

Cross-reference to:

Deed Book 7190, pp. 165 et seq.
Deed Book 8559, pp 298 et seq.
Deed Book 9350, pp. 396 et seq.
Cherokee County, Georgia records

When recorded return to:

Kilpatrick Stockton LLP
1100 Peachtree Street, NE, Suite 2800
Atlanta, Georgia 30309
Attn: R. Bailey Teague, Jr.

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR WOODHAVEN BEND ON THE ETOWAH**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR WOODHAVEN BEND ON THE ETOWAH (this "Declaration") is made as of this ____ day of November, 2008.

WITNESSETH THAT

WHEREAS, Declarant (together with Yellow Creek, L.L.C., a Georgia limited liability company ("Yellow Creek")) executed and recorded that certain Declaration of Covenants, Conditions, Easements and Restrictions for Woodhaven Bend on the Etowah dated June 30, 2004, and recorded with the Clerk of the Superior Court of Cherokee County, Georgia, beginning at Deed Book 7190, pages 165 et seq., as previously amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Woodhaven Bend on the Etowah dated December 27, 2005, and recorded at Deed Book 8559, pages 298 et seq., and as further amended by the First Amendment to Amended and Restated Declarations of Covenants, Conditions, Easements and Restrictions for Woodhaven Bend on the Etowah dated January 3, 2007, and recorded at Deed Book 9350, pages 396 et seq. (hereinafter the "Present Declaration").

WHEREAS, Declarant desires to amend and restate the Present Declaration as allowed by Section 11.02 of the Present Declaration for such matters as set forth herein; and

WHEREAS, the Present Declaration concerns certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), and Declarant desires to subject such property to the provisions of this Declaration as a residential community

of single-family housing, and to provide a flexible and reasonable method for the administration and maintenance of such property, all in accordance with and subject to the provisions of the Georgia Property Owners' Act (the "Act") contained in Article 6 of Chapter 3 of the Official Code of Georgia Annotated (O.C.G.A. §§ 44-3-220 et seq.), by which the "Association" (as defined herein) hereby elects to be governed;

NOW, THEREFORE, the Present Declaration is hereby amended and restated by this Declaration, hereby superseding the Present Declaration in its entirety, and Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described properties or any portion thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each Owner (as defined herein) thereof.

ARTICLE I

DEFINITIONS

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings, whether or not capitalized, and all definitions shall be applicable to the singular and plural forms of such terms:

"Architectural Review Board" shall mean and refer to the group of not less than three nor more than five persons in charge of administering and enforcing the architectural requirements contained in Article 9.

"Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

"Assessment" shall mean and refer to an Owner's share of the Common Expenses from time to time assessed against Owners by the Association in the manner herein provided.

"Association" shall mean and refer to Woodhaven Bend on the Etowah Homeowners Association, Inc., a Georgia non-profit corporation.

"Barn(s)" shall mean and refer to barns and stable facilities on Lots which are owned by particular Owners, which barns shall contain no more stalls than the number of horses or ponies permitted on the Lot in question. The building located on Lot 20 shall not constitute a Barn.

"Board" shall mean and refer to the Board of Directors of the Association.

"Buffer Easement" shall mean and refer to that certain Mitigation Bank Buffer Easement dated June 30, 2004, and recorded at Deed Book 8559, page 290, of the Records of the Clerk of the Superior Court of Cherokee County, Georgia, made by Yellow Creek in favor of the Association.

“Builders” shall mean and refer to Persons hired by Owners to construct Residences, but does not include Persons performing alterations, repair or renovations to Residences which do not amount to a substantial re-construction after their original construction.

“By-Laws” shall mean and refer to the By-Laws of the Association, as they may be amended from time to time.

“Common Areas” shall mean and refer to all real and personal property now or hereafter owned or leased by the Association for the common use and enjoyment of the Owners. The Common Areas include all of the Subdivision except the Lots and include the rights granted and obligations created by the Buffer Easement. The building located on Lot 20 is not a part of the Common Areas.

“Common Expense” or “Common Expenses” shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

“Control Period” shall mean and refer to the period from the date hereof until the date on which Declarant has sold at least 75% of the total number of Lots. For these purposes, the Lots now owned by Yellow Creek shall be treated as owned by Declarant until their sale by Yellow Creek.

“Days” shall mean and refer to calendar days; provided however if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period automatically shall be extended to the close of business on the next regular business day.

“Declarant” shall mean and refer to YC Development, Inc., a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit “A” for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one “Declarant” hereunder at any one time.

“Declaration” shall mean and refer to this instrument and all amendments and supplements hereto filed for record in the records of the Clerk of the Superior Court of Cherokee County, Georgia.

“Director” shall mean and refer to a member of the Board.

“Equestrian Lots” shall mean and refer to those Lots where the Owner may keep horses as designated on the Plat. Lots 4, 5 and 28 as shown on the Plat are the Equestrian Lots.

“Equestrian Lots Class A” shall mean and refer to Lots 4 and 5 as shown on the Plat.

“Equestrian Lots Class B” shall mean and refer to Lot 28 as shown on the Plat.

“Foreclosure” shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the exercise of a power of sale contained in any Mortgage.

“Lease” shall mean and refer to any lease, sublease or rental contract, whether oral or written.

