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**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR SKYFALL SUBDIVISION, CHATTANOOGA, TENNESSEE**

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This Instrument Prepared by and After Recording Return to:

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**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**FOR SKYFALL SUBDIVISION**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this 30<sup>th</sup> day of September, 2017, by Skyfall Development Group, G.P. as Tennessee general partnership as the "Developer" and "Property Owner."

**Background**

A. Property Owner/Developer is the owner of certain real property located in Hamilton County, Tennessee, and being more particularly described in Exhibit "A" hereto attached and herein incorporated.

B. The Property Owner/Developer desires to develop the Property, creating thereon a residential development known as Skyfall Subdivision, in accordance to the terms and conditions as set forth therein.

C. The Property Owner/Developer desires to provide for the preservation of the land values and home values when and as the Property is improved and desires to subject the Development (herein defined) to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every Owner (herein defined) of any and all parts thereof.

D. It is the plan of the Property Owner/Developer to devote the Lots (herein defined) in the Development solely to single family residential purposes.

E. The Property Owner/Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties (herein defined) and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement as hereinafter created.

F. The Property Owner/Developer shall cause to be incorporated under the laws of the State of Tennessee, SkyFall Subdivision Homeowners Association, Inc., a Tennessee non-profit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter.

**ARTICLE I**

**DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Review Committee" or "ARC" shall have the meaning set forth in Section 10.2.

**"Architectural and Design Review Guidelines"** means those guidelines attached hereto as **Exhibit C** and any other architectural guidelines and procedures adopted by the Architectural Review Committee pursuant to Article 10 and applicable to all Units within the Properties.

**"Area of Common Responsibility"** means the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract, become the responsibility of the Association.

**"Articles of Incorporation"** or **"Articles"** means the Articles of Incorporation of SkyFall Subdivision Home Owner's Association, Inc., as filed with the Tennessee Secretary of State.

**"Association"** means Skyfall Subdivision Home Owners' Association, Inc., a Tennessee nonprofit corporation, its successors and assigns.

**"Base Assessment"** means any assessments levied on all Units subject to assessment to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 9.1 and 9.3.

**"Board of Directors"** or **"Board"** means the Board of Directors of the Association.

**"Builder"** means any Big Whiskey Land & Cattle, LLC.

**"By-Laws"** means the By-Laws of the Association, attached as **Exhibit B** and incorporated by reference, as they may be amended from time to time.

**"Class A Member"** shall have the meaning set forth in Section 3.3(a).

**"Class B Control Period"** means the period of time from the recordation of this instrument until the date on which at least 100% of the Units are owned by Persons other than Declarant or Builder or at such earlier time as the Class B Member shall decide and so declares by written instrument recorded in the Register's Office of Hamilton County, Tennessee.

**"Class B Member"** shall have the meaning set forth in Section 3.3(b).

**"Common Area"** means all real and personal property in which the Association owns, leases, or otherwise holds possessory or use rights for the common use and enjoyment of the Owners.

**"Common Expenses"** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class B Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class A votes of the Association.

**"Community-Wide Standard"** means the standard of conduct, maintenance, or other activity generally prevailing through the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

**"Declarant"** or **"Developer"** means Skyfall Development Group, a Tennessee General Partnership or any successor or assign that takes title to any portion of the Property for the

purpose of development and/or resale in the ordinary course of business and that is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant.

"Member" means a Person entitled to membership in the Association, as provided in Section 3.2

"Mortgage" means a mortgage, a deed of trust, or any other form of security deed.

"Mortgagee" means the holder of a mortgage, a deed of trust, or any other form of security deed.

"Mortgagor" means any Person who grants a Mortgage.

"Owner" means one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

"Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Properties" or "Property" means the real property described in Exhibit A.

"Special Assessment" means any assessments levied in accordance with Section 6.5 of this Declaration.

"Specific Assessment" means any assessments levied in accordance with Section 9.5 of this Declaration.

"Supplemental Declaration" means an amendment or supplement to this Declaration which imposes, expressly or by reference, additional restrictions and obligations on the Properties.

"Unit" means a portion of the Property, whether improved or unimproved, that may be independently owned and conveyed and is intended for development, use, and occupancy as a residence for a single family. The term Unit shall refer to the portion of the Property, if any, that is part of the Unit as well as any improvements thereon. The term Unit shall include separately platted lots, as well as vacant land intended for development as such, but shall not include any of the Common Area or property dedicated to the public.

## **ARTICLE 2**

### **PROPERTY RIGHTS**

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to: (a) this Declaration, the By-Laws, and any other applicable covenants; (b) any restrictions or limitations contained in any deed conveying such property to the Association; (c) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of the recreational facilities within the Common Area to occupants of Units and their guests and rules limiting

the number of guests who may use the Common Area; (d) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws or rules of the Association after notice and a hearing pursuant to Sections 3.24 and 3.25 of the By-Laws; (e) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.8; (f) the right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area; (g) the right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board; and (h) the right of the Association, acting through the Board, to mortgage or pledge any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 13.2. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

## 2.2 Special Recreational Parcels.

(a) Certain recreational facilities may be located within the Properties. Such recreational facilities may include, without limitation, tennis courts, a swimming pool, a community building and parking facilities, and may be designated as a Special Recreational Parcel in the deed conveying them to the Association. The Board of Directors shall have the right to restrict use of all or any portion of such facilities to only such Persons as affirmatively elect to use the facilities and agree to pay such initiation fees and additional assessments and fees as are charged for such privilege of use. Such Persons may, in the discretion of the Board, include Persons other than Owners and occupants of Units; provided, such Persons shall be required to pay fees which are no less than those charged Owners and occupants of Units, and shall have no greater use rights than those extended to Owners and occupants of Units.

(b) The fees and assessments established by the Board for use of, or the rental payments charged by the Association pursuant to a lease of, a Special Recreational Parcel shall include such sums as the Board in the exercise of its business judgment deems sufficient to cover the estimated costs to be incurred by the Association for the operation, maintenance, repair, replacement, and insurance of such Special Recreational Parcel, but rental payments need not be limited to such amounts.

