

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**  
*for*  
**SARATOGA**  
*and*  
**SARATOGA PROPERTY OWNERS**

THIS DECLARATION is made this 29th day of March, 2005 by NEBOKI DEVELOPMENT, L.L.C.

WHEREAS, Developer owns all of the property known as **SARATOGA**, a private subdivision, with a private road and secured access, as shown on that certain plat of survey recorded in Plat Book 60 Pages 77-87, Bartow County, Georgia Records. (the "Property"); and

WHEREAS, Developer desires to provide for the benefit of all of the residents of the Property, a Common Area (as hereinafter defined); and

WHEREAS, Developer deems it desirable to create the Association (as hereinafter defined), to own, maintain and administer the Common Area in accordance with the Covenants and Restrictions as hereinafter provided and to insure the enjoyment of such Common Area by such residents; and

WHEREAS, Developer intends that every Owner (as hereinafter defined) of a Residential Unit (as hereinafter defined) which is made subject to this Declaration does automatically and by reason of such ownership and by reason of this Declaration become a member of the Association and subject to its valid rules and regulations and subject to the assessment by the Association pursuant hereto;

NOW THEREFORE, the Developer declares that the properties which are made subject to this Declaration pursuant to Article 2 hereof are and shall be held, transferred,

sold, conveyed and occupied to the Covenants and Restrictions hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. Such Covenants and Restrictions are and shall be binding on all parties having and acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

## ARTICLE 1

*Definitions.* The following terms when used in this Declaration (unless the context shall clearly indicate to the contrary) shall have the following meaning:

(a) "Association" shall mean and refer to Saratoga Property Owners Association, Inc., a nonprofit corporation organization and existing under the laws of the State of Georgia.

(b) "Covenants and Restrictions" shall mean and refer to all covenants, restrictions, easements and charges and liens set forth in this Declaration.

(c) "Developer" shall mean Neboki Development, L.L.C.

(d) "Development Documents" shall mean and refer to the Articles of Incorporation and By-Laws of the Association.

(e) "Manager" shall mean and refer to any person with whom the Association contracts for the administration and operation of the Common Area.

(f) "Mortgage" shall mean and refer to any security instrument by means of which title to the Common Area is conveyed or encumbered to secure a debt, including, without limiting the generality of the foregoing, security deeds, deeds to secure debt, mortgages and deeds of trust.

(g) "Owner" shall mean and refer to any Person (as hereinafter defined) who is or shall be a record owner by purchase, transfer assignment, or foreclosure of a fee or undivided fee interest in a Residential Unit (as hereinafter defined) in a portion of the Restricted Property (as hereinafter defined); provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

(h) "Person" shall mean and refer to any natural person, corporation, partnership, limited partnership, joint venture, association or any other such entity.

(i) "Common Area" shall mean and refer to the property described on the recorded plat of survey of the Property, as Lots C1, C2, C3, C4, and the roads contained within the Property.

(j) "Common Purposes" shall mean and include activities such as ingress and

gress for pedestrian and vehicular traffic, horseback riding, walking, riding of non-motorized vehicles, and such other activities as may be delineated by the Board of Directors of the Association from time to time.

(k) "Restricted Property" shall mean and refer to all real property as set forth in Article 2 of this Declaration and any additional real property added to the jurisdiction of the Association pursuant to Article 2, Section 2 of this Declaration.

(l) "Residential Units" shall mean and refer to each single family detached house located on a tract of subdivided property intended for a single family detached house.

(m) "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Bartow County, covering any portion of the Restricted Property, provided, however, that no portion of the Common Property shall ever be a Lot.

## ARTICLE 2

### **Property Subject to Declaration; Effect Thereof.**

#### Section 1. Property Subject to This Declaration.

This declaration is hereby imposed upon the following described real property and the Developer hereby subjects the following described property to this Declaration, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to this Declaration:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 245, 259 & 260 of the 5<sup>th</sup> District, 3<sup>rd</sup> Section, Bartow County, Georgia, and being a private subdivision known as **SARATOGA**, a Rural Estate Subdivision, all as more fully shown on a plat thereof prepared by Claude E. Head, G.R.L.S. No. 2428, dated October 18, 2004, which plat is recorded in Plat Book 60, Pages 77-87, Bartow County, Georgia records, which plat by reference is incorporated herein and made a part hereof.