“Lot” shall mean and refer to those portions of the Subdivision upon which is or will be located a Residence for sale, use or occupancy as a single-family residential dwelling in conformity with the terms of this Declaration, as such Lots are shown on the Plat.

“Mortgage” shall mean and refer to a mortgage, deed to secure debt, deed of trust or similar other security instrument granting, creating or conveying a lien upon, a security interest in, or security title to a Lot or Lots and any improvements thereon.

“Mortgagee” shall mean and refer to the holder of a Mortgage.

“Non-Equestrian Lots” shall mean and refer to all Lots other than Equestrian Lots.

“Occupant” shall mean and refer to any Person, including, without limitation, any guest, invitee, or family member of an Owner, occupying or otherwise using a Residence.

“Officer” shall mean and refer to an officer of the Association.

“Owner”, unless the context shall otherwise require, shall mean and refer to one or more Persons, who or which owns fee simple title to any Lot and the improvements thereon, excluding, however, those Persons having such an interest under a Mortgage.

“Person” shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

“Plat” shall mean and refer to that certain Final Plat for Woodhaven Bend prepared by Reece Land Surveying, P.C., Scott L. Reece, Georgia Registered Land Surveyor No. 2648, as recorded with the Clerk of the Superior Court of Cherokee County, Georgia, at Plat Book ___, Page ___ (which supersedes in its entirety the plat recorded with the Clerk of the Superior Court of Cherokee County, Georgia, at Plat Book 70, pages 179-184), as amended from time to time in accordance with the terms of this Declaration.

“Residence” shall mean and refer to an individual single-family dwelling unit which is now or hereafter located on a Lot.

“Subdivision” shall mean and refer to those tracts and parcels of land described on Exhibit “A” attached hereto and incorporated herein by reference, together with all improvements now or hereafter located thereon, and together with the easements created by the Buffer Easement.

“Subdivision Roads” means the private roads within the Subdivision as shown on the Plat, including, without limitation, Etowah Landing and River Bluff Lane.

ARTICLE II

PROPERTY RIGHTS

2.01 Lots. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, subject to the provisions of this Declaration. Unless otherwise provided hereinbelow, each Lot shall include the Residence and all other improvements and fixtures presently constructed on or hereafter attached to such Lot. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title and interest of an Owner in the Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to the Lot. Lots shall not be subdivided, and the boundaries between Lots shall remain as established in accordance with the Plat, unless the relocation thereof is made with the consent of the Owners directly affected thereby and the Association.

2.02 Lot Classification. Each Lot shall be classified as either a Equestrian Lot or a Non-Equestrian Lot and subject to the following restrictions:

(a) Equestrian Lots. The owner of each Equestrian Lot shall be allowed to keep no more than: (1) for Equestrian Lots Class A, one horse or pony for every full acre of each Equestrian Lot Class A, and (2) for Equestrian Lots Class B, one horse or pony for every 2.5 acres of each Equestrian Lot B, but in no case more than four horses or ponies on Equestrian Lots Class B. Barns shall be allowed on Equestrian Lots, but the Owner must obtain design approval from the Architectural Review Board before commencing construction. Additionally, the Architectural Review Board must approve of the location of any Barn on a lot before Owner commences construction.

(b) Non-Equestrian Lots. All Lots that are not classified as Equestrian Lots shall be classified as Non-Equestrian Lots. No horses or ponies shall be kept on Non-Equestrian Lots.

2.03 Owner's Easement of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas (including, without limitation, the right of pedestrian (but not equestrian), vehicular, battery operated vehicle, bicycle, motorized cart (defined as a vehicle having no less than three wheels and an unladen weight of 1,300 pounds which cannot operate at more than 40 miles per hour), and all-terrain vehicle (defined as a vehicle designed for off-road use which is equipped with two or more tires and with a seat to be straddled by the operator and with handlebars for steering control) access, ingress and egress to and from his Lot over those portions of the Common Areas from time to time designated for such purposes; provided, however, in no event shall any Owner have the right of vehicular, battery operated vehicle, bicycle, motorized cart or all-terrain vehicle access, ingress and egress to and from his Lot over the area covered by the Buffer Easement), which right and easement

shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner and Occupants.

(b) The right of the Association to grant and accept easements as provided in Section 2.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by a majority of the members of the Association. No such dedication or transfer of fee simple title shall be effective unless an instrument agreeing to such dedication or transfer has been signed by Owners having at least a majority of the votes of the Association.

(c) Security procedures as established by the Association.

(d) The rights and easements reserved in Sections 2.06 and 2.07 hereof for the benefit of the Association, its directors, officers, agents and employees.

2.04 Delegation of Use. Subject to Subsection 9.05(d), any Owner may delegate, in accordance with the By-Laws and the published rules and regulations of the Association, his right of enjoyment to the Common Areas and facilities therein to Occupants, the members of his family, and his tenants, guests and invitees.

2.05 Existing Installations. Each of the Owners hereby grants to the Association permanent and perpetual easements for ingress, egress, installation, replacing, repairing and maintaining all existing and future water, irrigation, sewer and storm drainage facilities located within the Subdivision. Further, each of the Owners hereby grants to the Association (x) a permanent and perpetual easement over each Lot to a depth of six feet inside of the outer margin of the existing curb of all Subdivision Roads for the purposes of making repairs and improvements to Subdivision Roads or any of the water, irrigation, sewer, electrical, phone, gas, cable, storm drainage or other utility or service installations in the Subdivision and (y) a permanent and perpetual easement over each Lot for the purpose of maintaining and repairing all fencing which is the responsibility of the Association.