(c) Notwithstanding the provisions of Section 13.2, the Board, acting on behalf of the Association, may lease any Special Recreational parcel to a private club composed of such Owners who use the facility, or to a commercial operation, or to Declarant, the city or county parks department, or any other appropriate body, on such terms and conditions as may be agreed to by the Board. If the Board so agrees to the lease of such facilities, the

lessee shall have the right to permit public use upon payment of use fees, which shall not be less than the fees charged to Owners for such use.

(d) There is hereby reserved to all authorized users of any Special Recreational Parcel an easement over the Common Areas of the Association for direct ingress and egress to and from such Special Recreational Parcel, subject to Board regulation.

(e) The Board shall have the right at any time, subject to the terms of any existing lease, to declare by majority vote that use of all or any portion of such facilities shall no longer be restricted as provided in this Section, and thereafter such facilities shall be made available for the use of all Owners and all costs associated with such Special Recreational Parcel shall be deemed Common Expenses.

### **ARTICLE 3**

#### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.1 **Function of Association.** The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Architectural and Design Review Guidelines. The Association shall also be the entity responsible for management, maintenance, operation, and control of the Common Area within the Properties. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Tennessee law.

3.2 **Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all Co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all such Co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 **Voting.** The Association shall have two classes of membership, Class A and Class B.

(a) **Class A Members.** Class A Members shall be all Owners except the Class B Member, if any. Class A Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2. There shall be only one vote per Unit.

(b) **Class B Member.** The sole Class B Member shall be Declarant. The rights of the Class B Member, including the right to approve or withhold approval of actions proposed under this Declaration and the By-Laws, are specified elsewhere in this

Declaration and the By-Laws. The Class B Member may appoint a majority of the members of the Board during the Class B Control Period. The Class B membership shall terminate upon the earlier of: (i) two years after termination of the Class B Control Period pursuant to Section 3.3 of the By- Laws; or (ii) the date Declarant so declares in an instrument recorded in the Register's Office of Hamilton County, Tennessee.

(c) Exercise of Voting Rights. In any situation in which a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

## **ARTICLE 4**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real property and leasehold interests located within the Properties. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of the Members, subject to any restrictions set forth in the deed. Declarant shall convey the initial Common Area to the Association prior to the conveyance of a Unit to any Person other than Builder.

4.3 Rules. The Association, through its Board, may make and enforce reasonable rules governing the use of the Properties, or rules that further define or limit, and, where specifically authorized hereunder, create exceptions to, covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all owners, occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting by the vote of two-thirds (2/3) of the total Class A votes in the Association and by the Class B Member, so long as such membership exists.

4.4 Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with the By-Laws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Association, by contract or other agreement, may enforce

county and city ordinances, if applicable, and permit Hamilton County to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

4.5 **Implied Rights; Board Authority.** The Association may exercise any other right or privilege provided to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, or the Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6 **Governmental Interests.** So long as Declarant owns any portion of the Property, Declarant may designate sites for fire, police, utilities, public schools, and parks, and other public facilities, and such sites may include portions of the Common Area.

4.7 **Indemnification.** The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability insurance, and may maintain officers' and directors' liability insurance, to fund this obligation, if such insurance is reasonably available.

4.8 **Dedication of Common Areas.** The Association may dedicate portions of the Common Area to Hamilton County, Tennessee, or to any other local, state, or federal governmental entity, subject to such approval as may be required by Section 13.2 of this Declaration.

4.9 **Security.** The Association may, but shall not be obligated to, maintain, or support certain activities to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARMSYSTEM, OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS,



AND COVENANTS TO INFORM ITS TENANTS, LICENSEES, AND INVITEES THAT DECLARANT, ANY SUCCESSOR DECLARANT, THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, UNITS, AND THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

4.10 Rights to Storm Water Runoff and Water Conservation and Reclamation Programs. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, and storm water runoff within the Properties and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall retain all such rights. No person other than Declarant and its designees shall claim, capture, or collect rainwater, ground water, surface water, or storm water runoff within the Properties without prior written permission of Declarant or its designee. Declarant or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the Properties and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from Units. The Board shall also have the right to establish restrictions on, or prohibit outside use of, potable water within the Properties.

## ARTICLE 5

### MAINTENANCE

#### 5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, parks, signage, structures, and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;

(ii) landscaping, sidewalks, street lights, and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easements and conservation easements within the Properties (subject to the terms of any easement agreement relating thereto);

(iii) such portions of any additional property included within any Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(iv) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility

and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(b) There are hereby reserved to the Association easements over the Properties as reasonably necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for reasonable periods as may be necessary to perform required maintenance or repairs, unless 75% of the Class A Members and the Class B Member, if any, agree in writing to discontinue such operation.

(c) The Association may maintain other property which it does not own, including, without limitation, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of an Area of Common Responsibility shall be a Common Expense to be allocated among all Units as a part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other person responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable rules and covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 9.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. The term "maintenance," as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Notwithstanding anything to the contrary contained herein, the Association and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own, unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Party Walls and Similar Structures.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units that serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general

rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

All Owners who make use of a party structure shall share equally the cost of reasonable repair and maintenance of such structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

5.5 Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## **ARTICLE 6**

### **INSURANCE AND CASUALTY LOSS**

#### **6.1 Association Insurance.**

(a) The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair, and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways that the Association is obligated to maintain. If blanket "all-risk" coverage is not generally available at reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. Premiums for all such insurance shall be Common Expenses and shall be included in the Base Assessment.

(b) The Association also shall obtain a public liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or Builder while acting on its behalf. If generally available at reasonable cost, the public liability policy shall have at least a \$1,000,000 combined single limit as respects bodily injury and property damage and at least a \$3,000,000 limit per occurrence and in the aggregate. Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(c) The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage amount. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence of willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant, pursuant to Section 9.6.

(d) All insurance coverage obtained by the Association shall: (i) be written with a company authorized to do business in Tennessee which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available; (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members; (iii) vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; (iv) not be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees; and (v) have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and be familiar with construction in the Hamilton County, Tennessee, area.

