



NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.

Angela Stewart DeLorme, P.C.
Attorney at Law
P.O. Box 1549
Blue Ridge, GA 30513

24,586
STATE OF GEORGIA
COUNTY OF FANNIN

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR TOCCOA RIVERBEND ESTATES**

This Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for TOCCOA RIVERBEND ESTATES (the "Declaration"), is made this 21st day of August, 2015 (the "Effective Date"), by the undersigned, BIG RIVER ASSOCIATES, LLC, a Georgia limited liability company (hereafter referred to as "Developer" or "Declarant") and TOCCOA RAPIDS, LLC, a Georgia limited liability company (hereafter referred to as "Toccoa").

WITNESSETH:

WHEREAS, pursuant to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Toccoa Riverbend Estates dated November 2, 2012, and recorded in Deed Book 1030, page 316, in the office of the Clerk of Superior Court of Fannin County, Georgia, as amended and restated on May 7, 2014, said Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Toccoa Riverbend Estates being recorded in Deed Book 1091, page 524, in the office of the Clerk of Superior Court of Fannin County, Georgia (the "Declaration") the covenants and restrictions may be amended by an instrument signed by the Owners of two-thirds or more of the Lots; and

WHEREAS, Big River Associates, LLC and Toccoa Rapids, LLC are the owners of 100% of the Lots; and

WHEREAS, Developer and Toccoa desire to amend the Declaration for the common welfare of subsequent Owners in the Community as to Section 7 of the Restrictive Covenants;

NOW, THEREFORE, for and in consideration of the premises and all of the benefits to be derived by Declarant, Toccoa, Owners, their successors and assigns, and each and every subsequent Owner of any Lot in the Community, the Developer does hereby amend the Declaration as follows:

1.

Section 7. All Lots are restricted to permanent housing with a minimum of 1200 square feet of enclosed heated living space in the main structure; however, any home constructed on a Lot with frontage on the Toccoa River shall have a minimum of 2000 square feet. The square footage mentioned above is exclusive of areas contained in open porches, carports, garages, and basements and refers to enclosed above-ground heated living area. The exterior of all homes must be a design appropriate for the natural, rustic environment of the development and shall be in earth tone colors. All exterior foundation materials shall be rock, brick or stucco in a manner to be consistent with the remainder of the dwelling. All dwellings shall be of quality workmanship commensurate with the highest standards of the building profession.

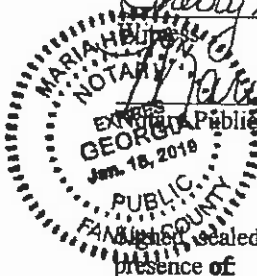
2.

This Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Toccoa Riverbend Estates shall be attached to and incorporated into the original Declaration as amended and restated, and the original Declaration together with all Amendments thereto shall remain in full force and effect.

IN WITNESS WHEREOF, Developer and Toccoa have caused this Second Amendment and Restated Covenants, Conditions, Restrictions and Easements for Toccoa Riverbend Estates to be executed the day and year first written above.

Signed, sealed and delivered in the presence of:

Sherry A. Walden
Maria Helton



BIG RIVER ASSOCIATES, LLC
James A. Dickens
By: James A. Dickens, Member/Manager

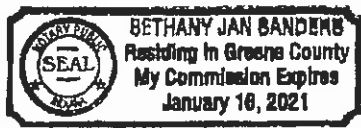
Signed, sealed and delivered in the presence of:

James L. Fisher
Witness

Bethany Jan Sanders
Notary Public

TOCCOA RAPIDS, LLC:
Terry L. Fisher
By: Terry L. Fisher

Sarah H. Fischer
By: SARAH H. FISCHER



CONSENT AND SUBORDINATION OF LENDER

UNITED COMMUNITY BANK ("Lender"), the owner and holder of a Promissory Note made by Jeanette M. Dickens and James A. Dickens, dated as of December 30, 2011 (hereinafter referred to as the "Note"). Repayment of the Note, among other things, is secured by a Security Deed dated December 30, 2011, recorded in Deed Book 992, page 400, in the office of the Clerk of Superior Court of Fannin County, Georgia (as may have been modified or amended, collectively the "Security Deed"). For and in consideration of the benefit to be received by Lender, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender does hereby consent to the recordation of this Declaration in order to subordinate the lien and operation of the Security Deed to this Declaration and the easements and restrictions created hereby. In the event of a foreclosure of the Security Deed, or a transfer of any portion of the Property subject to the Security Deed (the "Security Property") in lieu of foreclosure, Lender agrees that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Security Property together with and subject to all of the terms and conditions of this Declaration.

Signed sealed and delivered
In the presence of:

Sherry S. Walden

Unofficial Witness

Maria Helton

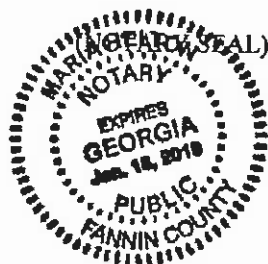
Notary Public

My Commission Expires: 1-18-2019

LENDER:

UNITED COMMUNITY BANK:

By: *Brandon Holloway*
Name: BRANDON HOLLOWAY
Its: Vice President



Angela Stewart DeLorme, P.C.
Attorney at Law
P.O. Box 1549
Blue Ridge, GA 30513

24,586
STATE OF GEORGIA
COUNTY OF FANNIN

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
TOCCOA RIVERBEND ESTATES**

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for TOCCOA RIVERBEND ESTATES (the "Declaration"), is made this 7th day of May, 2014 (the "Effective Date"), by the undersigned, BIG RIVER ASSOCIATES, LLC, a Georgia limited liability company (hereinafter referred to as "Developer" or "Declarant") and TOCCOA RAPIDS, LLC, a Georgia limited liability company (hereinafter referred to as "Toccoa").

WITNESSETH:

WHEREAS, Declarant is the owner of the development known as TOCCOA RIVERBEND ESTATES, same being a development of all those tracts or parcels of land situate, lying and being in the 8th District and 2nd Section of Fannin County, Georgia, and being part of Land Lot Nos. 116 and 117, consisting of 29.42 acres as shown on a plat of survey dated November 27, 2013, prepared by Mark E. Chastain, G.R.L.S. No. 2718, and recorded in Plat Hanger E383, pages 3-5, in the office of the Clerk of Superior Court of Fannin County, Georgia, said recorded plat being incorporated herein by reference (the "Community"); and

WHEREAS, Declarant had declared and set forth that certain Declaration of Covenants, Conditions, Restrictions and Easements for Toccoa Riverbend Estates dated November 2, 2012, and recorded in Deed Book 1030, page 316, in the office of the Clerk of Superior Court of Fannin County, Georgia (the "Declaration"); and

WHEREAS, Toccoa owns 12.52 acres located in Land Lot 116 of the 8th District and 2nd Section of Fannin County, Georgia, adjacent to and abutting the Community as described in a Warranty Deed dated May 14, 2010, and recorded in Deed Book 934, page 291, and shown on a plat recorded in Plat Hanger E236, page 3, Fannin County records (the "Toccoa Property"); and

WHEREAS, Toccoa desires the Toccoa Property to be included as part of the Community; and

WHEREAS, Declarant desires to amend the Declaration for the common welfare of subsequent Owners in the Community and to include the Toccoa Property as part of the Community; and

WHEREAS, Toccoa hereby agrees to submit the Toccoa Property to the covenants governing and regulating the use and occupancy of same.

NOW, THEREFORE, for and in consideration of the premises and all of the benefits to be derived by Declarant, Toccoa, Owners, their successors and assigns, and each and every subsequent Owner of any Lot in the Community, the Declarant does hereby amend and restate the Declaration and declare the following protective covenants to apply to all Lots in the Community. These protective covenants shall become effective immediately and shall be covenants running with the land and shall be binding on all parties, person or entities owning a Lot or Lots in the Community. Every grantee in the Community, by acceptance of deed or other conveyance of such interest, whether or not it shall be so expressed, shall take title to the same subject to this Declaration and to the terms and conditions herein and shall be deemed to have assented to said terms and conditions.

ARTICLE I
DECLARATION OF PROPERTY OWNERS ASSOCIATION

Section 1. Definitions. The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- A. "Articles" shall mean the Articles of Incorporation of the Association.
- B. "Board" shall mean the Board of Directors of the Association.
- C. "By-laws" shall mean the By-laws of the Association.
- D. "Common Expenses" shall mean all expenses of any kind or nature whatsoever incurred by the Association, including, but not limited to, the following:
 - 1. Expenses incurred in connection with the ownership, construction, maintenance, repair, improvement or operation of the Common Property, including Private Drives, the Railroad Crossing or any other property to be maintained by the Association as provided in this Declaration, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alterations;
 - 2. Expenses incurred in connection with the administration and management of the Association; and
 - 3. Expenses declared to be Common Expenses by the provisions of this Declaration or by the Association.
- E. "Common Property" shall mean those certain areas in the Community and all other real property owned, or to be owned, by the Association for the common use and enjoyment of the Owners, including, but not limited to, all common areas, the Private Drives, streets, roads, walkways, pathways, beaches, utility service areas, gates, and common structures. Common Property shall not include the Railroad Crossing lying within the right of way of the Railroad.

