEREAS, Article IX, Section 9.02 of the Declaration provides for amendment of the Declaration by agreement of seventy-five (75%) percent of the Owners within Rose Creek; and

WHEREAS, at least seventy-five (75%) percent of the Owners at Rose Creek desire to amend the Declaration and have approved the following amendments to the Declaration; and

WHEREAS, these Amendments do not alter, modify, change or rescind any right, title, interest or privilege held by any first mortgage holder; provided, however, in the event a court of competent jurisdiction determines that these Amendments do alter, modify, change or rescind any right, title, interest or privilege held by any first mortgage holder without such first mortgage holder's consent in writing to these Amendments, then these Amendments shall not be binding on the first mortgage holder so involved, unless such first mortgage holder consents to these Amendments; and if such consent is not forthcoming, then the provisions of the Declaration effective prior to these Amendments shall control with respect to the affected first mortgage holder;

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

1.

Article I of the Declaration is hereby amended by adding the following Section 1.21 thereto:

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THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ROSE CREEK SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

1.21 Act shall mean 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.

Article III of the Declaration is hereby amended by adding the following Section 3.09 thereto:

Section 3.09 Georgia Property Owners' Association Act. The Property is 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.

3.

Article IV of the Declaration is hereby amended by deleting that Article in its entirety and substituting the following therefor:

#### ARTICLE IV - ASSESSMENTS

Section 4.1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for common expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots as may be authorized by the Board. The term "Occupant," as used in this Declaration, means, "any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property."

Section 4.2 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, including any Master Assessments for Towne Lake Residential Area as provided in the Master Declaration of Protective Covenants for Towne Lake Residential Area; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to Section 4.3 hereunder, including, but not limited to, reasonable fines imposed in accordance with the terms of the Act and hereof.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, 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. 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.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. 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 any 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. The lien provided for herein shall have priority as provided in the Act.

Section 4.3 Individual Assessments. 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, the Declaration or the Bylaws, the amount of

all common expenses shall be assessed against all the Lots.

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

(i) Any common expenses benefitting less than all of the Lots or significantly disproportionately benefitting all Lots may be specially assessed equitably among all of the Lots which are benefitted 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(s) may be specially assessed against such Lot(s).

Section 4.4 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 assessment or other charge, or any part thereof, 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, and a collection administrative fee not to exceed \$50.00 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.

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.

(b) If assessments, fines or other charges, or any part thereof due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then, after ten (10) days written notice, the Board may accelerate and declare immediately due any installments of the annual assessment and any special assessment.

(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 Bylaws, the Act and Georgia law and suspend the Owner's right to vote and the Owner's and Occupant's right to vote and use the Common Property.

Section 4.5 Computation of Operating Budget and Assessment. At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Development during the coming year. 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 twenty-one (21) days prior to the beginning of the Association's fiscal year. The annual budget and assessment shall become effective unless disapproved at an Association meeting by a majority of the entire Association vote. If the Board fails for any reason to determine the budget for the succeeding year or the membership disapproves the budget, 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 Owners at least thirty (30) days prior to the proposed effective date thereof. The Association annual assessment shall not be increased in any year to an amount over ten (10%) percent of the Association assessment levied in the immediately preceding year not including the Master Assessment.

Section 4.6 Special Assessments. In addition to the other assessments authorized herein, the Association

may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed Three Hundred (\$300.00) Dollars in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Owners. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 4.7 Statement of Account. 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 ten (\$10.00) dollars, 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.

Section 4.8 Collection of Master Assessments. The Association shall collect all Master Assessments levied against each Lot subject to this Declaration and shall as a matter of first priority, out of any income of the Association, remit any such Master Assessments as may be levied by the Master Association on all property subject to the jurisdiction of the Association, on a timely basis.

4.

Article V, Section 5.04(b) of the Declaration is hereby amended by changing the phrase "two (2) or more members" to "three (3) or more members" as it appears in throughout this section.

5.

Article V, Section 5.06 of the Declaration is hereby amended by adding to the end thereto the following:

Verbal approvals for plans and specifications shall be invalid. Plans and specifications shall be valid only upon written approval of three or more ACC members.

6.

Article VI of the Declaration is hereby amended by adding to the end thereto the following Section 6.24:

6.24 Leasing. In order to protect the equity of the individual Lot Owners in Rose Creek, to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogenous residential community of predominantly owner-occupied homes and by preventing the Property from assuming the character of a renter-occupied development, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this Paragraph. Except as provided herein, the leasing of Lots shall be prohibited.

(a) Definitions.

(i) "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing hereunder.

(ii) Open Leasing Status shall authorize a Lot to be leased at any time. Each Lot in Rose Creek which is being leased on the date that this Declaration is recorded in the Cherokee County, Georgia records shall have Open Leasing Status until the Lot is sold at which time the Lot shall automatically be converted to Restricted Leasing Status. Unless so converted to Restricted Leasing Status, the Lot shall be in Open Leasing Status until such time as title is conveyed to any person or entity other than the person or entity holding record title on the date that this Declaration is recorded in the Cherokee County, Georgia records, after which conveyance the Lot shall automatically be converted to Restricted Leasing Status. Open Leasing Status may also be conferred upon a Lot as provided in subparagraph (b) below.