(e) The Board shall use reasonable efforts to secure insurance policies containing endorsements that: (i) waive subrogation as to any claims against the Association's Board, its officers and employees, the Owners and their tenants, servants, agents, and guests; (ii) waive the insurer's right to repair and reconstruct instead of paying cash; (iii) preclude cancellation, invalidation, suspension, or non-renewal by the insurer on account of the acts or omissions of any one or more individual Owners, or on account of the acts or omissions of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; (iv) exclude individual Owners' policies from consideration under any "other insurance" clause; and (v) require at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(f) The Association shall also obtain, as a Common Expense, worker's compensation insurance and employer's liability insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

(g) The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

**6.2 Damage and Destruction.**

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction to the Common Area or Area of Common Responsibility shall be repaired or reconstructed unless Members representing at least 75% of the total Class A votes in the Association, and the Class B Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or Area of Common Responsibility shall be repaired or reconstructed.

(c) If determined in the manner described above that any damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association in a neat, attractive, landscaped condition consistent with the Community-Wide Standard.

**6.3 Disbursement of Proceeds.** Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvements account. This provision is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

**6.4 Repair and Reconstruction.** If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Special Assessments against the Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

**6.5 Owner's Insurance.** By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless the Association carries such insurance (which it is not obligated to do hereunder). Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, he shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 10 of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and

maintain the Unit in a neat, attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

## **ARTICLE 7**

### **NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area or Area of Common Responsibility. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## **ARTICLE 8**

### **CONDEMNATION**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class A votes in the Association and of Declarant, as long as Declarant owns any of the Property), by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any of the Property, and Members representing at least 75% of the total Class A votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.3 and 6.4 regarding funds for the repair of damage or destruction shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **ARTICLE 9**

### **ASSESSMENTS**

#### **9.1 Levy of Assessments.**

(a) The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (i) Initial Assessment in the amount of \$4,000.00, until such time as the amount is changes by the Class B Member or the Board, which shall be a one-time assessment in an amount shall be paid at the time of the closing of the purchase of any Unit by an Owner; (ii) Base Assessments to fund Common Expenses for the general benefit of all Units; (iii) Special Assessments as described in Section 9.5; and (iv) Specific Assessments as described in Section 9.6. Each Owner, by accepting a deed or entering into a recorded contract of sale of any portion of the Properties is deemed to covenant and agree to pay these assessments.

(b) All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by Tennessee law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until such assessment is paid, as more particularly provided in Section 9.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first priority Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

(c) Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) No Owner may exempt himself from liability for assessments by nonuse of a Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. Neither

set-off nor diminution nor abatement of assessments shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any action it takes.

(e) The Association is specially authorized to enter into contracts with Declarant or other entities for payment of Common Expenses through "in kind" contribution of services, materials, or a combination of services and materials.

9.2 Declarant's Obligation for Assessments. During the Class B Control Period, Declarant may annually elect either to pay regular assessments on its unsold Units, or to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Units owned by Declarant to secure Declarant's obligations under this paragraph, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Units under this Article. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination thereof.

9.3 Computation of Base Assessment.

(a) The Base Assessment shall be \$3,900 per year, per Unit from the date of the recording of these Covenants and Restrictions until such time as the Board or the Class B Member determines a change in such amount is necessary and/or appropriate.

(b) At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget containing the estimated Common Expenses for the coming fiscal year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.4. The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

(b) The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 60 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total



Class A votes and by the Class B Member, if there is one. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members for a special meeting in accordance with Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of the Base Assessment. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.4 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments, as appropriate, over the budget period.

9.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of budgeted amounts. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class B Member, if there is one. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Properties, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying a Specific Assessment under this subsection (b).

9.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration; (b) the end of the calendar year or (c) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Units.

9.8 Lien for Assessments.

(a) Any assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of Tennessee law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien by suit, judgment, and foreclosure.

(b) The Association may bid for a Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

(c) The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage thereon shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

9.9 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.10 Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

9.11 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments: (a) any Common Area; (b) any property dedicated to and accepted by any governmental authority or public utility; and (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies with the boundaries of a Unit which is subject to assessment under Section 9.1 (in which case the Unit shall not be exempted from assessment).

## **ARTICLE 10**

### **ARCHITECTURAL STANDARDS**

#### 10.1 General.

(a) No structure shall be placed, erected, or installed upon any Unit, and no improvement (including staking, clearing, excavating, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Architectural and Design Review Guidelines, and upon approval of the appropriate committee under Section 10.2. All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

(b) Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) This Article shall not apply to the activities of Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended without Declarant's written consent so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

## 10.2 Architectural Review.

(a) Responsibility for administration of the Architectural and Design Review Guidelines, and review of all applications for construction and modifications under this Article shall be handled by the Architectural Review Committee ("ARC"). The ARC shall consist of at least three, but not more than five, persons. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review. The ARC shall have exclusive jurisdiction over all original construction on any portion of the Properties and all modifications, additions, or alterations made on or to existing structures on Units.

(b) Until all of the Properties have been conveyed to Owners other than Builder, Declarant retains the right to appoint all members of the ARC who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the ARC, who shall serve and may be removed in the Board's discretion.

## 10.3 Guidelines and Procedures.

(a) Declarant has prepared the initial design and development guidelines and application and review procedures (the "Architectural and Design Review Guidelines"), which are attached as Exhibit C. Such guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

(b) The ARC shall adopt Architectural and Design Review Guidelines at its initial organizational meeting. Any amendments to the Architectural and Design Review Guidelines pursuant to Article 11 shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

(c) The ARC shall make the Architectural and Design Review Guidelines available to Owners and Builder who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such guidelines. In Declarant's discretion, such Architectural and Design Review Guidelines may be recorded in the Register's Office of Hamilton County, Tennessee, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Guidelines was in effect at any particular time.

#### 10.4 Submission of Plan and Specifications.

(a) No construction or improvements shall be commenced, erected, placed, or maintained on any Unit, nor shall any exterior addition, change, or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utilities, and screening shall have been submitted to and approved in writing by the ARC. The Architectural and Design Review Guidelines shall set forth the procedure for submission of the Plans. In reviewing each submission, the ARC may consider visual and environmental external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The ARC may require relocation of native plants within the construction site as a condition of approval of any submission.

(b) The ARC shall, within 30 days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the ARC to be inconsistent or not in conformity with this Declaration and/or the Architectural and Design Review Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the ARC fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and deemed to have been given at the time of delivery.