F. "Community" shall mean collectively the property known as TOCCOA RIVERBEND ESTATES, which is described in the first paragraph of the recitals to this Declaration, and the Toccoa Property, which is described in the third paragraph.

G. "County" shall mean Fannin County, Georgia

H. "Declarant" or "Developer" shall mean and refer to BIG RIVER ASSOCIATES, L.L.C. a Georgia limited liability company, its successors and assigns.

I. "Development" shall mean, the entire Community.

J. "Home" shall mean a completely constructed single family home, which is designated and intended for use and occupancy as a residence along with all other improvements on the Lots (i.e. fences, sheds, detached garages, etc.) and which is subject to assessments under this Declaration or any supplemental declaration made by the Developer. Said term includes any interest in land, improvement and other property appurtenant to the Home.

K. "Lot" shall mean and refer to any Lot shown on the Plats

L. "Member(s)" shall mean and refer to all those Owners who are members of the Association.

M. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, including the Declarant with respect to any unsold Lot, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

N. "Plat" or "Plats" shall mean the plat of survey for TOCCOA RIVERBEND ESTATES as recorded in Plat Hanger E383, pages 3-5, and the plat of survey of the Toccoa Property as recorded in Plat Hanger E236, page 3, in the office of the Clerk of Superior Court, Fannin County, Georgia, and all future subdivision plats of the Development.

O. "Private Drives" shall mean and refer to those certain portions of the Common Property owned, or to be owned, by the Association and used for pedestrian and/or vehicular access, if any, except for the Railroad Crossing and approaches lying within the Railroad's right of way.

P. "Property" shall mean and refer to all property within the Community as shown on the Plats.

Q. "Property Owners Association" or "Association" shall mean and refer to TOCCOA RIVERBEND ESTATES PROPERTY OWNERS ASSOCIATION, INC. as formed by the Declarant.

R. "Railroad" shall mean the Georgia Northeastern Railroad and its successors and assigns.

S. "Railroad Crossing" shall mean that private crossing identified in and governed by that Private Road Grade Crossing Agreement entered into with the Railroad, a copy of which is attached hereto as Exhibit A.

Section 2. Membership and Voting Rights in the Association.

A. Each and every Lot owner subject to this Declaration shall automatically, and by reason of such ownership, become a Member of the Property Owners Association, provided that any such person or entity who holds an interest merely as a security for the performance of any obligation shall not be a Member. If two or more Lots are combined so as to serve as a residence Lot for one residence, the Owner shall have one vote per combined residence Lot in all transactions and business of the association.

B. Toccoa, as an Owner within the Community, shall be a Member of the Association and shall be a Class A Member. Initially, the Toccoa Property shall consist of one (1) Lot, known as "Lot 15", for purposes of assessments and or calculation of any financial obligation under the Declaration or other Association documents. The Toccoa Property shall be entitled to one (1) vote and will not be obligated to pay more than 1/15th share of any assessments or other Association expenses, regardless of whether any other Lots in the Community are ever sold by Declarant. Under no circumstances will Toccoa ever be obligated to pay any infrastructure or development costs associated with development of the Community. Upon any subdivision of the Toccoa Property, each Lot within the Toccoa Property shall be considered a separate Lot for the purpose of joinder fees, assessments and voting rights under the Declaration.

Section 3. Voting Rights.

A. The Property Owners Association shall initially have two classes of membership, which shall be Class A Members and Class B Members. Class A Members shall be all of the Owners, including Toccoa, with the exception of the Declarant. The Class B Member shall be the Declarant. All Members shall be entitled to one (1) vote per Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

B. Notwithstanding anything to the contrary herein, until such time as the Developer has sold 90% of its Lots in the Community, Declarant shall solely control the affairs of the Property Owners Association, unless said powers shall be authorized, in writing, by the Declarant.

C. Notwithstanding anything to the contrary herein, for as long as Developer is the Owner of any Lot within the Community, no vote, decision, or action which requires the approval or a vote of a majority or more of the Members of the Property Owners Association voting on said matter shall be effective or implemented until Declarant has approved of or consented to same in a writing directed to the Board of Directors of the Property Owners Association.

Section 4. Declaration Superiority. Neither the Articles nor By-laws shall, for any reason, be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

Section 5. Duties of the Association. The Property Owners Association shall, in addition to such obligations, duties and functions as are assigned to it by other provisions of this Declaration, have the obligations, duties and functions (subject to the provisions of this Declaration), to do and perform each and every one of the following for the benefit of the Owners and for the maintenance, administration and improvement of the Community:

A. **Enforcement.** To take such action, whether or not expressly authorized herein or in any governing instrument, as may be reasonably necessary to enforce the restrictions, limitations,

covenants, affirmative obligations, conditions and other provisions of this Declaration, and the Articles and By-laws.

B. Operation and Maintenance of Common Property. To own, operate, maintain and otherwise manage and/or provide for the operation, maintenance and management of the Common Property, together with all easements for operations and maintenance purposes and for the benefit of the Property Owners Association or its Members over and within the Common Property; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, conditions and repair, and to maintain any parking areas and streets free and clear from obstructions and in a safe condition for vehicular use at all times. The Property Owners Association shall maintain and repair the Private Drives and pay all Common Expenses.

C. Taxes and Assessment. To pay all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Property Owners Association and/or any property owned by the Property Owners Association. Such taxes and assessments may be contested or compromised by the Property Owners Association provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

D. Dedication for Public Use. To promptly dedicate any water, sewer, or other utility lines or facilities and appropriate easements as may be specified by Declarant or required by any applicable municipality, utility company, public authority, or similar agency or body as may be designated by Declarant or the Property Owners Association.

E. Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this Declaration, the provisions of the Private Road Grade Crossing Agreement and the rules and regulation of the Property Owners Association.

F. Operation and Maintenance of the Railroad Crossing. To maintain and otherwise manage and/or provide for the maintenance and management of the Railroad Crossing for the benefit of the Property Owners Association or its Members; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, conditions and repair, and to maintain such crossing free and clear from obstructions and in a safe condition for vehicular use at all times. The Property Owners Association shall maintain and repair the Railroad Crossing and pay all associated expenses. The Property Owners Association shall also pay all expenses invoiced by the Railroad pursuant to that Private Road Grade Crossing Agreement entered into with the Railroad. Any such payments to the Railroad shall be a billed on a pro rata basis to each Owner as a Special Assessment. In addition, the Property Owners Association shall also pay to the Railroad, on behalf of each owner, a licensee fee for each Owner's privilege of using the Railroad Crossing. The Property Owners Association will bill each Owner, as a Special Assessment, for the licensee it has paid on behalf of each Owner.

Section 6. Powers and Authority of the Property Owners Association. The Property Owners Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Property Owners Association under this Declaration, the Articles and By-laws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Property Owners Association including the following which are listed without intent to limit the foregoing articulation:

A. Assessments. To levy assessments on the Owners of the Lots and to enforce payment of such assessments, all in accordance with the provision of this Declaration.

B. Right of Enforcement. In its own name, on its own behalf or on behalf of any Owner or Owners, who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration, the Private Road Grade Crossing Agreement and the rules and regulations promulgated by the Property Owners Association, and to enforce, by mandaminy injunction or otherwise, all of the provisions thereof.

C. Easements and Right-of-Way. To grant and convey to any third party an easement in, on, over, and under the Common Property and the Private Drives located thereon for the purposes of constructing, erecting, operating or maintaining thereon, therein, or thereunder, (1) underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio and antenna facilities and for other appropriate purposes; (2) public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities.

D. Right of Entry. Without liability to Developer, any Owner, or its agents, independent contractors and employees, Developer and the Association reserves to itself, its designees, successors and assigns, easements, licenses, and rights and privileges of a right-of-way in, through, over, under and across the Community for the construction, maintenance and repair of utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines and other improvements, which may from time to time be in or along the streets and roads or other areas of the Community. Developer also reserves the right for itself, its designees, successors and assigns, to continue to use the Community, and any Common Property, Private Drives, roadways, sales offices, model homes, signs, flags, promotional material and parking spaces located in the Community, in its efforts to market Lots, land and Homes in the Community. This paragraph may not be amended without the prior written consent of the Developer. The Developer, by its execution of this Declaration, hereby grants to each Owner a non-exclusive perpetual easement for the maintenance, repair and replacement of water and sanitary sewer lateral pipes servicing the Lot and improvements thereon, which lateral pipes are located within the Common Property. The Developer, by its execution of this Declaration, hereby grants to the Railroad a non-exclusive perpetual easement upon the Common Property solely to provide access for the maintenance, repair and replacement of the Railroad Crossing.

E. Street Maintenance. To contract and pay for, or otherwise provide for, the construction, reconstruction, repair, replacement, or refinishing of any Private Drives, parking areas, or other paved areas upon any portion of the Common Property not dedicated to any local, state or federal government agency.

F. Controlled Access and Gated Entry Provisions. To make decisions related to security measures, including, but not limited to access privileges of visitors or service personnel. These decisions shall not apply to Declarant or its successors or assigns, who shall have unlimited access as long as any Lots remain unsold by Declarant, its successors or assigns.