#### Section 2. All Restricted Property Bears the Burden, and Enjoys the Benefits, of This Declaration.

All restricted property bears the burden, and enjoys the benefits, of this Declaration. Every person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in any portion of the Restricted Property or later added Restricted Property does agree and shall be deemed by

reason of taking such record title to agree to all of the terms and provisions of this Declaration.

### ARTICLE 3

#### **The Community Association; Automatic Membership and Voting Rights Therein.**

##### Section 1. The Association.

The Developer has caused to be formed and incorporated under the laws of the State of Georgia and there does now exist Saratoga Property Owners Association, Inc., a nonprofit Georgia Corporation.

##### Section 2. Membership.

Every person who is an Owner is and shall be a member of the Association; provided, however, that any Person who owns such interest merely as security for the performance of an obligation shall not be a member of the Association.

##### Section 3. Classes of Membership; Voting Rights.

The Association shall have two classes of membership: Class A and Class B.

(a) *Class A.* Class A members shall be those persons holding an interest required for membership as specified in Section 2 of this Article 3 with the exception of the Developer. Class A membership shall be a nonvoting membership except on such matters and in such events as hereinafter specified. Class A members shall be entitled to full voting privileges:

- (i) At such time as the Class B member shall so designate by notice in writing delivered to the Association, or
- (ii) On the 1<sup>st</sup> day of February, 2012, or
- (iii) the date upon which 25 lots have been sold by Developer to Owners, whichever shall first occur.

Before the earlier of these events, the Class A members shall be entitled to vote only on:

- (i) Any proposal or change of method of calculating the maximum amount of the annual assessment delivered by the Association;
- (ii) Any proposal that is a special assessment levied by the Association, except as otherwise specifically herein provided;

- (iii) Any proposal not to repair or reconstruct any damage or destruction to the Common Area and the facilities thereon;
- (iv) Any proposal to dedicate, transfer or sell all or any part of the Common Area;
- (v) Any proposal of merger, consolidation or dissolution;
- (vi) Any proposal to amend this Declaration or the Articles of Incorporation of the Association; and
- (vii) Any other matter for which it is herein specifically provided that approval of all classes of membership is required.

When entitled to vote, Class A members shall be entitled to one vote for each Residential Unit in which they hold any interest required for membership under Section 2 of this Article 3. When more than one person holds an interest in a Residential Unit, the vote for such Residential Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Residential Unit. In the event of disagreement among such persons, and two or more persons vie to cast a vote for such Residential Unit, then the vote pertaining to such Residential Units shall not be counted.

(b) *Class B.* The Developer shall be the sole Class B member. Class B membership shall be full voting membership, and during its existence, the Class B member shall be entitled to vote on all matters and in all events. The Class B member shall be entitled to three votes for each Lot or Residential Unit in which it holds any interest. At such time as the Class B membership terminates and ceases to exist, the Developer shall be a Class A member insofar as it may then hold any interest required for membership in Section 2 of Article 3. From and after the date on which the Class B membership terminates and ceases to exist in accordance with this Article 3, such membership shall not be revived or restated.

*Section 4. Suspension of Membership Rights.*

The membership rights of any member, including the right to vote, may be suspended by the Association's Board of Directors pursuant to authority granted in the Association's By-Laws, as amended from time to time. Any such suspension shall not affect such member's obligations to pay assessments due, coming due or past due during the period of suspension and shall not affect the permanent charge and lien on the member's property in favor of the Association.

*Section 5. Meetings of the membership.*

All matters concerning meetings of members of the Association, including the time and manner in which notice of any of said meetings must be given to members, shall

be given or conducted as may be required by this Declaration or the By-Laws of the Association, as amended from time to time.

#### ARTICLE 4

##### Section 1. The Common Property; Members Rights in the Common Property.

The Developer hereby covenants with the Association to convey the Common Area to the Association on or prior to:

- (i) On the 1<sup>st</sup> day of February, 2012, or
- (ii) the date upon which 25 lots have been sold by Developer to Owners, whichever shall first occur.