(c) If construction does not commence on a project for which Plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the ARC for reconsideration.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application, and enforcement of the Architectural and Design Review Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.6 Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted,

however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

10.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the ARC, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

10.8 Enforcement.

(a) Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter upon the Unit, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Unit and collected as a Specific Assessment.

(b) Builder, any subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural and Design Review Guidelines may be excluded from the Properties by the Board, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association nor its officers or directors shall be held liable to any Person for exercising the rights granted by this Section. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions for the ARC.

## ARTICLE 11

### USE GUIDELINE AD RESTRICTIONS

#### 11.1 Plan of Development; Applicability; Effect.

(a) Declarant has created SkyFall Subdivision as a residential and recreational development. The Properties are subject to the provisions of this Declaration and to the Architectural and Design Review Guidelines as set forth in Article 10 and Exhibit C hereto. The Properties are subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon the Properties as provided in this Article 11, and any resolutions the Board or the Members may adopt to establish affirmative and negative covenants, easements, and restrictions. All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests, and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

(b) Declarant promulgates SkyFall Subdivision's general plan of development in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within SkyFall Subdivision, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the development.

(c) Declarant has prepared initial Architectural and Design Review Guidelines which contain general provisions applicable to all of the Properties, as well as specific provisions which may vary within the Properties depending upon the location, characteristics, and intended use. Such initial Architectural and Design Review Guidelines are set forth in Exhibit C hereto. Based upon these Architectural and Design Review Guidelines, the Board shall adopt the initial rules at its initial organizational meeting.

#### 11.2 Board Power.

(a) Subject to the terms of this Article 11 and to its duty of care and undivided loyalty to the Association and its Members, the Board shall implement and manage the Architectural and Design Review Guidelines through rules which adopt, modify, cancel, limit, create exceptions to, or expand the Architectural and Design Review Guidelines. Prior to any such action, the Board shall conspicuously publish notice of the proposal at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to action being taken.

(b) The Board shall send a copy of any proposed new rule or amendment to each Owner at least 30 days prior to its effective date. The rule shall become effective unless disapproved at a meeting by Members representing at least two-thirds (2/3) of the total Class A votes and by the Class B Member, if any. The Board shall have no obligation to call a meeting

of the Members to consider disapproval except upon petition of the Members as required for special meetings in Section 2.4 of the By-Laws.

(c) The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to effect the powers contained in this Section 11.2. The Board shall provide, without cost, a copy of the Architectural and Design Review Guidelines and implementing rules then in effect to any requesting Member or Mortgagee.

11.3 Members' Power. The Members, at a meeting duly called for such purpose as provided in Section 2.4 of the By-Laws, may adopt, repeal, modify, limit, and expand Architectural and Design Review Guidelines and implementing rules by a vote of two-thirds (2/3) of the total Class A votes and the approval of the Class B Member, if any.

11.4 Owners' Acknowledgement. All Owners are subject to the Architectural and Design Review Guidelines and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Architectural and Design Review Guidelines in accordance with Sections 11.2, 11.3, and 17.2, and adopt additional rules and regulations in accordance with Section 4.3. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by the Architectural and Design Review Guidelines and/or rules that may change from time to time.

11.5 Rights of Owners. Except as may be specifically set forth in Section 11.6, neither the Board nor the Members may add, delete, modify, create exceptions to, or amend the Architectural and Design Review Guidelines or adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Units of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations in their units of the kind normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule or action by the Association or Board shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Common Area, including parking areas.



(e) Activities within Unit. No rule or action by the Association or Board shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.

(f) Pets. Unless the keeping of pets in any Unit is prohibited by a Supplemental Declaration at the time of the sale of the first Unit, no rule prohibiting the keeping of ordinary household pets shall be adopted thereafter over the objection of any affected Owner expressed in writing to the Association. The Association may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(g) Allocation of Burdens and Benefits. Except as permitted by Section 2.2, the initial allocation among the various Units of the financial burdens and rights to use the Common Area shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the available Common Area, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article 9.

(h) Alienation. No rule or action by the Association or Board shall prohibit transfer of any Unit, or require consent of the Association or Board for transfer of any Unit, for any period greater than two months. The Association shall not impose any fee for transfer of any Unit greater than an amount reasonably based on the costs to the Association of the transfer.

(i) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Properties in accordance with the Declaration or any Supplemental Declaration.

(j) Abridging Existing Rights. If any rule would otherwise require Owners to dispose of personal property that they owned at the time they acquired their Units, such rule shall not apply to any such Owners without their written consent.

## **ARTICLE 12**

### **EASEMENTS**

12.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each

Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

#### 12.2 Easements for Utilities, Etc.

(a) There are hereby reserved unto the Association and Declarant, so long as Declarant owns any of the Properties, and the designees of each (which may include, without limitation, Hamilton County, Tennessee, and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing systems, facilities, or utilities over, under, or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the use of the easement. The use of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(b) Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

12.3 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

12.4 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article 5 hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules, which right may be exercised by any member of the Board, the Association, its officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested

by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

### **ARTICLE 13**

### **MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

13.1 **Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges related to a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit which is not cured within 60 days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of any obligation under the Declaration or By-Laws which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2 **Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or at least 67% of the Members entitled to cast votes consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the Properties comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar uses consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded shall not be subject to

this provision when such decision or subsequent declaration is otherwise authorized by this Declaration);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design or exterior appearance or maintenance of Units and the Common Areas (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property; or

(e) Fail to maintain insurance, as required by this Declaration.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

13.3 Other Provisions for First Mortgagees. To the extent possible under Tennessee law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained from at least 51% of the Eligible Holders.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of at least 51% of the Eligible Holders.

13.4 Amendments to Documents. The following provisions do not apply to amendments to the Declaration, By-Laws, or Articles of Incorporation or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 13.3(a). The consent of Members representing at least 67% of the Class A votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of at least 51% of the Eligible Holders, shall be required to amend materially any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following: (a) voting; (b) assessments, assessment liens, or subordination of such liens; (c) reserves for maintenance, repair, and replacement of the Common Area; (d) insurance or fidelity bonds; (e) rights to use the Common Areas; (f) responsibility for maintenance and repair of the Properties; (g) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association; (h) boundaries of any Unit; (i) leasing of Units; (j) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his Unit; (k) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or (l) any provisions included in the Declaration, By-Laws, or Articles of

Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

13.5 Termination of Association. The consent of Members representing at least 67% of the Class A votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of at least 67% of the eligible Holders, shall be required to terminate the Association.