G. Railroad Crossing Provisions. To contract and pay for, or otherwise provide for, the construction, reconstruction, maintenance, repair, replacement, or refinishing of the Railroad Crossing and approaches necessary for access to the Common Property. The Property Owners Association shall be jointly and severally liable for the obligations owed by each Owner or Member to the Railroad pursuant to such Owner's or Member's Private Road Grade Crossing Agreement, or shall be solely liable for such obligations in the event such Owner or Member fails or refuses to execute such an agreement with the Railroad as required by this Declaration. Property Owners Association

Section 7. Property Rights in Common Property.

A. **Members' Easements of Enjoyment.** Every Member shall have a nonexclusive right, license, privilege, and easement of enjoyment in and to the Common Property, and such easements shall be appurtenant to and shall pass with the title to every Lot. In addition, the Declarant does hereby grant unto the Owners of each Lot a non-exclusive easement in perpetuity for ingress and egress and over and across the Private Drives, streets, roads, crossings (excluding the Railroad Crossing) and walks in the Common Property for all lawful purposes.

B. **Title to Common Property.** The Declarant shall convey to the Property Owners Association legal title to any Common Property, subject to the following covenant which shall be deemed to run with the land and shall be binding upon the Property Owners Association, its successors and assigns:

In order to preserve and enhance the property values of the Community, the Common Property and all facilities now or hereafter built or installed thereon shall at all times be maintained in a first class manner, in good repair and condition and shall be operated in accordance with highest standards. The maintenance and repair of the Common Property shall include, but not be limited to, the repair of damage to the Private Drives, walkways, outdoor lighting, fences, benches, gates and landscape maintenance.

C. **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

1. The right of the Property Owners Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Property and in aid thereof, to mortgage said property

2. The right of the Property Owners Association to take such steps as reasonably necessary to protect the Common Property against foreclosure.

3. The right of the Property Owners Association, as provided in its Articles and By-laws, to suspend the enjoyment right of any Member, except as to ingress and egress to and from such Member's Lot, for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

4. The right of the Property Owners Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, utility for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, cable television, telephone, electricity, gas and other utilities, and for completion of the Development. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication has been signed by two-thirds (2/3) of the Members entitled to vote and has been recorded; and unless notice of the proposed agreement and action thereafter is sent to every Member at least thirty (30) days in advance of any action taken.

5. The right of the holder of a mortgage encumbering the Common Property, upon foreclosure or proceeding in lieu of foreclosure, to enter upon and take possession of the Common Property, for the purpose of operating, administering and maintaining said Common Property for the use and benefit of the Owners, subject to the terms, conditions and provisions of this Declaration.

D. Easements Reserved Unto Declarant Over Common Property and Development.

The Declarant hereby reserves unto itself, its successor and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across the Development, including but not limited to, (1) the right to use the said property for right-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water other public convenience or development utilities; (2) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells and pumping stations and all other water system equipment; (4) the right and easement of ingress and egress for purposes of development and construction and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of TOCCOA RIVERBEND ESTATES; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility, development, or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Development. Finally, the Declarant reserves the right to establish and continue to use any sales offices, signs, or parking spaces located in the Development in its effort to market the Development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant after conveyance of all Lots owned by Declarant until such time as such rights are specifically and expressly relinquished by Declarant by reference to this provision. This paragraph may not be amended without the consent of the Declarant. Nothing contained herein establishes, creates or recognizes a right in the Declarant to cross the Railroad's right of way, as no such right is contained within this Declaration.

E. Transfer of Easement by Declarant. The Declarant hereby covenants, for itself, its successors and assigns, that it will transfer the easements, licenses, rights and privileges reserved in this Declaration by Declarant to the Property Owners Association upon the latter of ten (10) years from the date hereof or the sale by Declarant of the last Lot held for sale in the ordinary course of business by Declarant in the Development. Notwithstanding the above, Declarant, its successors and assigns, shall retain easement access rights for ingress, egress and utilities over and across the Development regardless of the ownership of Lots in the Development.

Section 8. Covenant for Assessments.

A. Personal Obligation of Assessments; Claim of Lien. Each Owner by acceptance of a deed therefore, whether or not it shall be so expressed in such deed; is deemed to covenant and agree to pay to the Property Owners Association the following: (i) annual assessments or charges for the Common Expenses of the Association and other costs described in this Declaration; and (ii) special assessments for capital improvements and other expenses described in this Declaration. Each Owner by acceptance of a deed therefore, whether or not it shall be so expressed in such deed; is also deemed to covenant and agree to pay to the Property Owners Association all charges due for each owner's use of the Railroad Crossing. The annual and special assessments and amounts owed for use of the Railroad Crossing, together with interest and costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, cost of collection, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided the Property Owners Association or the Railroad has caused a claim of lien to be recorded in the Public Records of Fannin County giving notice to all persons that the Property Owners Association or the Railroad is asserting a claim of lien upon the Lot prior to the conveyance of title to said Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof,

the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Property Owners Association, by a managing agent of the Property Owners Association or by an officer of the Railroad. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. Liens filed pursuant to this paragraph may be foreclosed on by suit brought in the name of the Property Owners Association or the Railroad in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a residence and the Property Owners Association or Railroad shall be entitled, as a matter of law, to the appointment of a receiver to collect the same.

B. Purpose of Assessments. The assessments levied by the Property Owners Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Community, and in particular for the improvement and maintenance of property, services, and facilities devoted to the purpose and related to the use and enjoyment of the Common Property and of the Lots situated upon the Property.

C. Annual Assessments and Initial Assessments. Each Class A Member shall be required to pay an Annual Assessment in the amount of Four Hundred Fifty Dollars (\$450.00) per year per Lot owned, which shall be due annually. In the event that multiple Lots are owned, each additional contiguous Lot shall be assessed at 40% of the assessment for the primary residence Lot if combined. Non-contiguous lots shall be assessed at 100%. Said assessment shall be prorated and due at closing in the year of closing and shall become due each year thereafter on January 1st with a fifteen (15) day grace period. Any Class A Member that does not pay said annual assessment before the end of the grace period shall be subject to the penalties set forth in Section I of this Article.

D. Increase of Assessments. During the last quarter of each year, the Board of Directors of the Property Owners Association shall meet and, after consideration of current maintenance costs and calculated needs of the Association, fix the actual assessment in advance for the next year. Any new annual assessments exceeding one hundred fifty percent (150%) of the assessment for the previous year shall have the approval of two-thirds (2/3) of the votes of the Members (if any) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

E. Special Assessments. In addition to the annual assessments authorized by the above sections, the Property Owners Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property and/or road system, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

F. Quorum and Notice for any action as set forth in "Increase of Assessments" and "Special Assessments". Written notice of any meeting called for the purpose of taking any action authorized in this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members in person or by proxy entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

G. Certificate of Payment. The Property Owners Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing and in recordable form,

signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of and assessment therein stated to have been paid.

11. Effect of Nonpayment of Assessment, Personal Obligation, Lien, Remedies of the Association. If the assessments, initial, annual or special, are not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot for which such assessment is delinquent and such lien shall bind the then Owner, his heirs, devisees, personal representatives and assigns. If the such assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Property Owners Association may bring an action of law against the Owner personally obligated to pay the same or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest, the costs of the action for the collection of the assessment, including a reasonable attorney's fee costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought. If the Property Owners Association files a claim of lien on the public records of Fannin County, against any Lot, a Seventy-Five Dollar (\$75.00) lien fee may be charged and shall be added to the unpaid assessment and secured by the lien hereby created. Notwithstanding the above, during the period of Declarant's ownership of any Lot, no assessments shall apply to Declarant or any of the Lots owned by Declarant.

ARTICLE II ROAD EASEMENTS

Section 1. Reservation By Developer of Road Easement.

A. The Developer hereby reserves unto itself, its successors and/or assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property in the Development, including but not limited to: (1) the right to use said property for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2) the right to cut or trim any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right and easement of ingress and egress for purposes of development and construction; and (4) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of said subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Developer to provide or maintain any such utility, development, or service. Nothing herein shall be deemed to create or declare any rights to the Railroad Crossing, any such rights being found solely and exclusively within the Private Road Grade Crossing Agreement.

B. The Developer also reserves the right to connect with and make use of utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the property. Finally, the Developer reserves the right to establish and continue to use any sales offices, signs, or parking space located on the property, in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Developer until conveyance of all Lots have occurred and Developer has executed and recorded an extinguishment of easement with the office of the Clerk of Superior Court of Fannin County, Georgia. Nothing herein shall be deemed to create or declare any rights to the Railroad Crossing, any such rights being found solely and exclusively within the Private Road Grade Crossing Agreement.

Section 2. Road Easements for Community.

A. Developer does hereby establish and create for the benefit of the Association and for all Owners from time to time subject to this Declaration, and does hereby give, grant and convey to each of the aforementioned, a permanent and perpetual forty (40) ft. right-of-way easement for ingress and egress by vehicles or on foot, in, through, over, under and across the Private Drives, railroad crossing and all streets and roads within the Community (as they may be built or relocated in the future). Nothing herein shall be deemed to create or declare any rights to the Railroad Crossing, any such rights being found solely and exclusively within the Private Road Grade Crossing Agreement.