2.06 Easements for Utilities. The Board has the power to grant and accept easements upon, over, under and across all of the Common Areas for ingress, egress, installing, replacing, repairing and maintaining master television antenna and/or cable systems, security and similar systems and all utilities, including, but not limited to, storm sewers and electrical, gas, telephone, water, irrigation, sewer lines and cable television. In addition, the Board has the power to grant and accept such easements upon, over, under and across all of the Common Areas as may be reasonably necessary or desirable for the improvement of any portion of the Subdivision by virtue of any such easement. It shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain upon the Subdivision the necessary poles and other necessary equipment.

2.07 Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association, to enter upon the Subdivision or any portion

thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or occupant of the Lot, Residence or other structure or improvement directly affected thereby.

2.08 No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any Person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition.

2.09 Common Areas. The Common Areas of the Subdivision shall be those portions of the Property designated as Common Areas on the Plat together with (v) Subdivision Roads, including all land inside of cul de sacs; (w) the entry plaza and security gate; (x) the area covered by the Buffer Easement and all improvements thereon which the Association is responsible for maintaining under the Buffer Easement; and (y) easements for river access, emergency vehicle access, service vehicle (operated by or for the Board or Declarant) access and pedestrian trails as actually constructed by Declarant. The Common Areas shall also include all fencing in the Subdivision constructed by Declarant from time to time (subject to the right of Declarant to remove any fencing which Declarant desires to remove prior to the end of the Control Period); provided, however, that inter-Lot fences constructed by Declarant shall not be part of the Common Areas. The equestrian easement provided for by Section 6.02 of the Present Declaration is hereby vacated and terminated. The equestrian trails provided for by Section 6.02 of the Present Declaration shall no longer be part of the Common Areas, and the fencing for such equestrian trails (which does not include the fencing around the Buffer Easement) shall be removed by Declarant (unless the Owner on whose Lot the fence is located gives Declarant written notice within 15 days of the date of this Declaration that such Owner does not want the fence on such Owner's Lot removed).

2.10 Plan of Development of Subdivision. The Subdivision shall contain 33 Lots with one (1) Residence to be located on each Lot. The Subdivision shall also include Subdivision Roads, utility systems and other improvement serving the Lots. The Lots shall be restricted exclusively to residential use in accordance with the provisions of this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale or to make improvements and changes to all Common Areas and to all Lots owned by Declarant including, without limitation, (x) additions to or realignment of Subdivision Roads, (y) installation of any utility systems and facilities, and (z) installation of security and/or refuse facilities. Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth.

2.11 Conveyance of Common Areas or Buffer Easement Area. At any time and from time to time, Declarant may convey to the Association Declarant's interest in all or any part of the Common Areas, and the Association shall be deemed to have accepted all such conveyances upon their filing with the Clerk of the Superior Court of Cherokee County. At any time and from time to time, Yellow Creek, its successors or assigns may convey to the Association all or any part of the property encumbered by the Buffer Easement, and the Association shall be deemed to have accepted all such conveyances upon their filing with the Clerk of the Superior Court of the County where such property is located.

ARTICLE III

MEMBERSHIP

3.01 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot and ownership of a Lot shall be the sole qualification for such membership. The foregoing is not intended to include Mortgagees or any other Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more Persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast nor more than one office held for each Lot. When more than one Person holds an interest in any Lot, the vote for such Lot shall be exercised as those Owners of such Lot themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it. If only one of those Persons is present at a meeting of the Association, that Person shall be entitled to cast the vote pertaining to that Lot. The votes pertaining to any Lot may, and, in the case of any Owner not a natural person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner or, in cases where the Owner is more than one Person, by or on behalf of the joint Owners. Such proxy shall not be revocable unless written notice is delivered to the Association by the Owner(s). The voting weight appurtenant to each Lot is equal and each Lot shall have one vote. Any Owner who is in default of his obligations under this Declaration, including, without limitation, the obligation to pay Assessments, which has not been cured within thirty (30) days after notice from the Association, shall have his voting privileges suspended until such default is cured.

3.02 Notice of Meeting and Quorum. Written notice of any annual or regularly scheduled meeting of the Association shall be sent to all Owners by mailing same to the address for their Residence not less than twenty-one (21) days nor more than thirty (30) days in advance of such meetings and at least seven (7) days in advance of any other meeting and shall state the time, place and purposes of such meeting. At the first such meeting called, the presence at the beginning of the meeting of members or proxies entitled to cast over one-third (1/3) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be three-fourths (3/4) of the required quorum at the preceding meeting, provided that no meeting shall be held with less than one-fourth (1/4) of the total membership of the Association constituting a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

ARTICLE IV

MAINTENANCE

4.01 Owner's Responsibility. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Residence and other improvements thereon, shall be the responsibility of the Owner of such Lot. Each Owner shall promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is that of the Association. As provided in Section 4.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing or cleaning any item which is the responsibility of the Owner, but which responsibility such Owner fails or refuses to discharge. No Owner shall (x) decorate, change or otherwise alter the appearance of any portion of the exterior of his Residence, or if an Equestrian Lot his approved Barn, unless such decoration, change or alteration is first approved, in writing, by the Association's Board or the Architectural Review Board as provided in Article IX hereof, or (y) do any work which, in the reasonable opinion of said Board or the Architectural Review Board, would jeopardize the soundness or safety of the Subdivision, reduce the value thereof, or impair any easement or hereditament thereto without in every such case obtaining the written approval of the Board or the Architectural Review Board.