13.6 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

13.7 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

13.8 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

13.0 Applicability of Article 13. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Tennessee law for any of the acts set out in the Declaration or the Articles of Incorporation.

13.10 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## **ARTICLE 14** **DECLARANT'S RIGHTS**

(a) Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Register's Office of Hamilton County, Tennessee.

(b) So long as construction and initial sales of Units shall continue, Declarant and the Builder may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and Builder shall have easements for access to and use of such facilities.

(c) No Person shall record any declaration of covenants, conditions and restriction, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

(d) This Article may not be amended without the written consent of Declarant. Declarant's rights contained in this Article shall terminate on the earlier of forty (40) years from the date this Declaration is recorded, or the date Declarant no longer owns any of the Properties.

## **ARTICLE 15**

### **DISPUTE RESOLUTION AND LITIGATION**

15.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to void the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances, or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles of Incorporation (collectively "Claim"), except for those Claims authorized in Section 15.2, shall be subject to the procedures set forth in Section 15.3.

15.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 15.3: (a) any suit by the Association against any Bound Party to enforce the provisions of Article 9; (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce to provisions of Article 10 and Article 11; and (c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the state of Tennessee in the absence of a claim based on the Declaration, By-Laws, Articles, or rules of the Association, if the amount in controversy exceeds \$5,000. Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 16.3, but there shall be no obligation to do so.

15.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 15.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has been complied with the following procedures:

(a) Notice. Claimant shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the date, time, location, persons involved, Respondent's role in the Claim, and the provisions of this Declaration, the By-Laws, the Articles of Incorporation, or other authority out of which the Claim arises;

(ii) the basis of the Claim (i.e., the provision of the Declaration, By-laws, rules, or Articles triggered by the Claim;

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim

(b) Negotiation.

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of the local arbitration/mediation service or AAA, or such other independent agency providing similar services upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(d) Final and Binding Arbitration.

(i) If the Parties do not resolve the Claim through mediation, the Claimant shall have 30 days following termination (as determined by the mediator) of mediation proceedings ("Termination of Mediation") to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit D or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii) This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the state of Tennessee. The decision of the arbitrator ("Decision") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the state of Tennessee.

16.4 Allocation of Costs of Resolving Claims.

(a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 15.3 (a), (b) and (c), including the fees of its attorney or other representatives. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 15.3(c).

(b) Each Party shall bear all of its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 16.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in this subsection; provided, however, if the Claim is rejected in whole or in part, Claimant shall pay all Post Mediation costs, including the costs incurred by Respondent.

16.5 Enforcement of Resolution. If the Parties reach agreement on the resolution of any Claim through negotiation or mediation in accordance with Section 15.3 ("Agreement"), and any Party thereafter fails to abide by the terms of such Agreement, or if any Party fails to comply with the Decision, then any other Party may file suit or initiate administrative proceedings to enforce such Agreement or Decision without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such



Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

## ARTICLE 17

### GENERAL PROVISIONS

17.1 Term. This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 40 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

17.2 Amendment.

(a) By Declarant. Until termination of the Class B Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision of this Declaration into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender, purchaser, insurer, or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as Declarant still owns property described in Exhibit A for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Owners. After termination of the Class B Control Period, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least 75% of the total Class A votes in the Association, including 75% of the Class A Members other than Declarant, and the consent of Declarant, so long Declarant has an option to subject additional property to this Declaration as set forth herein. In addition, the approval requirements set forth in Article 13 hereof shall be met, if applicable. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date.** Amendments to this Declaration shall become effective upon recordation in the Register's Office of Hamilton County, Tennessee, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

17.3 **Severability.** If any provision of this Declaration is found by a court of competent jurisdiction to be legally invalid or unenforceable: (i) the validity and enforceability of the remainder of this Declaration shall not be affected; (ii) such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law; and (iii) such provision shall be valid, enforceable, and enforced in its modified form.

17.4 **Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

17.5 **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Class A Members and the Class B Member, if any. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 9; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article 16, if applicable.

17.6 **Compliance.** Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages for injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s).

17.7 **Notice of Sale or Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to his Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferor, the date of such transfer of title, and

such other information as the Board may reasonable require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 30~~th~~ day of September, 2017.

SKYFALL DEVELOPMENT GROUP, G.P.

By:   
Richard O. Harris – Managing Partner

STATE OF TENNESSEE )

ss.

COUNTY OF HAMILTON )

Before me, a Notary Public, of the state and county aforesaid, personally appeared Richard O. Harris on this 30 day of September, 2017, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the managing partner of Skyfall Development Group, G.P., the within named bargainor, and that he executed the foregoing instrument for the purpose therein contained with the authority of and on behalf of the Partnership.

WITNESS my hand and seal this 30 day of September, 2017.

  
Notary Public

My Commission Expires: 8/25/18



**EXHIBIT A**  
**LEGAL DESCRIPTION**

IN THE SECOND CIVIL DISTRICT OF HAMILTON COUNTY, TENNESSEE:

TRACT ONE (1): Being a part of the Northwest Quarter of Section Four (4), Township One (1), South, Range Two (2), West of the Basis Line, Ocoee District, and further being a part of the property conveyed by Statewide Enterprises, Inc. to Fred L. Edgmon, Inc., by deed recorded in Book 2548, Page 419, in the Register's Office of Hamilton County, Tennessee, said property being more particularly described as follows: BEGINNING at a point in the West line of Ooltewah-Ringgold Road where the same is intersected by the South line of the property of Howard Swope as recorded in Book 2134, Page 243, in the said Register's Office; then North Sixty-six (66) degrees Forty-six (46) minutes West, along said Swope property, Twelve Hundred Thirty-Seven and 28/100 (1237.28) feet to a point; thence South Twenty-six (26) degrees Twenty-one (21) minutes West, Two Hundred Forty-seven and 15/100 (247.15) feet to a point marking the most Northwestern corner of the Cleve Hooper Subdivision as shown by plat in Plat Book 33, Page 30, in the said Register's Office; thence North Eighty-eight (88) degrees Forty-one (41) minutes Fifty-two (52) seconds East, One Hundred Ninety- four and 45/100 (1944.45) feet to a point; thence South Sixty-six (66) degrees Forty-six (46) minutes East, Eleven Hundred Forty-six and 6/10 (1146.6) feet to a point in the Western line of Ooltewah-Ringgold Road; thence Northwardly along said road, no (00) degrees Twenty-six (26) minutes Six (6) seconds East measured on a chord distance, One Hundred Eighty-one and 26/100 (181.26) feet to the point of beginning.