B. The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a lot, by the Developer, which might fail to expressly grant or reserve such an easement.

Section 3. Toccoa Access Easement.

Toccoa does hereby establish and create for the benefit of the Association and for all Owners from time to time subject to this Declaration, and does hereby give, grant and convey in each of the aforementioned, a permanent and perpetual access easement across a twenty (20) foot wide portion of the Toccoa Property abutting the southeast side of the GDOT railroad right of way (the "Toccoa Access Easement") for purposes of accessing the "Riverfront Common Area," consisting of approximately 1 acre, and located East of the Toccoa Property. Use of the Toccoa Access Easement will be limited to Members of the Association and their guests, licensees, and/or tenants, and will be subject to reasonable rules and regulations as may be established by the Association from time to time. To the extent the Association is ever expanded to include additional members beyond the original 15 lots contemplated by this Declaration, any such expansion members shall enjoy the same use of the Toccoa Access Easement; provided expansion beyond the five nearby lots currently owned by Declarant will be subject to the prior written consent of Toccoa. Within one (1) year after the Effective Date, the Developer will construct a twelve (12) foot gravel access road across the Toccoa Access Easement area. After initial construction of the road, the Association will perpetually maintain the road in good condition and repair and shall be responsible for ensuring the drainage area adjacent to Riverfront Common Area remains clear and free flowing at all times sufficient to prevent pooling of water onto the Toccoa Property.

Section 4. Utility Easement Benefiting Toccoa.

Developer does hereby establish, create and grant a general utility easement across the Community for the benefit of the Toccoa Property. This right shall include a perpetual right to connect into any permanent utility facilities, including without limitation utility lines, wires, pipes, conduits, cable, television, sewers, and drainage and other utility lines, which may from time to time be located in or along the streets and roads within the Community.

**ARTICLE III
RESTRICTIVE COVENANTS**

Section 1. The protective covenants and restrictions set forth herein shall apply only to the lots.

Section 2. All residential structures shall be constructed in accordance with all local and state codes.

Section 3. Only one single-family residence shall be constructed on any one Lot, provided, however, that the owner of any Lot may erect a garage, guest house, or outbuilding for use in conjunction with such residence. Said garage, guest house or outbuilding must be fashioned in appearance and likeness to the design of the main residence. No prefabricated buildings, metal buildings nor carports shall be erected on any Lot. No mobile homes will be used or located on any lot at any time either temporarily or permanently. No old, new, complete or used home may be moved onto any Lot. All homes must be constructed onsite.

Section 4 All building construction shall be completed within twelve (12) months from the starting date of construction, unless otherwise approved, in writing, by the Developer. The construction site must be kept clean of debris and waste must be disposed of properly. Any damage to roads, adjacent properties or other common property shall be the responsibility of the Owner and builder. Owners shall be responsible for the acts of their employees, subcontractors, suppliers, and other persons or parties involved in construction or alteration of a home site, including compliance with the Private Road Grade Crossing Agreement. In this regard, the Owner shall be responsible for ensuring

- A. That the construction site is kept clean and free of debris and all waste material disposed of properly.
- B. That stockpiles of unused materials are kept in a neat and orderly fashion.
- C. That a freestanding, enclosed toilet ("Port-a-Pot") be installed on the lot prior to commencement of construction of the primary residence, be maintained in good operating condition while on the Property, and be removed immediately upon completion of the construction.
- D. That no debris or waste material from lot clearing, site preparation, or construction is disposed of by burning or burying on any lot. However, Developer may clear and burn as required to improve the appearance of the Property.

Section 5. Except as otherwise provided herein, no structure of a temporary character, such as a mobile home, basement, camper, lean-to, tent, shack, garage, barn or other outbuilding will be used on any Lot at any time as a residence either temporarily or permanently.

Section 6. All Lots shall be used for residential purposes only and no business or business activity shall be carried on upon any Lot at any time, with the exception that short term rentals of homes in the Community shall be allowed. The Owner of the home shall remain responsible for the conduct of guests and their compliance with these covenants. There shall also be an exception for home-based businesses involving no retail traffic or storage of inventory or equipment.

Section 7. All Lots are restricted to permanent housing with a minimum of 1500 square feet of enclosed heated living space in the main structure; however, any home constructed on a Lot with frontage on the Toccoa River shall have a minimum of 2000 square feet. The square footage mentioned above is exclusive of areas contained in open porches, carports, garages, and basements and refers to enclosed above-ground heated living area. The exterior of all homes must be a design appropriate for the natural, rustic environment of the development and shall be in earth tone colors. All exterior foundation materials shall be rock, brick or stucco in a manner to be consistent with the remainder of the dwelling. All dwellings shall be of quality workmanship commensurate with the highest standards of the building profession.

Section 8. No signs of any type shall be allowed on any Lot with the exception of a temporary sign offering all or a portion of the Property for sale and a small sign used for reasonable address identification. "For sale" signs shall not be any larger than 36" x 36", and address identification signs shall be no larger than 144 square inches. An exception shall also be made for the Developer for the placement of signs advertising the Development.

Section 9. No noxious or offensive activities shall be permitted or carried on upon any Lot, nor shall anything be done thereof which may be or become an annoyance or nuisance to the Community. No outdoor light that shines onto another Lot causing annoyance to the other Owner shall be permitted nor shall loud music that carries and causes annoyance to another Owner be permitted. No offensive, noisy or illegal activity shall be suffered or permitted upon any Lot, nor shall any lot be used for any illegal purpose. No hunting or discharging of firearms shall be permitted within the Community.

Section 10. Personal recreational vehicles such as golf carts, utility vehicles, 4-wheel ATVs may be operated on roads within the Property at speeds not to exceed fifteen (15) miles per hour, by persons 18 years of age or older who possess a valid state driver license. Off-road operation of such vehicles is not permitted on the Property at any time. No recreational use of dirt bikes, motorcycles or any similar type vehicles shall be permitted within the Development. Motorcycles and ATVs shall be used within the Development for transportation only and shall not be operated in any manner that would be considered offensive or noisy. All such vehicles must be equipped with sound attenuating devices (mufflers) so as not to annoy other lot owners or their guests.

Section 11. No Owner may remove or top more than fifty percent (50%) of the existing trees with a diameter of eight (8) inches at the height of five (5) feet above ground level on any Lot. Such removal shall be equally distributed over the entire Lot, except that clear-cutting shall be permitted for purposes of construction of a permanent residence. Clear cutting shall not extend more than twenty (20) feet from the structure foundation, plus attached decks or porches.

Section 12. No animals, livestock or poultry shall be raised, bred or maintained on any subdivision lot, except that dogs, cats or other ordinary household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Potentially vicious breeds of dogs are specifically prohibited and may not be kept, bred or raised on any lot. Pets must be kept under control and shall not be permitted to annoy neighbors. No dog runs or pens are permitted on any Lot, and dogs shall not be permitted to roam freely at any time. All pet owners must comply with county ordinances.

Section 13. No trash, garbage or other waste material or refuse shall be placed or stored on any Lot except in covered sanitary containers designed for that purpose. All containers must be stored within the home or within an enclosure designed for that purpose, which must be at least five (5) feet from any lot line.

Section 14. Each Lot and the improvements constructed thereon shall be maintained in a good, safe and attractive condition, and grass must be mowed on a regular basis. Each Lot shall be kept and maintained completely free of any junk, trash and garbage (including old vehicles and discarded appliances). All machinery, boats, trailers, recreational vehicles or automobiles in storage will be located in a garage or basement. No inoperative cars, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in a garage or basement. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the Community. All vehicles shall have current license plates.

Section 15. No travel trailer or motor home (unless, said vehicle is housed in a completely enclosed garage), truck (excluding pickup trucks), camper, tent, or other similar vehicle shall be placed on any Lot at any time for a period exceeding forty-eight (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation, dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on any Lot, except for so long as necessary for use in connection with ongoing construction.

Section 16. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any Lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

Section 17. No clotheslines shall be permitted on any Lot. No garments, laundry, rags or other articles may be aired or dried outside on any Lot.

Section 18. All fencing shall be made of wood, stone or wrought iron and finished in earth tones and a style that complements the design of the main residence. Fences shall not exceed a height of four (4) feet. Privacy fences or screens around hot tubs or in-ground pools may not exceed six (6) feet in height. Above-ground swimming pools shall not be permitted on any Lot.

Section 19. At the time of purchase of a Lot within the Community, each Owner shall execute an Acknowledgement of this Declaration and the Private Road Grade Crossing Agreement attached hereto, which grants a license to use a private railroad crossing to be constructed and maintained by the Property Owners Association. No activities shall be allowed that will interfere with the operations of the Railroad.