##### Section 2. Members Easements of Enjoyment.

Subject to the provisions contained in (a) through (f) of this Section, every member of the Association shall have a right in the easement of enjoyment in and to the Common Area, including, but not limited to, the nonexclusive right of ingress and egress and nonexclusive right to use the Common Area for Common Purposes, and such easement shall be appurtenant to and shall pass with the title to all portions of the Restricted Property. The Common Area shall be used only for Common Purposes, and the purposes set forth in Article 1, paragraph (j), supra. Rights and easements of enjoyment created hereby shall be subject to the following:

(a) The Developer or its designees shall have the exclusive use of such portion of the Common Area as it, in the exercise of its sole discretion, may deem necessary or advisable for, or as may be reasonably required convenient or incidental to, the construction of improvements within the Restricted Property and Common Area. In addition, Developer, at its expense, covenants to construct in the Common Area, a paved road, the surface type of which shall be at Developer's sole option, and such landscaping and private secured access as Developer, in its sole discretion, deems appropriate. Such right of the Developer shall and does exist notwithstanding any provision in this Declaration which might be construed to the contrary, and such right of the Developer exists without affecting any member's obligation to pay assessments coming due and without affecting the permanent charge and lien on any member's property in favor of the Association.

(b) The Association shall not mortgage any portion of the Common Area which provides ingress and egress to any Residential Unit.

(c) The Association shall be and is empowered to take such steps as are reasonably necessary to protect the Common Area against foreclosure if Developer has pledged any interest in the Common Area to any lender as collateral securing repayment of a loan.

(d) The Association shall be and is empowered, as provided by its By-Laws, to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations.

(e) The Association shall be and is empowered to transfer all of any part of the Common Area if authorized by a two-thirds (2/3) or more vote of those entitled to vote on such matter, subject to the provisions of this Declaration.

(f) The Association shall be and is empowered to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it may deem necessary or desirable for the proper service and maintenance of the Common Area.

Section 3. Extension of Rights and Benefits.

Every member of the Association shall have the right to extend the rights and easements of enjoyment vested in such member under this Article 4 to each member of the member's family who resides with him, and to guests, and to each of his tenants, and to other persons as may be permitted by the Association's Board of Directors.

**ARTICLE 5**

**Assessment**

Section 1. Creation of the Lien or Personal Obligation for Assessments.

Each Class A member, by acceptance of a deed or other conveyance for any Residential Unit in the Restricted Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

(a) Annual assessments and charges; and

(b) Special assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with interest thereon and cost of collection thereof as hereinafter provided shall be a charge on the land, shall be a continuing lien upon the property against which each such assessment is made and shall also be the personal obligation of the person who is the record owner of the property at the time the assessment fell due. This Article 5 shall not apply to Developer so long as Developer is a Class B member.

Section 2. Purpose of Assessment.

The assessments levied under this Article 5 shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members and their tenants and, in particular, for the servicing, improvement and maintenance of the Common Area and facilities related thereto devoted to such purposes and related to the use and enjoyment of the Common Area, and for the maintenance of the landscaped entrance or areas (the "Entrance Areas") of Saratoga, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Such portion of the annual assessments levied by the Association under this Article 5 as may be necessary for such purposes shall be devoted to promoting the recreation, health, safety and welfare of the members and their tenants and establishing and maintaining reserves for the maintenance, repair, replacement and operation of the Common Area and facilities and the entrance area.

Section 3. Basis and Maximums of Annual Assessments.

Until such time as the Class A member shall be entitled to full voting privileges in accordance with Article 3 of this Declaration.

(a) The maximum initial annual assessment of Class A members shall be Five hundred dollars (\$500.00) per residential unit payable to the Association; and

(b) The Class B member shall pay whatever amount, if any, in excess of the Class A member's assessment as, in the sole opinion of the Class B member, may be necessary to maintain and manage (and only to maintain and manage, including the payment of ad valorem taxes) the Common Area.

From and after such time as the Class A members shall be entitled to full voting privileges and in accordance with Article 3 of this Declaration, the annual assessment shall be determined by the Board of Directors of the Association without regard to the maximum annual assessment imposed prior to such time and shall be paid by all the members; provided, however that any assessment after the initial assessment set by the Board of the Association shall not be increased (or decreased) in any one year by an amount in excess of thirty percent (30%) of the assessment for the year immediately prior to the year for which the increase (or decrease) is to be effective.