4.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas. The Association's responsibilities with respect to the Common Areas shall be deemed to include the maintenance, repair and replacement of (1) all Subdivision Roads, driveways, walks, parking areas and buildings and other improvements situated within the Common Areas and lighting therefor, (2) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Areas, (3) all fences and walls in the Subdivision which were originally constructed by Declarant and situated within, upon or immediately adjacent to the Common Areas, if any, (4) the irrigation system for the Common Areas, (5) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Areas. The Association shall not be liable for injury or damage to any Person or property (1) caused by the elements or by any Owner or any other Person, (2) resulting from any rain, snow or ice which may leak or flow from any portion of the Common Areas, or (3) caused by any pipe, plumbing, drain, conduit, appliance, equipment or utility lines or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

(b) In the event that the Board of the Association determines that: (1) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which the Owner is responsible hereunder, or (2) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees and is not covered or paid for by insurance in whole or in part, then, in either event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, the Owner shall have fifteen (15) days within which to complete said maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete said maintenance, cleaning, repair or replacement in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Association may provide any such maintenance, cleaning, repair or replacement at such Owner's sole cost and expense, and said costs, together with an administrative charge equal to twenty-five percent (25%) of such costs, shall be added to and become a part of the Assessment to which such Owner and his Lot are subject and shall become a lien against such Lot.

4.03 Inter-Lot Fencing. Owners of Equestrian Lots shall be required to fence in their Lots (to the extent not already fenced in by fences installed by Declarant) prior to allowing horses to be kept on their Equestrian Lots. Owners who purchase more than one contiguous Equestrian Lot need not fence in between such Lots until and unless a Lot is separately conveyed, in which case inter-Lot fencing shall be erected within ninety days after the separate conveyance. Each Owner shall submit to the Architectural Review Board for its approval a fencing plan. All fences shall be constructed of wood and shall be painted black (except that fencing pillars or columns may be made of stone). Each fence shall be located entirely within or on the boundary lines of Lots. Fences erected on the boundary lines of Equestrian Lots which also form the boundary line of another Equestrian Lot shall be designed such that they are two-sided.

ARTICLE V

INSURANCE; CONDEMNATION

5.01 Association's Insurance.

(a) The Board or its duly authorized agents shall have the authority to and may, in their sole discretion, obtain and continue in effect property insurance, in such form as the Board deems appropriate, for the benefit of the Association insuring all insurable improvements in and to the Common Areas against loss or damage by fire or such other hazards as the Board shall deem appropriate.

(b) The Board or its duly authorized agents shall have the authority to and may, in their sole discretion, obtain and continue in effect one or more liability policies in such amounts and in such form as the Board shall deem appropriate covering any of the Common Areas and all damage or injury caused by the negligence of the Association, members, its directors and officers, or any of its agents.

(c) The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

5.02 Condemnation. Whenever all or any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board, then the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association as trustee for all Owners and shall be disbursed as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining land included in the Common Areas which is available therefor, in accordance with the plans approved by the Board. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association and shall be placed in a capital improvements reserve account.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Association and shall be placed in a capital improvements reserve account.

(c) If the taking or sale in lieu thereof includes one or more Lots, or any portion or portions thereof, and any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Owners so affected so as to give just compensation to the Owner of any Lot taken for his interest in such Lot.

5.03 Owner's Insurance. By virtue of taking title to Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot.

5.04 Rights of Mortgagees. If the Common Areas or any portion thereof, or any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any Mortgage will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other document establishing or relating to the Subdivision will entitle any Owner or any other party to priority over such

Owner's mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Owner's Lot.

ARTICLE VI

SUBDIVISION ROADS

6.01 Subdivision Roads. All Subdivision Roads are private roads and have not been dedicated to or accepted by any governmental authority. Each Owner agrees and acknowledges that, except for Etowah Landing and River Bluff Lane, the fee simple titles to the Subdivision Roads are initially owned by Declarant and may in the future be held by the Association, subject to the rights of Owners created hereby. All Subdivision Roads are Common Areas hereunder. The Association shall have the right to take all such actions as are necessary to prevent any Person other than Owners and the lawful residents, occupants, lessees of Residences and their licensees, permittees and invitees from using Subdivision Roads. The Association shall have the further right to take such actions as are necessary to prevent Subdivision Roads from becoming impliedly dedicated to public use, including, without limitation, the right to periodically barricade them. It is further provided, however, that the Association shall have the right, upon the written consent of a majority of the Owners, to dedicate all or any Subdivision Roads (except for Etowah Landing and River Bluff Lane) as public rights-of-way by appropriate instrument.

ARTICLE VII

ADMINISTRATION

7.01 Common Areas. The Association, subject to the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. Except to the extent otherwise required by the Georgia Nonprofit Corporation Code, the Act, this Declaration, the By-Laws, or the Articles of Incorporation, the power herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in Section 11.01 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until the end of the Control Period. Each Member, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association during the Control Period. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Act, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the

Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Act, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, this Declaration, the Act, the Articles of Incorporation, and the By-Laws, in that order, shall prevail, and each Owner of a Lot covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. Such powers of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and to hold, lease, mortgage, sell, and convey the same.