Section 20. The Owner of a Lot within the Community may enforce the restrictive covenants by proceeding at law or in equity against any person or persons or entity violating or attempting to violate any covenant or restriction either by seeking to restrain such violation or seeking damages. The Owners are not under any mandatory duty to seek enforcement of any of these covenants as set forth herein. The failure of the Developer, the Association or of any Owner to enforce any of said covenants and restrictions and other provisions should in no event be deemed a waiver of the right to do so thereafter.

Section 21. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 22. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE IV **GENERAL PROVISIONS**

Section 1. **Execution of Documents Required by Fannin County, Georgia or the Railroad.** The Developer's plan for the development of the Community may require from time to time the execution of certain documents required by the County or the Railroad. To the extent that said documents require the joinder of any or all Owners in the Community, each of said Owners, by virtue of their acceptance of a deed to their respective Lot, does irrevocably give and grant to the Developer, or any of its officers individually, full power of attorney to execute said documents as their agent and in their place and stead.

Section 2. **Enforcement.** The Railroad, the Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, court costs and reasonable attorneys' fees for any proceeding to enforce this Declaration, including any appeal therefrom, shall be borne by the Owner(s) against whom the suit has been filed. Failure by the Railroad, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of twenty (20) years. This Declaration may be amended by an Instrument signed by the Owners of two-thirds (2/3) or more of the Lots, or by a vote of ninety percent (90%) of a quorum of Owners present in person or by proxy at a duly called regular or special meeting of the members of the Association. Notwithstanding anything to the contrary herein, Developer will have the right to amend this Declaration without the consent of any of the Owners for clarification purposes only; provided, however, Developer owns at least one (1) Lot in the Community. Any amendment that in any way alters or affects the obligations owed to the Railroad shall also require the written consent of the Railroad to be effective. Any amendment to this Declaration shall comply with all applicable codes, laws, regulations and ordinances then in place and must be recorded in the office of the Clerk of the Superior Court of Fannin County, Georgia.

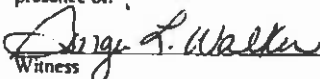
Section 5. Damage or Destruction to Common Property. Each Owner shall be liable to the Association for any damage to the Common Property not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, guests and invitees, both minor and adult.


Section 6. Release of Liability for Declarant. Declarant shall in no way be held liable or subject to any law suit, regardless of the type, from anyone in regards to or in connection with the Development of the Property upon the Developer's sale of all Lots within Community. Declarant hereby states that at time of recordation of this agreement they have complied with all Fannin County Land Development laws and regulations for development of said Property, and should any new purchaser of a Lot within said subdivision not comply with said county laws and regulations for any reason, Declarant shall in no way be held responsible or liable, and shall be fully released of any liability thereof.

Section 7. Release of Liability for Railroad. Railroad shall in no way be held liable or subject to any law suit, regardless of the type, from anyone in regards to or in connection with the Development of the Property or the use of the Railroad Crossing. Each Owner acknowledges and agrees that there are certain inherent risks in crossing a railroad track and by purchasing property within the Development/Community assumes such risk.

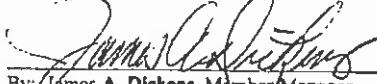
IN WITNESS WHEREOF, Declarant and Toccoa have caused this Amended and Restated Covenants, Conditions, Restrictions and Easements for TOCCOA RIVERBEND ESTATES and Declaration of Property Owners Association to be executed the day and year first written above.

Signed, sealed and delivered in the presence of:


Witness


Notary Public

BIG RIVER ASSOCIATES, LLC:


By: James A. Dickens, Member/Manager



Signed, sealed and delivered in the presence of:

Jane C. Thomas
Witness
Robt. P. J. [Signature]
Notary Public

TOCCOA RAPIDS, LLC:

Larry L. Fischer Member/Manager
By:
Sarah W. Fischer Member/Manager
By:



CONSENT AND SUBORDINATION OF LENDER

UNITED COMMUNITY BANK ("Lender"), the owner and holder of a Promissory Note made by Jennette M. Dickens and James A. Dickens, dated as of December 30, 2011 (hereinafter referred to as the "Note"). Repayment of the Note, among other things, is secured by a Security Deed dated December 30, 2011, recorded in Deed Book 992, page 400, in the office of the Clerk of Superior Court of Fannin County, Georgia (as may have been modified or amended, collectively the "Security Deed"). For and in consideration of the benefit to be received by Lender, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender does hereby consent to the recordation of this Declaration in order to subordinate the lien and operation of the Security Deed to this Declaration and the easements and restrictions created hereby. In the event of a foreclosure of the Security Deed, or a transfer of any portion of the Property subject to the Security Deed (the "Security Property") in lieu of foreclosure, Lender agrees that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Security Property together with and subject to all of the terms and conditions of this Declaration.

Signed sealed and delivered
In the presence of:

R. J. May
Unofficial Witness

Maria Heiton
Notary Public

My Notary Public Expires: 1-18-2015



LENDER:

UNITED COMMUNITY BANK:
By: John W. Chestnut, III
Name: _____
Its: President

Doc ID: 001451230028 Type: COVE
Recorded: 11/18/2012 at 11:40:00 AM
Fee Amt: \$84.00 Page 1 of 28
Fannin Co. Clerk of Superior Court
DANA CHASTAIN Clerk of Courts
BK 1030 pg 316-343

Angela Stewart DeLorme, P.C.
Attorney at Law
P.O. Box 1549
Blue Ridge, GA 30513

STATE OF GEORGIA
COUNTY OF FANNIN

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
TOCCOA RIVERBEND ESTATES**

This Declaration of Covenants, Conditions, Restrictions and Easements for TOCCOA RIVERBEND ESTATES (the "Declaration"), is made this 2nd day of November, 2012, by the undersigned, BIG RIVER ASSOCIATES, LLC, a Georgia limited liability company (hereafter referred to as "Developer" or "Declarant").

WITNESSETH:

WHEREAS, said Developer is the owner of the development known as TOCCOA RIVERBEND ESTATES, and being a development of all those tracts or parcels of land situate, lying and being in the 8th District and 2nd Section of Fannin County, Georgia, and being part of Land Lot Nos. 116 and 117, consisting of 30.46 acres as shown on a plat of survey dated October 22, 2012, prepared by Mark E. Chastain, G.R.L.S. No. 2718, and recorded in Plat Hanger E329, page 8, in the office of the Clerk of Superior Court of Fannin County, Georgia, said recorded plat being incorporated herein by reference (the "Community"); and

WHEREAS, it is the intent of the Developer to subdivide and create Lots within the Community that will be conveyed subject to all easements, restrictions, and rights of way as set forth on the recorded plat for the Community; and

WHEREAS, it is to the interest, benefit and advantage of the Developer, the subsequent owners and of each and every person who shall hereinafter purchase any Lot in the Community that certain protective covenants governing and regulating the use and occupancy of the same be established, set forth and declared.

NOW, THEREFORE, for and in consideration of the premises and all of the benefits to be derived by Developer, Owners, their successors and assigns, and each and every subsequent Owner of any Lot in the Community, the Developer does hereby set up, establish, promulgate, and declare the following protective covenants to apply to all Lots in the Community. These protective covenants shall become

effective immediately and shall be covenants running with the land and shall be binding on all parties, person or entities owning a Lot or Lots in the Community. Every grantee in the Community, by acceptance of deed or other conveyance of such interest, whether or not it shall be so expressed, shall take title to the same subject to this Declaration and to the terms and conditions herein and shall be deemed to have assented to said terms and conditions.

ARTICLE I
DECLARATION OF PROPERTY OWNERS ASSOCIATION

Section 1. **Definitions.** The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- A. "Articles" shall mean the Articles of Incorporation of the Association.
- B. "Board" shall mean the Board of Directors of the Association.
- C. "By-laws" shall mean the By-laws of the Association.
- D. "Common Expenses" shall mean all expenses of any kind or nature whatsoever incurred by the Association, including, but not limited to, the following:
 - 1. Expenses incurred in connection with the ownership, construction, maintenance, repair, improvement or operation of the Common Property, including Private Drives, the Railroad Crossing or any other property to be maintained by the Association as provided in this Declaration, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alterations;
 - 2. Expenses incurred in connection with the administration and management of the Association; and
 - 3. Expenses declared to be Common Expenses by the provisions of this Declaration or by the Association.
- E. "Common Property" shall mean those certain areas in the Community and all other real property owned, or to be owned, by the Association for the common use and enjoyment of the Owners, including, but not limited to, all common areas, the Private Drives, streets, roads, walkways, pathways, benches, utility service areas, gates, and common structures. Common Property shall not include the Railroad Crossing lying within the right of way of the Railroad.
- F. "Community" shall mean the property known as TOCCOA RIVERBEND ESTATES, which is described in the first paragraph of the recitals to this Declaration.
- G. "County" shall mean Fannin County, Georgia.
- H. "Declarant" or "Developer" shall mean and refer to BIG RIVER ASSOCIATES, LLC, a Georgia limited liability company, its successors and assigns.
- I. "Development" shall mean, the entire Community.
- J. "Home" shall mean a completely constructed single family home, which is designated and intended for use and occupancy as a residence along with all other improvements on the Lots (i.e. fences, sheds, detached garages, etc.) and which is subject to assessments, under this Declaration

or any supplemental declaration made by the Developer. Said term includes any interest in land, improvement and other property appurtenant to the Home.