TRACT TWO (2): Beginning at a point in the Western line of Ooltewah-Ringgold Road, said point being the Northeastern corner of the property conveyed to Nelson Wong and wife, by deed recorded in Book 3069, Page 680, in the Register's Office of Hamilton County, Tennessee. Said point also being the Southeastern corner of the property conveyed to DeGrave Construction, Inc., a Tennessee Corporation, by deed recorded in Book 3224, Page 73, in the said Register's Office; thence along the line dividing said respective tracts, North Sixty-six (66) degrees Twenty-six (26) minutes Forty- seven (47) seconds West, One Thousand Two Hundred Thirty-seven and 26/100 (1237.26) feet to a point, said point being in the Eastern line of Lot One Hundred Twenty-two (122), Quail Run Subdivision, Unit Two (2), as shown by plat of record in Plat Book 39, Page 361, in the said Register's Office, and also being South Twenty-four (24) degrees Fifty-three(53) minutes Forty-eight (48) seconds West, Three and 46/100 (3.46) feet from the Northeastern corner of said Lot One Hundred Twenty-two (122); thence North Twenty-four (24) degrees Fifty-three (53) minutes Forty-eight (48) seconds East, Thirteen and 46/100 (13.46) feet to a point, said point being the Southwestern corner of Lot Eleven (11), Cobblestone Subdivision, as shown by plat recorded in Plat Book 42, Page 40, in the said Register's Office; thence South Sixty-six (66) degrees Twenty-three (23) minutes East, along the Southern line of Cobblestone Subdivision, One Thousand Two Hundred Thirty and 23/100 (1230.23) feet to a point in the Western line of Ooltewah-Ringgold Road, said point being the Southeastern corner of Lot One (1) of said Cobblestone Subdivision; thence South Seven (7) degrees Thirty-five (35) minutes East, along the Western line of said Ooltewah-Ringgold Road, Thirteen and 9/10 (13.9) feet to the point of beginning.

**TRACT THREE (3): Lot Two (2), Charles & Lou Emma Werner Subdivision, as shown by plat of record in Plat Book 93, Page 51, in the Register's Office of Hamilton County, Tennessee**

**REFERENCE is made for prior title to Deed recorded in Book 10424, Page 747, in the Register's Office of Hamilton County, Tennessee.**

**Subject to Inspection and Maintenance Agreement recorded in Boo 10603, Page 513, in the Register's Office of Hamilton County, Tennessee.**

**Subject to Declaration of Restrictions and Covenants for Stormwater Facilities and Systems recorded in Book 10603, Page 517, in the Register's Office of Hamilton County, Tennessee.**

**Subject to Public Sewer Easement shown on plat recorded in Plat Book 109, Page 19, in the Register's Office of Hamilton County, Tennessee.**

**Subject to any set-backs lines, rights of ways, easement, notes, and any and all other matters shown of record on plat recorded in Plat Book 109, Page 19 in the Register's Office of Hamilton County, Tennessee.**

**Subject to Governmental zoning and subdivision ordinances or regulations in effect thereon.**

**BY-LAWS OF SKYFALL SUBDIVISION  
HOME OWNER'S ASSOCIATION**

**EXHIBIT B**

**BY-LAWS OF SKYFALL  
HOMEOWNER'S ASSOCIATION, INC.**

**ARTICLE I  
NAME**

The following provisions shall constitute the By-laws of SKYFALL HOMEOWNERS' ASSOCIATION, INC., (the "Bylaws"), a Tennessee nonprofit corporation (the "Association") which shall, along with the provisions of the Charter of the Association (the "Charter"), the Declaration of Covenants and Restrictions for Skyfall Subdivision, as may be amended from time to time (the "Declaration") and the rules and regulations ("Rules and Regulations") adopted by the Board of Directors of the Association (the "Board"), govern the administration of Skyfall Subdivision, a residential development (the "Development") and the real property rights in the Development owned by the Association ("Common Properties"). The terms in these Bylaws (unless otherwise defined) shall have the same meaning as the terms defined in the Declaration for this Development.

**ARTICLE II  
OFFICES**

The principal office of the Association shall be located at:

9284 Skyfall Drive  
Ooltewah, TN 37363

or at such other place either within or without the State of Tennessee, as shall be lawfully designated by the Association, or as the affairs of the Association may require from time to time.

**ARTICLE III  
PURPOSES**

The purposes of this Association shall be to provide for the establishment of a residents' association for the government of the Development in the manner provided by the Charter, the Declaration and these Bylaws. The aims of this Association are to be carried out through any and all lawful activities, including others not specifically stated in the Charter, the Declaration, or these Bylaws but incidental to the stated aims and purposes; provided that any such activity or contribution shall conform to any applicable restrictions or limitations set forth in the Charter or which are imposed on real estate.

## **ARTICLE IV ASSOCIATION**

**4.01 Membership.** The Developer and every person or entity who is a record owner of a fee simple interest or an undivided fee simple interest in any Lot, being defined in Declaration as any lot in the Development whether improved or unimproved which is subject to the Declaration, shall be a member of the Association ("Member"), provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member. Membership shall be automatically transferred to the new Member upon the conveyance of any Lot and recording of the deed of conveyance in the Register's Office of Hamilton County, Tennessee. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

### **4.02 Voting Rights.**

(a) Except as hereinafter provided in Section 4.02 (b), Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 4.01. 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 vote be cast with respect to any such Lot. When one or more co-owners signs a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a written instrument delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, each co-owner will be entitled to a fractional vote equal to his fraction of ownership.