Section 4. Special Assessments.

Upon the affirmative vote of the holders of two-thirds (2/3) or more of the vote of those then entitled to vote, inclusive of all classes of membership of the Association, the Association may levy and collect a specific special assessment so authorized for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of a capital improvement upon the Common Area,

including any necessary fixtures or personal property related thereto; or for the purpose of increasing the annual assessment by an amount in excess of what is authorized by Section 3 of this Article.

Section 5. Equality of Assessment among Residential Units.

No Residential Unit within the Restricted Property shall bear a higher assessment than any other except that, until such time as the Class A members shall be entitled to full voting privileges in accordance with Article 3 of this Declaration, the Class B member may bear a greater or lesser assessment burden than Class A members while the Class B member may be subsidizing the Association with its obligation pursuant to Section 3 of this Article.

Section 6. Date of Commencement of Annual Assessments; Due Dates.

(a) The Association's Board of Directors shall send written notice of the annual assessment and the amount of such assessment to every member subject thereto at least thirty (30) days in advance of each annual assessment. Unless otherwise provided by the Association's Board of Directors, the entire amount of the annual assessment for each Residential Unit shall become due and payable to the Association on the 31<sup>st</sup> day of January of each year and shall be paid to the Association without further notice from the Association; provided, however, that in the event the Board of Directors shall fail to send written notice of the annual assessment to members at least thirty (30) days prior to the annual assessment period the payment for the annual assessment shall not be due until thirty (30) days after such notice is given; the failure to notify thirty (30) days prior to the annual assessment period shall not, however, reduce the amount of the assessment due and payable.

The annual assessment shall be established on a calendar year basis and shall commence as to each member when he becomes a member pursuant to Section 2 of Article 3.

The first annual assessment payable to the Association with respect to a Residential Unit shall be adjusted according to the number of days remaining in the calendar year following the date a member becomes a member.

(b) The Association shall, upon demand at any time, furnish to any member liable for any assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. A reasonable charge, as determined by the Board of Directors may be made for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Nonpayment of Assessment: the Personal Obligations; the Lien; Remedies of the Association.

(a) If an assessment is not paid on or before the date when due then such assessment shall become delinquent and shall, together with such interest thereon and the

cost of the collection thereof, thereupon become a continuing lien on the delinquent members' property which shall bind such property in the hands of the then owner, his heirs, designees, personal representatives, successors and assigns. In addition to the lien rights, the obligation of the then owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such owners shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding any transfer; and such owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such owners and successors in title creating any indemnification of the owner or any relationship of principal and surety as between themselves.

(b) If an assessment is not paid within thirty (30) days after the due date, such assessment shall bear interest from the date of the delinquency at the lesser of the highest rate permitted by law or ten percent (10%) per annum, and the Association may bring legal action against the owner personally obligated to pay the same or foreclose its lien against such owner's property, in which event, interest, costs and attorney's fees equal to fifteen percent (15%) of the principal amount shall be added to the amount of such assessment as may then be due. Each owner by acceptance of a deed or other conveyance of his or her property, invests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt and to foreclose the aforesaid lien in an appropriate proceeding at law or equity. The lien provided for in this Article 5 shall be in favor of the Association and shall be for benefit of all other members. The Association acting on behalf of the other members shall have the power to bid in the owner's property at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No member may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area and facilities. The Association shall not waive any liens or rights it may have against any member or such members Residential Unit without the approval of holders of one hundred percent (100%) or more of the vote of those then entitled to vote all classes of membership.

(c) If the assessment is not paid within sixty (60) days after the due date, the Association may also suspend the membership rights of the delinquent member, including the right to vote, the right of enjoyment in and to the Common Area and facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such members' obligation to pay future assessments as may come due during the period of such suspension and shall not effect the permanent charge and lien on such members property in favor of the Association.

Section 8. Subordination of Charges and Liens to Mortgages.