K. "Lot" shall mean and refer to any Lot shown on the Plats.

L. "Member(s)" shall mean and refer to all those Owners who are members of the Association.

M. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, including the Declarant with respect to any unsold Lot, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

N. "Plat" or "Plats" shall mean the plat of survey for TOCCOA RIVERBEND ESTATES as recorded in Plat Hanger E329, pages 8, in the office of the Clerk of Superior Court, Fannin County, Georgia, and all future subdivision plats of the Development.

O. "Private Drives" shall mean and refer to those certain portions of the Common Property owned, or to be owned, by the Association and used for pedestrian and/or vehicular access, if any, except for the Railroad Crossing and approaches lying within the Railroad's right of way.

P. "Property" shall mean and refer to all property within the Community as shown on the Plat.

Q. "Property Owners Association" or "Association" shall mean and refer to TOCCOA RIVERBEND ESTATES PROPERTY OWNERS ASSOCIATION, INC. as formed by the Declarant.

R. "Railroad" shall mean the Georgia Northeastern Railroad and its successors and assigns.

S. "Railroad Crossing" shall mean that private crossing identified in and governed by that Private Road Grade Crossing Agreement entered into with the Railroad, a copy of which is attached hereto as Exhibit A.

Section 2. Membership and Voting Rights in the Association. Each and every lot owner subject to this Declaration shall automatically, and by reason of such ownership, become a Member of the Property Owners Association, provided that any such person or entity who holds an interest merely as a security for the performance of any obligation shall not be a Member. If two or more Lots are combined so as to serve as a residence Lot for one residence, the Owner shall have one vote per lot in all transactions and business of the association.

Section 3. Voting Rights.

A. The Property Owners Association shall initially have two classes of membership, which shall be Class A Members and Class B Members. Class A Members shall be all of the Owners with the exception of the Declarant. The Class B Member shall be the Declarant. All Members shall be entitled to one (1) vote per Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

B. Notwithstanding anything to the contrary herein, until such time as the Developer has sold 90% of its Lots in the Community, Declarant shall solely control the affairs of the Property Owners Association, unless said powers shall be authorized, in writing, by the Declarant.

C. Notwithstanding anything to the contrary herein, for as long as Developer is the Owner of any Lot within the Community, no vote, decision, or action which requires the approval or a vote of a majority or more of the Members of the Property Owners Association voting on said matter shall be effective or implemented until Declarant has approved of or consented to same in a writing directed to the Board of Directors of the Property Owners Association.

Section 4. Declaration Superiority. Neither the Articles nor By-laws shall, for any reason, be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

Section 5. Duties of the Association. The Property Owners Association shall, in addition to such obligations, duties and functions as are assigned to it by other provisions of this Declaration, have the obligations, duties and functions (subject to the provisions of this Declaration), to do and perform each and every one of the following for the benefit of the Owners and for the maintenance, administration and improvement of the Community:

A. **Enforcement.** To take such action, whether or not expressly authorized herein or in any governing instrument, as may be reasonably necessary to enforce the restrictions, limitations, covenants, affirmative obligations, conditions and other provisions of this Declaration, and the Articles and By-laws.

B. **Operation and Maintenance of Common Property.** To own, operate, maintain and otherwise manage and/or provide for the operation, maintenance and management of the Common Property, together with all easements for operations and maintenance purposes and for the benefit of the Property Owners Association or its Members over and within the Common Property; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, conditions and repair, and to maintain any parking areas and streets free and clear from obstructions and in a safe condition for vehicular use at all times. The Property Owners Association shall maintain and repair the Private Drives and pay all Common Expenses.

C. **Taxes and Assessment.** To pay all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Property Owners Association and/or any property owned by the Property Owners Association. Such taxes and assessments may be contested or compromised by the Property Owners Association provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

D. **Dedication for Public Use.** To promptly dedicate any water, sewer, or other utility lines or facilities and appropriate easements as may be specified by Declarant or required by any applicable municipality, utility company, public authority, or similar agency or body as may be designated by Declarant or the Property Owners Association.

E. **Enforcement of Restrictions and Rules.** To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this Declaration, the provisions of the Private Road Grade Crossing Agreement and the rules and regulation of the Property Owners Association.

F. Operation and Maintenance of the Railroad Crossing. To maintain and otherwise manage and/or provide for the maintenance and management of the Railroad Crossing for the benefit of the Property Owners Association or its Members; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, conditions and repair, and to maintain such crossing free and clear from obstructions and in a safe condition for vehicular use at all times. The Property Owners Association shall maintain and repair the Railroad Crossing and pay all associated expenses. The Property Owners Association shall also pay all expenses invoiced by the Railroad pursuant to that Private Road Grade Crossing Agreement entered into with the Railroad. Any such payments to the Railroad shall be a billed on a pro rata basis to each Owner as a Special Assessment. In addition, the Property Owners Association shall also pay to the Railroad, on behalf of each owner, a licensee fee for each Owner's privilege of using the Railroad Crossing. The Property Owners Association will bill each Owner, as a Special Assessment, for the licensee fee it has paid on behalf of each Owner.

Section 6. Powers and Authority of the Property Owners Association. The Property Owners Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Property Owners Association under this Declaration, the Articles and By-laws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Property Owners Association including the following which are listed without intent to limit the foregoing articulation:

A. Assessments. To levy assessments on the Owners of the Lots and to enforce payment of such assessments, all in accordance with the provision of this Declaration.

B. Right of Enforcement. In its own name, on its own behalf or on behalf of any Owner or Owners, who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration, the Private Road Grade Crossing Agreement and the rules and regulations promulgated by the Property Owners Association, and to enforce, by mandatory injunction or otherwise, all of the provisions thereof.

C. Easements and Right-of-Way. To grant and convey to any third party an easement in, on, over, and under the Common Property and the Private Drives located thereon for the purposes of constructing, erecting, operating or maintaining thereon, therein, or thereunder, (1) underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio and antenna facilities and for other appropriate purposes; (2) public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities.

D. Right of Entry. Without liability to Developer, any Owner, or its agents, independent contractors and employees, Developer and the Association reserves to itself, its designees, successors and assigns, easements, licenses, and rights and privileges of a right-of-way in, through, over, under and across the Community for the construction, maintenance and repair of utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines and other improvements, which may from time to time be in or along the streets and roads or other areas of the Community. Developer also reserves the right for itself, its designees, successors and assigns, to continue to use the Community, and any Common Property, Private Drives, roadways, sales offices, model homes, signs, flags, promotional material and parking spaces located in the Community, in its efforts to market Lots, land and Homes in the Community. This paragraph may not be amended without the prior written consent of the Developer. The Developer, by its execution of this Declaration, hereby grants to each Owner a non-exclusive perpetual easement for the maintenance, repair and replacement of water and sanitary sewer lateral pipes servicing the Lot and improvements thereon, which lateral pipes are located within the Common Property. The Developer, by its execution of this Declaration, hereby grants to the Railroad a non-exclusive perpetual

easement upon the Common Property solely to provide access for the maintenance, repair and replacement of the Railroad Crossing.

E. Street Maintenance. To contract and pay for, or otherwise provide for, the construction, reconstruction, repair, replacement, or refinishing of any Private Drives, parking areas, or other paved areas upon any portion of the Common Property not dedicated to any local, state or federal government agency.

F. Controlled Access and Gated Entry Provisions. To make decisions related to security measures, including, but not limited to access privileges of visitors or service personnel. These decisions shall not apply to Declarant or its successors or assigns, who shall have unlimited access as long as any Lots remain unsold by Declarant, its successors or assigns.

G. Railroad Crossing Provisions. To contract and pay for, or otherwise provide for, the construction, reconstruction, maintenance, repair, replacement, or refinishing of the Railroad Crossing and approaches necessary for access to the Common Property. The Property Owners Association shall be jointly and severally liable for the obligations owed by each Owner or Member to the Railroad pursuant to such Owner's or Member's Private Road Grade Crossing Agreement, or shall be solely liable for such obligations in the event such Owner or Member fails or refuses to execute such an agreement with the Railroad as required by this Declaration. Property Owners Association

Section 7. Property Rights in Common Property.

A. Members' Easements of Enjoyment. Every Member shall have a nonexclusive right, license, privilege, and easement of enjoyment in and to the Common Property, and such easements shall be appurtenant to and shall pass with the title to every Lot. In addition, the Declarant does hereby grant unto the Owners of each Lot a non-exclusive easement in perpetuity for ingress and egress and over and across the Private Drives, streets, roads, crossings (excluding the Railroad Crossing) and walks in the Common Property for all lawful purposes.

B. Title to Common Property. The Declarant shall convey to the Property Owners Association legal title to any Common Property, subject to the following covenant which shall be deemed to run with the land and shall be binding upon the Property Owners Association, its successors and assigns:

In order to preserve and enhance the property values of the Community, the Common Property and all facilities now or hereafter built or installed thereon shall at all times be maintained in a first class manner, in good repair and condition and shall be operated in accordance with highest standards. The maintenance and repair of the Common Property shall include, but not be limited to, the repair of damage to the Private Drives, walkways, outdoor lighting, fences, benches, gates and landscape maintenance.

C. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

1. The right of the Property Owners Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Property and in aid thereof, to mortgage said property.

2. The right of the Property Owners Association to take such steps as reasonably necessary to protect the Common Property against foreclosure.

3. The right of the Property Owners Association, as provided in its Articles and By-laws, to suspend the enjoyment right of any Member, except as to ingress and egress to and from such Member's Lot, for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

4. The right of the Property Owners Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, utility for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, cable television, telephone, electricity, gas and other utilities, and for completion of the Development. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication has been signed by two-thirds (2/3) of the Members entitled to vote and has been recorded; and unless notice of the proposed agreement and action thereafter is sent to every Member at least thirty (30) days in advance of any action taken.

5. The right of the holder of a mortgage encumbering the Common Property, upon foreclosure or proceeding in lieu of foreclosure, to enter upon and take possession of the Common Property, for the purpose of operating, administering and maintaining said Common Property for the use and benefit of the Owners, subject to the terms, conditions and provisions of this Declaration.

D. Easements Reserved Unto Declarant Over Common Property and Development. The Declarant hereby reserves unto itself, its successor and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across the Development, including but not limited to, (1) the right to use the said property for right-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water other public convenience or development utilities; (2) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably, necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells and pumping stations and all other water system equipment; (4) the right and easement of ingress and egress for purposes of development and construction and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of TOCCOA RIVERBEND ESTATES; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility, development, or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Development. Finally, the Declarant reserves the right to establish and continue to use any sales offices, signs, or parking spaces located in the Development in its effort to market the Development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant after conveyance of all Lots owned by Declarant until such time as such rights are specifically and expressly relinquished by Declarant by reference to this provision. This paragraph may not be amended without the consent of the Declarant. Nothing contained herein establishes, creates or recognizes a right in the Declarant to cross the Railroad's right of way, as no such right is contained within this Declaration.

E. Transfer of Easement by Declarant. The Declarant hereby covenants, for itself, its successors and assigns, that it will transfer the easements, licenses, rights and privileges reserved in this Declaration by Declarant to the Property Owners Association upon the latter of ten (10) years from the date hereof or the sale by Declarant of the last Lot held for sale in the ordinary course of business by Declarant in the Development. Notwithstanding the above, Declarant, its successors and assigns, shall retain easement access rights for ingress, egress and utilities over and across the Development regardless of the ownership of Lots in the Development.

Section 8. Covenant for Assessments.

A. Personal Obligation of Assessments; Claim of Lien. Each Owner by acceptance of a deed therefore, whether or not it shall be so expressed in such deed; is deemed to covenant and agree to pay to the Property Owners Association the following: (i) annual assessments or charges for the Common Expenses of the Association and other costs described in this Declaration; and (ii) special assessments for capital improvements and other expenses described in this Declaration. Each Owner by acceptance of a deed therefore, whether or not it shall be so expressed in such deed; is also deemed to covenant and agree to pay to the Property Owners Association all charges due for each owner's use of the Railroad Crossing. The annual and special assessments and amounts owed for use of the Railroad Crossing, together with interest and costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, cost of collection, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided the Property Owners Association or the Railroad has caused a claim of lien to be recorded in the Public Records of Fannin County giving notice to all persons that the Property Owners Association or the Railroad is asserting a claim of lien upon the Lot prior to the conveyance of title to said Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Property Owners Association, by a managing agent of the Property Owners Association or by an officer of the Railroad. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. Liens filed pursuant to this paragraph may be foreclosed on by suit brought in the name of the Property Owners Association or the Railroad in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a residence and the Property Owners Association or Railroad shall be entitled, as a matter of law, to the appointment of a receiver to collect the same.

B. Purpose of Assessments. The assessments levied by the Property Owners Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Community, and in particular for the improvement and maintenance of property, services, and facilities devoted to the purpose and related to the use and enjoyment of the Common Property and of the Lots situated upon the Property.

C. Annual Assessments and Initial Assessments. Each Class A Member shall be required to pay an Annual Assessment in the amount of Three Hundred Seventy Five Dollars (\$375.00) per year per lot owned, which shall be due annually. In the event that multiple lots are owned, each additional contiguous lot shall be assessed at 40% of the assessment for the primary residence lot. Said assessment shall be prorated and due at closing in the year of closing and shall become due each year thereafter on January 1st with a fifteen (15) day grace period. Any Class A Member that does not pay said annual assessment before the end of the grace period shall be subject to the penalties set forth in Section 1 of this Article.

change to \$450.00

D. Increase of Assessments. During the last quarter of each year, the Board of Directors of the Property Owners Association shall meet and, after consideration of current maintenance costs and calculated needs of the Association, fix the actual assessment in advance for the next year. Any new annual assessments exceeding one hundred fifty percent (150%) of the assessment for the previous year shall have the approval of two-thirds (2/3) of the votes of the Members (if any) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

E. Special Assessments. In addition to the annual assessments authorized by the above sections, the Property Owners Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property and/or road system, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting.

F. Quorum and Notice for any action as set forth in "Increase of Assessments" and "Special Assessments". Written notice of any meeting called for the purpose of taking any action authorized in this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members in person or by proxy entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

G. Certificate of Payment. The Property Owners Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of and assessment therein stated to have been paid.

H. Effect of Nonpayment of Assessment: Personal Obligation: Lien: Remedies of the Association. If the assessments, initial, annual or special, are not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot for which such assessment is delinquent and such Lien shall bind the then Owner, his heirs, devisees, personal representatives and assigns. If the such assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Property Owners Association may bring an action of law against the Owner personally obligated to pay the same or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest, the costs of the action for the collection of the assessment, including a reasonable attorney's fee costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought. If the Property Owners Association files a claim of lien on the public records of Fannin County, against any Lot, a Seventy-Five Dollar (\$75.00) lien fee may be charged and shall be added to the unpaid assessment and secured by the lien hereby created. Notwithstanding the above, during the period of Declarant's ownership of any Lot, no assessments shall apply to Declarant or any of the Lots owned by Declarant.

ARTICLE II ROAD EASEMENTS

Section I. Reservation By Developer of Road Easement.

A. The Developer hereby reserves unto itself, its successors and/or assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property in the Development, including but not limited to: (1) the right to use said property for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2)

the right to cut or trim any trees, bushes or shrubbery, make any gratings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right and easement of ingress and egress for purposes of development and construction; and (4) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of said subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Developer to provide or maintain any such utility, development, or service. Nothing herein shall be deemed to create or declare any rights to the Railroad Crossing, any such rights being found solely and exclusively within the Private Road Grade Crossing Agreement.

B. The Developer also reserves the right to connect with and make use of utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the property. Finally, the Developer reserves the right to establish and continue to use any sales offices, signs, or parking space located on the property, in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Developer until conveyance of all Lots have occurred and Developer has executed and recorded an extinguishment of easement with the office of the Clerk of Superior Court of Fannin County, Georgia. Nothing herein shall be deemed to create or declare any rights to the Railroad Crossing, any such rights being found solely and exclusively within the Private Road Grade Crossing Agreement.

Section 2. Road Easements for Community.

A. Developer does hereby establish and create for the benefit of the Association and for all Owners from time to time subject to this Declaration, and does hereby give, grant and convey to each of the aforementioned, a permanent and perpetual forty (40) ft. right-of-way easement for ingress and egress by vehicles or on foot, in, through, over, under and across the Private Drives, railroad crossing and all streets and roads within the Community (as they may be built or relocated in the future). Nothing herein shall be deemed to create or declare any rights to the Railroad Crossing, any such rights being found solely and exclusively within the Private Road Grade Crossing Agreement.

B. The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a Lot, by the Developer, which might fail to expressly grant or reserve such an easement.

ARTICLE III RESTRICTIVE COVENANTS

Section 1. The protective covenants and restrictions set forth herein shall apply only to the Lots.

Section 2. All residential structures shall be constructed in accordance with all local and state codes.

Section 3. Only one single-family residence shall be constructed on any one Lot, provided, however, that the owner of any Lot may erect a garage, guest house, or outbuilding for use in conjunction with such residence. Said garage, guest house or outbuilding must be fashioned in appearance and likeness to the design of the main residence. No prefabricated buildings, metal buildings nor carports shall be erected on any Lot. No mobile homes will be used or located on any lot at any time either temporarily or permanently. No old, new, complete or used home may be moved onto any Lot. All homes must be constructed onsite.

Section 4. All building construction shall be completed within twelve (12) months from the starting date of construction, unless otherwise approved, in writing, by the Developer. The construction site must be kept clean of debris and waste must be disposed of properly. Any damage to roads, adjacent properties or other common property shall be the responsibility of the Owner and builder. Owners shall be responsible for the acts of their employees, subcontractors, suppliers, and other persons or parties involved in construction or alteration of a home site, including compliance with the Private Road Grade Crossing Agreement. In this regard, the Owner shall be responsible for ensuring:

- A. That the construction site is kept clean and free of debris and all waste material disposed of properly.
- B. That stockpiles of unused materials are kept in a neat and orderly fashion.
- C. That a freestanding, enclosed toilet ("Port-a-Pot") be installed on the lot prior to commencement of construction of the primary residence, be maintained in good operating condition while on the Property, and be removed immediately upon completion of the construction.
- D. That no debris or waste material from lot clearing, site preparation, or construction is disposed of by burning or burying on any lot. However, Developer may clear and burn as required to improve the appearance of the Property.