7.03 Agreements. All agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Subdivision or the privilege of possession and enjoyment of any part of the Subdivision, and in performing its responsibilities hereunder, the Association, through its Board, shall have the authority to delegate to Persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any Person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Subdivision, whether such personnel are furnished or employed directly by the Association or by any Person or entity with whom or with which it contracts. Any management agreement for the Subdivision shall be terminable, without payment of any termination fee by the Association or such manager, with cause upon not more than thirty (30) days' written notice and without cause upon not more than ninety (90) days' written notice, and the original term of such management agreement may not exceed one year, with renewals by agreement of the parties for successive one-year periods. All costs and common expenses incident to the employment of a manager shall be Common Expenses of the Association. During the term of such management agreement, the manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or members of the Association by this Declaration or the By-Laws. The manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be an expense of the Association. In addition, the Association may pay for such legal and accounting services as are necessary or desirable in connection with the operation of the Subdivision or the enforcement of this Declaration, the By-Laws, or the published rules and regulations of the Association.

7.04 Personal Property and Real Property for Common Use. The Association through action of its Board may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held for the benefit of the Owners as herein provided and for the purposes herein stated. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is an appurtenance to such Lot.

7.05 Rules and Regulations. As provided in Article X hereof, the Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Lots and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

7.06 Liability. The Officers and Directors shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, or bad faith. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Officers or Directors may also be members of the Association) and the Association, as a common expense of the Association, shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. In addition, each Director and each Officer of the Association shall be indemnified and held harmless by the Association, as a common expense of the Association, from any expense, loss, or liability by reason of having served as such Director or as such Officer and against all expenses and liability, including court costs and reasonable attorneys' fees, incurred by or imposed upon such Director or Officer in connection with any proceeding to which he may be a party or have become involved by reason of being such Director or Officer at the time such expenses are incurred, except in cases wherein the expenses and liability arise from a proceeding in which such Director or such Officer is adjudicated guilty of willful misfeasance or malfeasance, misconduct, or bad faith in the performance of his duties. In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director, or former Officer or Director, may be entitled. To the extent available, the Association may, in the sole discretion of the Board, and as a Common Expense maintain adequate general liability and Officers' and Directors' liability insurance to fund these obligations.

7.07 Compensation. No Director or Officer of the Association shall receive any fee or compensation for services performed by him unless such fee or compensation is first fixed by resolution adopted by a majority vote of the Owners present in person or by proxy at a meeting of the Association.

7.08 Meetings of the Board. Annual meetings of the Board shall be held on the same day and at the same place as the annual meetings of members. Notice of such meeting or of any regularly scheduled meeting shall be given not less than ten (10) or more than thirty (30) days prior to such meetings. Special meetings shall be held as needed and notice of such meeting shall be given not less than seven (7) days prior to such meeting. Such notice shall state the day, time and place of the meeting. Notice of such meeting may be waived by the attendance of such Person at such meeting. For purposes of such meetings, a quorum shall be deemed present throughout the meeting if Persons entitled to cast one-half of the votes of the Board are present at the beginning of such meeting.

ARTICLE VIII

ASSESSMENTS

8.01 Purpose of Assessments. The Assessments 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 the Lots, and maintaining the Subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board.

8.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a lot and all successors in title to such Owners, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (a) annual Assessments, such Assessments to be established and collected as provided in Section 8.03 hereof, (b) special Assessments, such Assessments to be established and collected as provided in Section 8.04 hereof, (c) initiation Assessments, such initiation Assessments to be established and collected as provided in Section 8.10 hereof, and (d) individual or specific Assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot in accordance with Article X hereof. Any such Assessment, together with late charges, interest at the lower of eighteen percent (18%) per annum or the highest rate allowable under the laws of the State of Georgia, and court costs and attorneys' fees actually incurred to enforce such Assessment, shall be equitable charges and a continuing lien upon the Lot against which each such Assessment is made. Each Owner shall be personally liable for his portion of each Assessment coming due while he is the Owner of a Lot, and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, but without prejudice to the rights of such grantee to recover from his grantor the amounts paid by such grantee therefor; provided, however, that if the grantor or grantee shall request a statement from the Association regarding the amount of the unpaid Assessments as set forth in Section 8.09 herein, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid Assessments against such grantor in excess of any amount set forth in the statement. Furthermore, the liability of a grantee for the unpaid Assessments of his grantor shall not apply to the holder of any first priority Mortgage or any second priority purchase money Mortgage taking title to a Lot through foreclosure or by deed in lieu of foreclosure, provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Lot; provided, however, that the unpaid share of an Assessment or Assessments shall be deemed to be a Common Expense collectable from all of the Owners, including such holder or other Person 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. Unless otherwise provided by the Board, the annual Assessments shall be paid in advance in equal quarterly installments.