(a) The liens and permanent charges of all assessments and charges authorized herein (annual, special or otherwise) with respect to any restricted property is hereby made subordinate to the lien of any first mortgage placed on such property if, but only if, all assessments and charges with respect to such property authorized herein

having a due date on or prior to the date of the mortgage as filed of record have been paid. The liens and permanent charges hereby subordinated are only such liens or charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage.

(b) Such subordination is merely a subordination for the benefit of the mortgagee named therein and shall not relieve the owner of the mortgaged property of his personal obligation to pay all assessments and charges coming due at any time when he is the owner of such property; shall not relieve such property from the liens and permanent charges provided for herein (except to the extent a subordinated lien or permanent charge is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure, or pursuant to a sale under power, shall relieve any existing or previous owner of such property of any personal obligation, or relieve such property or the then owner of such property from liability for any assessment or charges authorized hereunder becoming due after such sale and transfer.

## **ARTICLE 6**

### **Administration**

#### *Section 1. Responsibility for Administration.*

The administration of the Association, and the maintenance, repair and operation of the Common Area and facilities shall be the responsibility of the Association.

#### *Section 2. Maintenance Agreement.*

The Association may enter into such maintenance agreements as are necessary or desirable for the maintenance of the Common Area and facilities and the Entrance Areas. In the event the Association shall determine to place improvements on the Common Area pursuant to this Declaration and enters into a maintenance agreement for the installation and/or operation of such improvements, the manager of the Common Area shall exercise all the powers and shall be responsible for the performance of all the duties of the Association, except those powers and duties specifically and exclusively assigned to the officers directly from members of the Association by this Declaration. Any maintenance agreement which is to be entered into, after approval by a majority of the Board of Directors, shall provide for the compensation to be paid, the term thereof (which shall not exceed one year), and the manner in which and the terms upon which such agreement may be terminated, which shall include the right of termination ten (10) days after two-thirds (2/3) of the members then entitled to vote, affirmatively vote to so terminate such

contract at any time after the Class A members are entitled to the full voting privileges in accordance with Article 3.

Section 3. Limitations of Liability; Indemnification.

Notwithstanding the duties of the Association to maintain and operate the Common Area and to maintain the Entrance Areas, the Association shall not be liable for injury or damage caused by the latent condition of the Common Area nor for injury caused by the elements, members or other persons; nor shall any officer or director of the Association be liable to any person for injury or damage by such officer or director in performance of the duties set forth hereunder unless due to willful misfeasance or malfeasance or gross negligence of such officer or director. Each officer and director of the Association shall be indemnified by the members against all expenses and liabilities, including attorney's fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, and any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer and director are adjudged guilty of willful misfeasance or malfeasance or gross negligence in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors and the Association approve of such settlement and reimbursement as being for and in the best interest of the Association. Officers and directors liability insurance may be obtained by the Association for this purpose.

**ARTICLE 7**

**Architectural Control**

Section 1. Architectural Control Committee - Creation And Composition.

(a) An Architectural Control Committee (the ACC) shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Developer shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residential Units for all of the Lots in the Restricted Property have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Developer, be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 2005. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall subject to the provisions of 5.01(a) be filled by the Developer (or Board if at the time the Board has the right to appoint

members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Developer (or Board if at the time the Board has the right to appoint members of the ACC).

Section 2. Purpose, Powers And Duties Of The ACC.

The purpose of the ACC is to assure that any installation, construction or alteration of any structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the SARATOGA, and (ii) as to the location of structures with respect to topography, finished ground elevation and surrounding structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure on any Lot.

Section 3. Officers, Subcommittees And Compensation.

The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

Section 4. Operations Of The ACC.

(a) *Meetings.* The ACC shall hold regular meeting at least once every six (6) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his Residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states at the beginning of the meeting any such objection or objections to the transaction of business. Except as otherwise provided

herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum is present, and any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and affect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) *Activities.*

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5 hereof and shall, as required, make findings, determinations, rulings and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority, as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit, or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to and reviewed promptly by the ACC, but in no event later than (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

Section 5. Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, revoke, and enforce guidelines (the Design Standards) for the purpose of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and,

(iv) assuring the conformity and harmony of external design and general quality of SARATOGA.