(b) Until such time as the Developer has sold 100% of the available and platted lots in the Development to third party purchasers, or such other time as shall be set forth and determined by the Developer in its sole discretion, the Developer shall maintain and control 100% of the voting rights as related to the Development, regardless of the number of votes held by person's owning lots in the Development.

**4.03 Dues.** The Board of Directors shall, from time to time, establish annual dues which shall be required to be paid by each Member of the Association and shall be used in furtherance of the acts of the Association. Any dues established and set forth by the Board of Directors during such time as the Developer maintains control over the Development, shall be due and payable regardless of the status of any Member's voting rights as prescribed hereunder. The Developer, or any entity related to or affiliated with the Developer, shall be exempt from this section and the payment of dues during any period of ownership of any Lot.

## **ARTICLE V THE BOARD OF DIRECTORS**

**5.01 Board of Directors.** Subject to Section 5.02 of this Article herein below, the administration of the Development and Common Properties on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of three (3) natural persons



of legal age, each of whom, at all times during membership on the Board, shall be a Member, a member of the household of a Member, or the nominee of an entity, other than a natural person, which is a Member.

## **5.02 Developer Performs Functions.**

(a) The rights, duties and functions of the Board shall be solely exercised by Developer until such time as the Developer has sold 100% of the Lots in the Development or at such other time as shall be set forth and determined by the Developer in its sole discretion. The Developer may, in its sole discretion, designate up to three (3) individuals to serve on the Board on behalf of the Developer during the period that the Developer is performing the functions of the Board. Such individuals designated by the Developer need not be Members, and may be removed and replaced by the Developer at will. The Developer may also limit the scope of authority of such individuals. At such time as the Developer shall have sold 100% of the Lots in the Development or at such other time as shall be set forth and determined by the Developer in its sole discretion, the Developer shall call a special meeting of Members for the purpose of electing Directors to succeed to the positions held by the Developer or individuals designated by the Developer.

(b) Upon the sale of all of the Lots in the Development or at such time as the Developer determines to relinquish the rights it has reserved to itself, the Developer shall execute and record in the Register's Office of Hamilton County, Tennessee, a document assigning those rights to the Board.

**5.03 Election.** At each annual meeting, subject to the provisions of Section 5.02 hereof, the Association shall elect those members of the Board as required under Section 5.01, who shall serve the terms set out in Section 5.04; provided, however, the members of the Board elected to succeed the Developer shall be elected at a special meeting duly and specifically called for that purpose by the Developer. The Board elected at that special meeting shall serve until the next annual meeting of the Association held thereafter.

**5.04 Term.** Members of the Board shall serve for a term of two (2) years; provided, however, that of the three (3) members of the first Board elected by the Association one (1) shall be elected and shall serve for a term of one (1) year and the other two (2) members shall be elected and serve for a term of two (2) years. Thereafter, all Board members elected each year shall serve for a term of two (2) years. The members of the Board shall serve until their respective successors are duly elected and qualified, or until their death, resignation or removal.

**5.05 Resignation and Removal.** Any member of the Board may resign at any time by giving 45 days written notice to the President or the remaining Board members. Any member of the Board may be removed from membership on the Board by the approval of two-thirds (2/3) of the votes of those Members of the Association who are in attendance or represented at any annual or special meeting duly called for such purpose, except that a vacancy on the Board shall be deemed to exist in the event of the death of a Board member, the disability of a Board member which, in the opinion of a majority of the members of the Board, renders such Board member incapable of performing Board duties, or in the event a Board member shall cease to be a Member.

Whenever there shall occur a vacancy on the Board for any reason, the remaining Board members shall elect a successor Member to serve until the next annual meeting of the Association or until a special meeting is called for filling vacancies, at which time said vacancy shall be filled by the Association for the un-expired term, if any.

**5.06 Compensation.** The members of the Board shall receive no compensation for their services unless expressly authorized for by the Members of the Association, but they shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

**5.07 Powers and Authority of the Board.** The Board, for the benefit of the Members of the Association, shall enforce the provisions of the Declaration, these Bylaws, and any Rules and Regulations governing the Common Properties. Subject to any provision herein, the Board shall have the power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

(a) Water, sewer, storm water assessment, garbage collection, electrical, telephone and gas and other necessary utility services for the Common Properties.

(b) The services of a person or firm to manage its affairs (herein called "Manager"), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Common Properties, whether such personnel are employed directly by the Board or are furnished by the Manager. All persons employed to manage or assist in the management or maintenance of the Common Properties shall be employed at the will of the Board; provided that a manager may be employed for successive periods not exceeding a three (3) year term in each period. The Board may delegate any of its duties, powers or functions relating to the daily administrative affairs of the Association to any person or firm designated by the Board to act as Manager.

(c) The services of a person or firm to provide security for the Development to the extent and in such manner (fixed or roving or a combination thereof) as allowed by law and as determined by the Board to be necessary or proper.

(d) Legal and accounting services necessary or advisable in the operation of the Common Properties and the enforcement of this Declaration, these Bylaws, and any Rules and Regulations made pursuant thereto.

(e) Officers and Directors Liability Insurance covering the Officers and Directors of the Association acting in such capacity.

(f) A fidelity bond naming the Manager, and such other person as may be designated by the Board as principals and the Board, Association and members as obligees, in an amount to be determined from time to time by the Board.

(g) Painting, maintenance, repair, replacement and landscaping of the Common Properties. The Board shall also have the exclusive right from time to time to acquire and dispose of by sale or otherwise and without the necessity of approval by any Member,

furnishings and equipment and other personal property for the Common Properties and to provide maintenance, repair and replacement thereof.

(h) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments that the Board is required to secure or pay for pursuant to the terms of the Declaration, these Bylaws or any Rules and Regulations promulgated hereunder or which, in its opinion, shall be necessary or advisable for the operation of the Common Properties or for the enforcement of the Declaration, these Bylaws, or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security personnel, and insurance, payment for which is to be made a Common Expense. The provision shall not be construed to prohibit the Board from delegating such authority to the Manager as it deems proper.