8.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association during the coming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association unless reserves are unanimously waived by the Board. The Board shall cause the

budget and the proposed annual Assessments to be levied against each Lot for the following year to be delivered to each Owner at least ten (10) days prior to such meeting. Except as otherwise provided in this Section and in Section 8.07 hereof, the annual Assessments shall be equally divided among the Lots (provided, however, the annual Assessments for any Lot shall be prorated for the year that such Lot was created). Notwithstanding anything contained herein to the contrary, any Common Expenses benefiting less than all of the Lots shall be specially assessed equitably among all of the Lots so benefited, as determined by the Board. The budget and the annual Assessments shall become effective unless disapproved at the annual meeting by a vote of a majority of the Owners who are voting in person or by proxy. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason 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 and annual Assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special Assessment as provided in Section 8.04 hereof. The Common Expenses of the Association to be funded by the annual Assessments may include, but shall not necessarily be limited to, the following:

- (a) management fees and expenses of administration, including legal and accounting fees;
- (b) utility charges for utilities serving the Common Areas and charges for other common services for the Subdivision, including trash collection and irrigation;
- (c) the cost of any fire and other hazard coverage, public liability coverage, and such other insurance coverage as the Board determines to be in the interests of the Association and the Owners;
- (d) the expenses of maintenance, operation, landscaping and repair of the Common Areas, which are the responsibility of the Association under the provisions of this Declaration;
- (e) security services for the Subdivision, if the Board elects to contract for same;
- (f) all taxes or other governmental charges or assessments assessed against the Common Areas;
- (g) such other expenses as may be determined from time to time by the Board of the Association to be Common Expenses, including, without limitation, legal fees, taxes and governmental charges assessed against the Common Areas or not separately assessed against the Lots; and
- (h) unless waived by the unanimous consent of the Board, the establishment and maintenance of a reasonable reserve fund or funds (1) for maintenance, repair, and replacement of those portions of the Common Areas, which are the responsibility of the Association and which must be replaced or repaired on a periodic basis, including, without limitation, Subdivision Roads and associated storm drainage facilities and (2) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from

emergency expenditures and other matters, all as may be authorized from time to time by the Board.

8.04 Special Assessments. In addition to the annual Assessments authorized above, the Association, acting through its Board, may levy, in any assessment year, special Assessments for Common Expenses, applicable to that year only, provided that any such Assessment shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 3.02 hereof. The Board may make such special Assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.

8.05 Individual Assessments. Any expenses occasioned by the conduct of less than all of the Owners or by the occupants, family, tenants, agents, guests, or invitees of the Owner of any Lot shall be specially assessed against the Lot or Lots, the conduct of the occupants (or their agents) of which occasioned such expenses. The individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Assessment so levied by the Board shall be as specified by the Board.

8.06 Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees actually incurred, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except only for:

- (a) liens of ad valorem taxes;
- (b) a lien for all sums unpaid on a first priority Mortgage and the lien of any Mortgage recorded prior to the recording of this Declaration; or
- (c) the lien of any secondary purchase money Mortgage, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for Assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

8.07 Effect of Non-Payment of Assessments; Remedies of the Association. Any Assessments or any portion thereof which are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as may be determined by the Board from time to time, but in no circumstances in excess of the greater of \$10.00 or ten percent (10%) of the amount of each delinquent Assessment, and the Board may cause a notice of delinquency to be given to any member who has not paid its Assessments, or any portion thereof, when due. A lien and equitable charge as herein provided for each Assessment shall attach simultaneously as the Assessment shall become due and payable, and if an Assessment has not been paid within thirty (30) days, the entire unpaid balance of the Assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and charge of such assessment shall include the late charge

established by the Board, interest on the principal amount due at the lower of eighteen percent (18%) per annum or the maximum rate allowable under the laws of the State of Georgia, all costs of collection (including reasonable attorneys' fees actually incurred and court costs), 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, and any other amounts provided or permitted hereunder or by law. In the event that the Assessment remains unpaid ten (10) days after notice is sent by certified mail, return receipt requested, to the Owner both at the address of the Lot and at any other address(es) which the Owner may have designated to the Association in writing, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien, in addition to the remedies set forth in Section 8.02 hereof. The notice shall specify the amount of the Assessments then due and payable together with authorized late charges and interest accrued thereon. The equitable charge and lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners, and each Owner grants to in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. 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, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot.

8.08 Date of Commencement of Annual Assessments. The annual Assessments provided for herein shall commence as to each Lot on the date of the sale of such lot by Declarant and as to all remaining Lots owned by Declarant at the end of the Control Period, and shall be due and payable in a manner and on a schedule as the Board may provide.

8.09 Statement of Assessments. Any Owner, Mortgagee, Person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of Assessments past due and unpaid together with late charges and interest applicable thereto against that Lot. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed.

8.10 Initiation Assessments. At each closing of the sale of any Lot, the buyer of each such Lot shall pay to the Association an initiation Assessment in the amount of \$900.00. Initiation Assessments shall be paid by the first and all subsequent buyers; that is, each time a Lot (or Lot and house) is sold, the buyer must pay the Initiation Assessment. The seller of each Lot shall collect the Initiation Assessment at closing and remit the same to the Association. Initiation Assessments may be deposited into the Association's general operating account.

ARTICLE IX

ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

9.01 General.

(a) To assure a community of congenial Owners and to protect the value of the Subdivision, the Lots and all improvements located thereon shall be subject to the restrictions set forth in this Article IX. Every grantee of any interest in the Subdivision, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article IX.

(b) No exterior structure or improvement shall be placed, erected, or installed on any Lot or adjacent to any Lot where the purpose of the structure is to service a Lot, except in compliance with this Article.

(c) Builders, as defined in Article I, must be approved in writing by the Architectural Review Board before an Owner commences construction of his house or any other structure on the Property.