(b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

Section 6. Submission of Plans and Specifications.

No structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing structure upon any Lot be altered in any way which materially changes the exterior appearance of the structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, but not limited to:

(a) a site plan showing the location of all proposed and existing structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof and all siltation and erosion control measures;

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed structures and alterations to existing structures, as such structures will appear after all back-filling and landscaping are completed;

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and,

(f) plans for landscaping and grading.

Section 7. Approval of Plans and Specifications.

Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or structure. Approval of any such plans and specifications relating to any Lot or structure, however, shall be final as to that Lot or structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

Section 8. Disapproval of Plans and Specifications.

The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction, or alteration of a structure (i) to fail to be in conformity and harmony of external design and general quality with the Standards of SARATOGA as set forth in the Design Standards or the Development-Wide Standard, or, (ii) as to location to be incompatible with topography, finished ground elevation and surrounding structures. In any case in which the ACC shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

Section 9. Obligation to Act.

The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take

action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 10. Inspection Rights.

Any employee or agent of the Association or ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot and structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any structure or the use of any Lot or structure is in compliance with the provisions of this Declaration and neither the Association nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of entry or inspection, provided such inspection is carried out in accordance with the terms in this section.

Section 11. Violations.

If any structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after mailing of the aforesaid notice of violation, then the Association shall have the recourse specified in Section 22, hereof.

Section 12. Certification of Compliance.

(a) Upon completion of the installation, construction or alteration of any structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such structure and the Lot upon which such structure is placed and stating that plans and specifications have been approved and that such structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the structures or of any construction, workmanship,

engineering, materials or equipment. The issuance of the Certificate shall in no way be construed to certify to any party that the structures have been built in accordance with any applicable rule or regulation.

Section 13. Fees.

The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

Section 14. Disclaimer as to ACC Approval.

Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Developer, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages, and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## **ARTICLE 8**

### **Restrictive Covenants and Design Guidelines**

Section 1. Application. The covenants and restrictions contained in this Article 8 shall pertain and apply to all Lots and to all structures erected or placed thereon.

Section 2. Restriction of Use. Lots may be used for single-family residences only and for no other purpose, provided that Developer may operate a Sales Office and/or Model Home on a Lot or Lots designated by Developer.

Section 3. Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent Developer or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residential Unit thereon; provided,

however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation), physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 5. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC. No work, including clearing, grubbing or grading, shall be commenced on any Lot unless and until all permissions have been granted by the ACC and the builder or Owner is ready to commence construction of the Residential Unit.

Section 5. Landscaping. No construction or alteration of any structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any structure may be included in the Development Guidelines of the ACC.

Section 6. Trees. No tree having a diameter of four (4) inches or more (measured from a point two (2) feet above ground level), shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 5 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

Section 7. Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

Section 8. Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one For Sale sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard

of a Lot; and, provided further, that if, at the time of any desired use of such sign, the Association is making For Sale signs available for the Owners' use, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and

(iv) for rent signs are prohibited.

(b) In no event during approved construction of any structure shall more than one job identification sign be approved by the ACC.

Section 9. Setbacks. In approving plans and specifications for any proposed structure, the ACC may establish setback requirements for the location of such structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 10. Fences. No fence or wall of any kind shall be erected, maintained or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

Section 11. Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

Section 12. Antennae. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a structure or Lot without prior written approval by the ACC, except that one eighteen inch (18") or smaller receiver may be placed in a location approved by the ACC. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

Section 13. Clotheslines, Garbage Cans, etc. No outside clotheslines will be allowed. Garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

Section 14. Maintenance. Each Owner shall keep and maintain each Lot and structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all structures; (ii) the seeding, watering, and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curbing of the right-of-way bordering said Lot. If in the opinion of the ACC,

any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the recourse specified in Section 22, hereof. Guidelines relating to the maintenance of structures and landscaping may be included in the Design Standards of the ACC.

Section 15. Recreational Vehicles and Trailers. No house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets, and be approved in writing by the ACC.

Section 16. Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be placed adjacent to the driveway, but shall be painted to match the house. No above-ground pools shall be allowed.