(iii) Restricted Leasing Status shall subject a Lot to the restrictions on leasing contained in subparagraph (b) below. All Lots which are not being leased on the date that this Declaration is recorded in the Cherokee County, Georgia records shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in subparagraph (b) below.

(b) General. No Owner of a Lot in Restricted Leasing Status may lease his or her Lot if five (5%) percent or more of the Lots in the Property are in Open Leasing Status, except as provided in subparagraph (c) below for cases of undue hardship. Any Owner of a Lot in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Lot shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than five (5%) percent of the Lots are in Open Leasing Status, the Board shall notify the Owner of the Lot at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Lot or it shall automatically revert to Restricted Leasing Status. Any Lot in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Lot is not subject to an approved lease for ninety (90) or more consecutive days.

(c) Undue Hardship. Notwithstanding the provisions of subparagraph (b) above, the Board of Directors shall be empowered to allow reasonable leasing of a Lot upon application in accordance with this Paragraph to avoid undue hardship, including, but not limited to, (1) where a Lot Owner must relocate his or her residence outside the Atlanta metropolitan area for employment purposes and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot for a price no greater than the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph (c), have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee and the Owner's address other than at the Property and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this Paragraph shall be voidable at the option of the Board of Directors.

(d) Leasing Provisions. Such leasing as is permitted by this Paragraph shall be governed by the following

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provisions:

(i) General. All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. All leases must be for an initial term of at least one (1) year, except with written Board approval. There shall be no subleasing or assignment of leases unless approved in writing by the Board. Lots may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be accommodated on a Lot. All leases shall be subject to the Declaration, the Bylaws and the Association's rules and regulations. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations, and the lease form shall provide that the Owner has done so.

(ii) Notice. Within ten (10) days after entering into the lease of a Lot, the Owner shall provide the Board of Directors with the name and phone number of the lessee and the names of all other people occupying the Lot, the Owner's address other than at the Property, and such other information as the Board may reasonably require. Notwithstanding anything in the Declaration to the contrary, failure to provide the above information to the Board within ten (10) days after entering into the lease of a Lot may result in a fine against the Owner for each day that the information is not provided to the Board. Nothing herein shall be construed as giving any party the right to approve or disapprove a proposed lessee.

(iii) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly stated therein, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

1) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee agrees to abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to do so. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to Rose Creek Homeowners and Recreation Association, Inc., acting through the Board, the power and authority to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

2) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.



3) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all annual and special assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, 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 Board'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 lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the Owner of the premises during the term of the agreement and any other period of occupancy by lessee.

(e) Applicability of this Section 6.24. Leases existing on the date which this Declaration is recorded in the Cherokee County, Georgia records shall not be subject to the terms of this Paragraph; such leases may continue in accordance with the terms of the Original Declaration as it existed prior to the recording date of this Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Paragraph. Any Owner of a Lot which is leased on the effective date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Cherokee County, Georgia records.

This Section 6.24 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

7.

Article VII of the Declaration is hereby amended by adding to the end thereto the following Section 6.25:

6.25 Sale of Lots. A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Section shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

8.

Article VIII, Section 8.04 of the Declaration is hereby amended by deleting that Section in its entirety.

9.

Article VIII of the Declaration is hereby amended by adding the following as a new Section 8.04 thereto:

8.04 Fining. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot for violation of any duty imposed under the Declaration, the Bylaws, or any rules and regulations duly adopted hereunder. If any Occupant violates the Declaration, Bylaws or Association rules and a fine is imposed, the fine may be imposed against the Owner and/or Occupant, subject to Article V, Section 2 of the Bylaws.

10.

Article IX, Section 9.01 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:

Section 9.01 Duration. The covenants and restrictions of this Declaration shall run with and bind the Community perpetually to the extent provided in the Act.

11.

Article IX, Section 9.02 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:

Section 9.02 Amendment. This Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Owners of the Association holding two-thirds (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 Cherokee County, Georgia land records. Any action to challenge the validity of an amendment adopted under this Section 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.

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 first 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. "Eligible Mortgage Holder" shall be defined as, "a holder of a first mortgage secured by a Lot who has requested notice of material amendments to this Declaration."

IN WITNESS WHEREOF, the undersigned officers of Rose Creek Homeowners and Recreation Association, Inc., hereby certify that this Amendment to the Declaration was duly adopted by the required vote of the Association membership and any required notices were duly given.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



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ROSE CREEK HOMEOWNERS AND RECREATION  
ASSOCIATION, INC.

By: James A. Harris  
President

Attest: Julie C. Gued  
Secretary

Sworn to and subscribed to  
before me this 3 day of

March, 2004.

[CORPORATE SEAL]

Witness

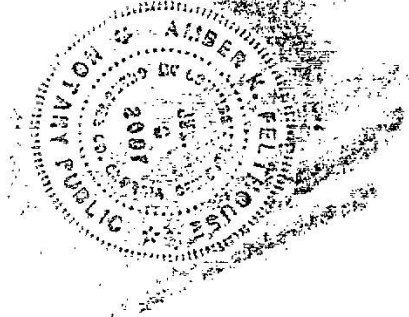
Notary Public

Amber K. Felthouse

[NOTARY SEAL]

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Witness

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