(d) No temporary house, shack, or tent shall be erected on any lots and no lot may be used for school or kindergartens. All lots or parcels to which these restrictions are applicable shall be used for single family residence purposes only and no Lot shall be subdivided. No duplexes, triplexes, quadraplexs or other multi-family occupancy buildings shall be erected.

(e) Whenever buildings erected on any Lot or parcel are constructed in whole or in part of concrete, concrete blocks, cinder blocks or other fabricated masonry block units, such blocks shall be veneered with brick or natural stone or cement stucco or other approved material over the entire surface exposed above finish grade.

(f) No advertising signs, billboards, or high and unsightly structures shall be erected on any Lot or displayed to the public on any Lot, except that after written permission of Declarant, its successors or assigns, is obtained, a sign may be used to advertise the property for sale. The undersigned shall be authorized to withhold its approval or consent until being furnished information as to the size, style, and color of any proposed sign permitted hereunder. Violation of this covenant shall be subject to the penalty of a stipulated, liquidated damage sum of \$50.00 for each day during which such violation continues. The recovery of such damages shall be available to the undersigned or to any owner of any lots or parcels subject to these covenants, except that the violator shall not be required to pay damages to more than one plaintiff or complainant. Written permission to erect signs advertising the property for sale shall not be required after all Residences are completed.

(g) Except as approved by the Architectural Review Board, no living, healthy trees that are more than two inches in diameter at a point two feet above the ground shall be removed, and no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed; except those that must be removed due to damage posed to person or property or to ameliorate the effects of storm damage.

9.02 Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the Architectural Review Board, the members of which need not be Owners or representatives of Owners, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Architectural Review Board. The Architectural Review Board may establish and

charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

9.03 Architectural Review Board. The Architectural Review Board shall consist of at least three (3), but not more than five (5), Persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and all Lots have certificates of occupancy issued thereon, Declarant retains the right to appoint all members of the Architectural Review Board who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such, the Board shall appoint the members of the Architectural Review Board, who shall thereafter serve and may be removed at the Board's discretion.

9.04 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines, however, are not the exclusive basis for decisions of the Architectural Review Board and compliance with the Design Guidelines does not guarantee approval of any application. The Architectural Review Board shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and not retroactively.

(b) Procedures. Plans and specification showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Architectural Review Board for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other feature of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the reviewing body may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finishing, among other considerations. Decisions may be based solely on aesthetic conditions.

9.05 Specific Guidelines and Restrictions.

(a) No lot or parcel of land shall be used as a dumping ground for rubbish, trash or garbage; nor shall any lot or parcel be used for keeping or breeding of livestock animals or poultry of any kind, except as provided in Section 2.02 herein and except that household pets may be kept provided they are not kept for breeding or maintained for any commercial purpose. No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance to the neighborhood nor shall any hazardous or toxic material (excluding normal household items) be stored on any Lot. Garbage containers shall be buried or shall be located abutting rear or sides of house and shall be

contained within an enclosure. The design and materials of such enclosure shall be in keeping with the general appearance of the house.

(b) No building shall be located nearer to a street line than indicated by the building lines shown on the Plat, nor nearer to a side lot line than fifteen (15) feet. Further, all surface improvements, including but not limited to, all building parking areas and roadways shall be set back at least fifteen (15) feet from the perimeter of the property. For the purposes of this covenant, eaves, steps and open porches not covered by a roof structure shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of the building or construction on any lot to encroach upon another lot, nor shall any building be erected or placed on any lot or parcel having an area of less than 3500 heated square feet of interior area. No building shall be constructed that exceeds thirty-five (35) feet in height from the ground to the mid-point of the gable. No Lot shall be subdivided.

(c) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

(d) No Residence shall be leased for any purpose without the prior written approval of the Board.

(e) Zoning regulations applicable to property subject to this Declaration shall be observed. In the event of any conflict between any provision of such zoning restrictions and the restrictions of this Declaration, the more restrictive provisions shall apply.

(f) Any propane or other fuel tanks shall be buried.

(g) Motorized vehicles shall be parked only in the garages serving the Lots, provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No motorized vehicles shall be permitted on pathways or unpaved Common Area except as authorized by Section 2.03(a) above. Boats, golf carts, ATV's, recreational vehicles and other similar equipment must be garaged so as not to be visible. Mobile homes are not permitted.

(h) There shall be no visible storage of hay, feed, straw or similar materials on any Lot; all such materials shall be stored within the interior of the improvements on the Lots.

(i) Owners maintaining horses on Equestrian Lots shall arrange for regular removal of all manure.

ARTICLE X

RULE MAKING

10.01 Rules and Regulations. The Board may establish reasonable rules and regulations concerning the use of individual Lots and of the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners and occupants, their families, tenants, guests, invitees, servants and agents, until and unless such rule or regulation be specifically overruled, canceled or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association.

10.02 Authority and Enforcement. The Association shall be used only for those uses and purposes set out in this Declaration, the By-Laws and the Articles of Incorporation. As provided in Section 10.01 hereof, the Board shall have the authority to make and to enforce reasonable rules and regulations governing the conduct, use and enjoyment of individual Lots and the Common Areas, provided that copies of all such rules and regulations are made available to all Owners. Subject to the provision of Section 10.03 hereof, upon the violation of this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, the Board shall have the power to (1) impose reasonable monetary fines which shall constitute a lien upon the Lot, the occupants of which are guilty of such violation or (2) to suspend an Owner's right to vote in the Association, and the Board shall have the power to impose all or any combination of these sanctions. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, which additional period may not exceed thirty (30) days.