Section 5. Except as otherwise provided herein, no structure of a temporary character, such as a mobile home, basement, camper, lean-to, tent, shack, garage, barn or other outbuilding will be used on any Lot at any time as a residence either temporarily or permanently.

Section 6. All Lots shall be used for residential purposes only and no business or business activity shall be carried on upon any Lot at any time, with the exception that short term rentals of homes in the Community shall be allowed. The Owner of the home shall remain responsible for the conduct of guests and their compliance with these covenants. There shall also be an exception for home-based businesses involving no retail traffic or storage of inventory or equipment.

Section 7. All Lots are restricted to permanent housing with a minimum of 1800 square feet of enclosed heated living space in the main structure; however, any home constructed on a Lot with frontage on the Toccoa River shall have a minimum of 2500 square feet. The square footage mentioned above is exclusive of areas contained in open porches, carports, garages, and basements and refers to enclosed above-ground heated living area. The exterior of all homes must be a design appropriate for the natural, rustic environment of the development and shall be in earth tone colors. All exterior foundation materials shall be rock, brick or stucco in a manner to be consistent with the remainder of the dwelling. All dwellings shall be of quality workmanship commensurate with the highest standards of the building profession

Section 8. No signs of any type shall be allowed on any Lot with the exception of a temporary sign offering all or a portion of the Property for sale and a small sign used for reasonable address identification. "For sale" signs shall not be any larger than 36" x 36", and address identification signs shall be no larger than 144 square inches. An exception shall also be made for the Developer for the placement of signs advertising the Development.

Section 9. No noxious or offensive activities shall be permitted or carried on upon any Lot, nor shall anything be done thereof which may be or become an annoyance or nuisance to the Community. No outdoor light that shines onto another Lot causing annoyance to the other Owner shall be permitted nor shall loud music that carries and causes annoyance to another Owner be permitted. No offensive, noisy or illegal activity shall be suffered or permitted upon any Lot, nor shall any lot be used for any illegal purpose. No hunting or discharging of firearms shall be permitted within the Community.

Section 10. Personal recreational vehicles such as golf carts, utility vehicles, 4-wheel ATVs may be operated on roads within the Property at speeds of fifteen (15) miles per hour, by persons 18 years of age or older who possess a valid state driver license. Off-road operation of such vehicles is not permitted on the Property at any time. No recreational use of dirt bikes, motorcycles or any similar type vehicles shall be permitted within the Development. Motorcycles and ATVs shall be used within the Development for transportation only and shall not be operated in any manner that would be considered offensive or noisy. All such vehicles must be equipped with sound attenuating devices (mufflers) so as not to annoy other lot owners or their guests.

Section 11. No Owner may remove or top more than fifty percent (50%) of the existing trees with a diameter of eight (8) inches at the height of five (5) feet above ground level on any Lot. Such removal shall be equally distributed over the entire Lot, except that clear-cutting shall be permitted for purposes of construction of a permanent residence. Clear cutting shall not extend more than twenty (20) feet from the structure foundation, plus attached decks or porches.

Section 12. No animals, livestock or poultry shall be raised, bred or maintained on any subdivision lot, except that dogs, cats or other ordinary household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Potentially vicious breeds of dogs are specifically prohibited and may not be kept, bred or raised on any lot. Pets must be kept under control and shall not be permitted to annoy neighbors. No dog runs or pens are permitted on any Lot, and dogs shall not be permitted to roam freely at any time. All pet owners must comply with county ordinances.

Section 13. No trash, garbage or other waste material or refuse shall be placed or stored on any Lot except in covered sanitary containers designed for that purpose. All containers must be stored within the home or within an enclosure designed for that purpose, which must be at least five (5) feet from any lot line.

Section 14. Each Lot and the improvements constructed thereon shall be maintained in a good, safe and attractive condition, and grass must be mowed on a regular basis. Each Lot shall be kept and maintained completely free of any junk, trash and garbage (including old vehicles and discarded appliances). All machinery, boats, trailers, recreational vehicles or automobiles in storage will be located in a garage or basement. No inoperative cars, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in a garage or basement. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the Community. All vehicles shall have current license plates.

Section 15. No travel trailer or motor home (unless, said vehicle is housed in a completely enclosed garage), truck (excluding pickup trucks), camper, tent, or other similar vehicle shall be placed on any Lot at any time for a period exceeding forty-eight (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation, dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on any Lot, except for so long as necessary for use in connection with ongoing construction.

Section 16. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any Lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

Section 17. No clotheslines shall be permitted on any Lot. No garments, laundry, rugs or other articles may be aired or dried outside on any Lot.

Section 18. All fencing shall be made of wood, stone or wrought iron and finished in earth tones and a style that complements the design of the main residence. Fences shall not exceed a height of

four (4) feet. Privacy fences or screens around hot tubs or in-ground pools may not exceed six (6) feet in height. Above-ground swimming pools shall not be permitted on any Lot.

Section 19. At the time of purchase of a Lot within the Community, each Owner shall execute an Acknowledgment of this Declaration and the Private Road Grade Crossing Agreement attached hereto, which grants a license to use a private railroad crossing to be constructed and maintained by the Property Owners Association. No activities shall be allowed that will interfere with the operations of the Railroad.

Section 20. The Owner of a Lot within the Community may enforce the restrictive covenants by proceeding at law or in equity against any person or persons or entity violating or attempting to violate any covenant or restriction either by seeking to restrain such violation or seeking damages. The Owners are not under any mandatory duty to seek enforcement of any of these covenants as set forth herein. The failure of the Developer, the Association or of any Owner to enforce any of said covenants and restrictions and other provisions should in no event be deemed a waiver of the right to do so thereafter.

Section 21. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 22. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE IV **GENERAL PROVISIONS**

Section 1. **Execution of Documents Required by Fannin County, Georgia or the Railroad.** The Developer's plan for the development of the Community may require from time to time the execution of certain documents required by the County or the Railroad. To the extent that said documents require the joinder of any or all Owners in the Community, each of said Owners, by virtue of their acceptance of a deed to their respective Lot, does irrevocably give and grant to the Developer, or any of its officers individually, full power of attorney to execute said documents as their agent and in their place and stead.

Section 2. **Enforcement.** The Railroad, the Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, court costs and reasonable attorneys' fees for any proceeding to enforce this Declaration, including any appeal therefrom, shall be borne by the Owner(s) against whom the suit has been filed. Failure by the Railroad, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. **Duration and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of twenty (20) years. This Declaration may be amended by an instrument signed by the Owners of two-thirds (2/3) or more of the Lots, or by a vote of ninety percent (90%) of a quorum of Owners present in person or by proxy at a duly called regular or special meeting of the members of the Association. Notwithstanding anything to the contrary herein, Developer will have the right to amend this Declaration without the consent of any of the Owners for clarification purposes only; provided, however, Developer owns at least one (1) Lot in the

Community. Any amendment that in any way alters or affects the obligations owed to the Railroad shall also require the written consent of the Railroad to be effective. Any amendment to this Declaration shall comply with all applicable codes, laws, regulations and ordinances then in place and must be recorded in the office of the Clerk of the Superior Court of Fannin County, Georgia.

Section 5. Damage or Destruction to Common Property. Each Owner shall be liable to the Association for any damage to the Common Property not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, guests and invitees, both minor and adult.

Section 6. Release of Liability for Declarant. Declarant shall in no way be held liable or subject to any law suit, regardless of the type, from anyone in regards to or in connection with the Development of the Property upon the Developer's sale of all Lots within Community. Declarant hereby states that at time of recordation of this agreement they have complied with all Fannin County Land Development laws and regulations for development of said Property, and should any new purchaser of a Lot within said subdivision not comply with said county laws and regulations for any reason, Declarant shall in no way be held responsible or liable, and shall be fully released of any liability thereof.

Section 7. Release of Liability for Railroad. Railroad shall in no way be held liable or subject to any law suit, regardless of the type, from anyone in regards to or in connection with the Development of the Property or the use of the Railroad Crossing. Each Owner acknowledges and agrees that there are certain inherent risks in crossing a railroad track and by purchasing property within the Development/Community assumes such risk.

IN WITNESS WHEREOF, Developer has caused these Covenants, Conditions, Restrictions and Easements for TOCCOA RIVERBEND ESTATES and Declaration of Property Owners Association to be executed the day and year first written above.

Signed, sealed and delivered in the presence of:

BIG RIVER ASSOCIATES, LLC

Mary Jane Albee
Witness

James A. Dickens
By: James A. Dickens, Member/Manager

George Anna M. Watson
Notary Public

Jeanette M. Dickens
By: Jeanette M. Dickens, Member/Manager