Section 17. Non-discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age, national origin, or other federally or state protected status. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

Section 18. Animals. No agricultural animals may be kept on any Lot, except that one horse or llama per acre of fenced area may be kept. Otherwise, no animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said structure have been approved by the ACC.

Section 19. Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any structure approved by the ACC, no lumber, metals, bulk material or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

(e) For as long as Developer is a Class B member, Developer shall have the right, but not the obligation, to designate the waste disposal company which shall be permitted to do business within the development. If so designated, Owners shall be prohibited from using or employing any other waste disposal company for the pickup and disposal of garbage.

(f) No chicken litter, sludge, or any noxious material, may be spread or placed upon any Lot at any time.

Section 20. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community.

Section 21. Protected Preservation Area. As shown on the recorded plat of survey of the Property, Lots 12, 13, 14, 15, 16, 17, 18, 19, 28, 29 and 30 (the "Trail Lots"), and Lots C1, C2, C3 and C4 (the "Common Area"), are affected by a "Protected Preservation Area." The area so designed must be kept safe from destruction, peril, or other adversity, and may include the placement of signs, markers or fencing, or other appropriate features so as to identify the site, and may also include the cleaning, maintenance, and upkeep of the site. Reference is made to O.C.G.A. 36-72, et seq., which is included herein by this reference. The Trail Lots may be used by Owners for walking, jogging, or horseback riding, biking or other non-motorized uses, provided said uses do not cause a nuisance.

Section 22. Enforcement. Enforcement of the covenants contained in this instrument shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages.

## ARTICLE 8

### Insurance and Casualty Losses

#### Section 1. Insurance.

The Board of Directors of the Association or its duly authorized agent shall have the authority to and shall obtain insurance for all improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, in amounts sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering the Common Area and all damage or injury caused by negligence of the Association or any of its agents. All such insurance coverage shall be written in the name of the Association and issued by a company license to do business in the State of Georgia and holding a "B" or better rating by Best's Insurance Report or a similar publication, and all policies shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear.

## ARTICLE 9

### General Provisions

#### Section 1. Duration.

The Covenants and Restrictions of this Declaration shall run with and bind the land, shall be and remain in effect, and shall inure to the benefit of and be enforceable by the Association or the owners of any of the Restricted Property, their respective legal representatives, successors and assigns, for a term of 20 years from the day and year first above written. Said Covenants and Restrictions shall be automatically renewed and extended beyond said 20-year period for successive periods of 20 years each unless terminated by fifty-one percent (51%) of the owners of the Restricted Property in accordance with the provisions of O.C.G.A. 44-5-60(d)(2). Every purchaser or grantee of any interest in any of the Restricted Property by acceptance of a deed or other conveyance thereof, hereby agrees that the Covenants and Restrictions of this Declaration may be renewed and extended as provided herein.

#### Section 2. Notices.

Any notice required or permitted to be sent any member pursuant to any provision of this Declaration may be served by depositing such notice in the United States mail, postage prepaid, addressed to the member or owner to whom it is intended at his last known place of residence, or to such other address as may be furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

Section 3. Severability.

Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or 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.

Section 4. Amendment.

The Covenants and Restrictions of this Declaration may be amended at any time during the first five (5) years following the day and year first above written by an instrument signed by members of the Association then entitled to cast at least two-thirds (2/3) of the votes of each class of members of the Association and, thereafter, by an instrument signed by members of the Association then entitled to cast at least two-thirds (2/3) of the votes of the Association; provided, however, that any such amendment of these Covenants and Restrictions must be in full compliance with all applicable laws and regulations, including the zoning ordinances applicable to the Restricted Property and any covenants affecting the Restricted Property recorded in Bartow County, Georgia Records, and shall not become effective until the instrument evidencing such change has been duly filed for record in the Office of the Clerk of the Superior Court of Bartow County, Georgia, and unless written notice of the proposed amendment is sent to every member at least thirty (30) days in advance of any action taken. Every purchaser or grantee of any interest in the Restricted Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the Covenants and Restrictions of this Declaration may be amended as provided herein.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers and the appropriate corporate seals affixed hereto, the day and year first above written.

NEBOKI DEVELOPMENT, LLC

---

S. Alan Bowen, Member