10.03 Procedure. Notwithstanding any provisions of this Declaration to the contrary, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Subdivision for violations of the Declaration, the By-Laws or any rules and regulations of the Association unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) The alleged violation;
- (ii) The action required to abate the violation; and
- (iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provisions of this Declaration, the By-Laws or of the rules and regulations of the Association may result in the imposition of sanction after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (1) The nature of the alleged violation;
- (2) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
- (3) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and
- (4) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Officer, Director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE XI

GENERAL PROVISIONS

11.01 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLE OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 7.01 hereof. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 11.01 and the provisions of Section 7.01. The Control Period shall last until the Declarant has sold or otherwise conveyed at least seventy-five (75) percent of the Lots. Upon the expiration of the period of Declarant's right to appoint and remove directors and of the Association pursuant to the provisions of Section 7.01 and this Section 11.01, such right shall automatically pass to the Members, including Declarant if Declarant then owner one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf during such period and which Declarant has in its possession. Any management contact or any other contract or lease executed by or on behalf of the Association during the period of

Declarant's right to control the Association shall be subject to cancellation and termination at any time during the twelve (12) months next immediately following the expiration of the Control Period by the affirmative vote of the Members to whom a majority of the votes in the Association appertain, unless the Members by a like majority shall have theretofore, following the expiration of the Control Period, expressly ratified and approved the same.

11.02 Amendments by Declarant. During the Control Period, Declarant may amend this Declaration or the Plat by an instrument in writing filed and recorded in the Office of the Clerk of the Superior Court of Cherokee County, Georgia, without the approval of any Owner or mortgagee; provided, however, that (1) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, changes the boundaries of any Lot, changes the Declaration, adversely affects the title to any Lot, changes the boundaries of any Lot, changes the number of votes in the Association pertaining thereto or the liability for Common Expenses pertaining to a Lot or Lots, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (2) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 11.02 shall be certified by Declarant as having been duly approved by Declarant and such Owners and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendment as are permitted by this Section 11.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (1) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (2) if such amendment is necessary to enable and reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (3) if such amendment if required by an institutional or governmental lender or purchaser of mortgage loans, including, for example the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, or (4) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration.

11.03 Amendments following the Control Period. Amendments to this Declaration following the expiration of the Control Period shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by members of the Association. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of

any Mortgagee must be approved by such Mortgagee, and (ii) the Association shall be unilaterally entitled to amend this Declaration to comply with any applicable law or to correct any scrivener's errors in this Declaration.

(c) The agreement of the required percentage of the Owners and, where required, any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained and that all notices required by the Act or this Declaration were properly given. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

(d) The approval of any proposed amendment by a Mortgagee shall be deemed implied and consented to if the Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the Mortgagee receives notice of the proposed amendment.

11.04 Enforcement. Each Owner shall comply strictly with the By-Laws and with the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by the Association acting by and through the Board or, in a proper case, by an aggrieved Owner. Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of ownership contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any occupant of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

11.05 Duration.

(a) Every purchaser or grantee of any interest in any property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the

provisions of this Declaration shall run with and bind title to the Subdivision, shall be binding upon and inure to the benefit of Declarant and all Owners and Mortgagees, and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect perpetually to the extent provided by law; provided, however, that, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by any such limitation shall run with and bind the land for the maximum period permitted by Georgia law from the date this Declaration is filed for record in the public real estate records in Cherokee County, Georgia (including any extensions of such maximum period that may be enacted after filing), after which time this Declaration shall be automatically extended and renewed for successive periods of twenty (20) years each unless an instrument in writing signed by Declarant (until the expiration of the Control Period) and Owners comprising more than sixty-seven percent (67%) of the Owners of all the Lots within the Property has been recorded agreeing to terminate this Declaration; provided, further, that no such agreement to terminate shall be effective unless made and recorded no sooner than, but within three (3) years prior to, the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period.

(b) Notwithstanding the foregoing, the easements granted in this Declaration are and shall be perpetual, except that dedication to and acceptance by an appropriate governmental authority or conveyance or grant to an appropriate public utility of the facilities that are the subject of any such easements shall terminate those easements if such dedication, conveyance or grant so provides.

11.06 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board, will best effect the intent of the general plan of ownership. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

11.07 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.08 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

11.09 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Association, the Owners who are signatories hereto, and their heirs, successors, successors in

title and assigns and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Subdivision, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof.

11.10 Notice of Sale. In the event an Owner sells or otherwise disposes of any Lot and/or any improvements thereon, the Owner must promptly furnish to the Association in writing the name and address of such purchaser or transferee.

Declarant further certifies, pursuant to Section 11.02 of the Present Declaration, that this Declaration was duly approved by a majority of Owners existing as of the date hereof, and that no other approval by other Owners or mortgagees was required.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration under seal as of the date and year first above written.

DECLARANT:

YC DEVELOPMENT, INC.

Signed, sealed and delivered
before me this ____ day
of _____, 2008.

Unofficial Witness

By: _____
President

Notary Public
My Commission Expires:

Attest: _____
Title:

[CORPORATE SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION

[To be attached.]