**5.08 Additional Powers of the Board.** The Board shall have the right to acquire, operate, lease, manage, mortgage and otherwise trade and deal with the Common Properties as may be necessary or convenient in the operation and management of the Common Properties, and in accomplishing the purposes set forth herein. The Board or any managing agent or entity designated by the Board shall be deemed the agents of the Members and as such shall manage, maintain and improve the Common Properties and also collect, conserve, allocate and expend money received from the Members in a manner consistent with such agent's relationship and in conformity with this Declaration, these Bylaws and the Rules and Regulations.

**5.09 Meetings of the Board.** Meetings of the Board shall be held at such places as the Board shall determine. Two (2) members of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. The President of the Association shall chair meetings of the Board, and the Secretary of the Association shall record the minutes, whether said Secretary is a Member of the Board or not. The Board shall annually elect all of the officers set forth in Section 6.07 hereof. The meeting for the election of officers shall be held at a meeting of the Board to be held immediately following the annual meeting of the Association. Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a written consent, setting forth the action so taken, signed by all members of the Board.

**5.10 Telephone Meetings.** Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating director can hear and be heard by other participating directors.

**5.11 Special Meetings.** Special meetings of the Board may be called by the President of the Association or by any two (2) Board members.

**5.12 Notice of Meetings.** Regular meetings of the Board may be held without call or notice. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need

not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

**5.13 Waiver of Notice.** Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purposes of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

**5.14 Action Without Meeting.** Any action required to be taken at a meeting of the Board of Directors or any action which may be taken at a meeting of the Board of Directors or a committee of directors may be taken at a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors or all of the members of the committee of directors, as the case may be, in accordance with the By Laws of the Association.

**5.15 Notice of Election.** After the election of the Board to succeed the first Board, the Secretary of the Association shall execute and, where desirable, acknowledge and record a certificate stating the names of all of the members of the then Board, provided, that, in the event of the disability or other incapacity of the Secretary, the President of the Association shall be empowered to execute the aforesaid certificate. The certificate shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

**5.16 Fiscal Year.** The Board shall determine the fiscal year of the Association.

**5.17 Special Committees.** The Board, by resolution duly adopted, may designate one or more special committees, including without limitation an Architectural Review Committee, with each committee to consist of two (2) or more Members appointed by the Board, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. The Board may also rescind any such resolution by a further resolution duly adopted. The Developer shall perform all of the functions of all Special Committees until such time as provided in Section 5.02 hereof. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Board. Such Special Committees shall keep regular minutes of their proceedings and report the same to the Board when required. The Board may appoint Members to fill vacancies on Special Committees.

**5.18 Rules and Regulations.** The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing the details of the operation and use of the Common Properties and setting forth restrictions on, and requirements respecting the use and maintenance of the Common Properties. Copies of the Rules and Regulations shall be furnished to each Member prior to the time the same shall become effective.

**5.17 Limitation on Capital Additions, Etc.** The Board shall authorize no structural alterations, capital additions to, or capital improvements of the Common Properties, any of which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) without approval of a majority of the votes of those Members who are present or represented at any annual or special

meeting of the Association duly called for such purpose; provided, however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of the Common Properties as are necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists which should be corrected before a meeting of the Association could be reasonably called and held.

**5.19 Failure to Insist on Strict Performance Not Waiver.** The failure of the Board or its agents to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in the Declaration or these By-Laws, or the Rules and Regulations, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction, right, option or notice; but such term, covenant, condition or restriction, right, option or notice shall remain in full force and effect.

## **ARTICLE VI THE ASSOCIATION: MEETINGS, OFFICERS, ETC.**

**6.01 Quorum.** The presence in person or by proxy at any meeting of the Association of a majority of the Members entitled to cast votes, in response to notice to all Members properly given in accordance with Sections 6.02 and 6.03 of these Bylaws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Association upon the affirmative vote of Members entitled to cast a majority of the votes which are represented at such meeting.

**6.02 Annual Meeting.** There shall be an annual meeting of the Association on the first Monday of February at 6:00 P. M. at such reasonable place or other time (but not more than sixty (60) days before or after such date) as may be designated by written notice by the Board delivered to the Members not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to the annual meeting, the Board shall furnish to the Members: (1) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year with the estimated allocation thereof to each Member, and (2) a statement of the Common Expenses itemizing receipts and disbursements for the previous and, if then available, for the current fiscal year, together with the allocation thereof to each Member. Within ten (10) days after the annual meeting, the budget statement shall be delivered to the Members who were not present at the annual meeting if not previously provided.

**6.03 Special Meeting.** Special meetings of the Association may be held at any time and at any reasonable place to consider matters, which by the terms hereof: require the approval of all or some of the Members, or for any other reasonable purpose. Special meetings may be called by a majority of the Board, or by at least ten percent (10%) of the Members by written notice, delivered to all Members not less than thirty (30) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered.

**6.04 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with these Bylaws or other such rules adopted by the Board.

**6.05 Officers.** The officers of the Association shall be a President, Secretary, and Treasurer. The Developer may, in its sole discretion, designate individuals to fill these positions during the period that the Developer is performing the functions of the Board pursuant to Section 5.02 hereof. Such officers designated by the Developer need not be Members, and may be removed and replaced by the Developer at will. The Developer shall determine the scope of the authority of each such designated officer.

Once the Developer has turned over authority to a successor Board pursuant to Section 5.03 hereof, the following provisions shall become applicable: Each officer shall be required to be a Member, and the President must be a member of the Board. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Association and may be removed and replaced by the Association. In the event an office becomes vacant due to an officer ceasing to be a Member, or due to the death or disability of an officer, or for any other reason, the Board shall immediately name a successor to that office to serve out the remainder of the term. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

(a) **President.** The President shall be the chief operating officer of the Association and he shall preside at all meetings of the Association and of the Board and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. He shall have the authority and power to execute on behalf of the Association contracts, notes, bonds, mortgages, deeds of trust, security deeds, leases, waivers of liens and other documents and instruments arising in the ordinary course of business.

(b) **Secretary.** The Secretary shall keep the minutes of all proceedings of the Board and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded.

(c) **Treasurer.** The Treasurer shall be responsible for the fiscal affairs of the Board and the Association, but may delegate the daily handling of funds to the Manager and accounting to accountants selected by the Board.

## **ARTICLE VII LIABILITY AND INDEMNIFICATION**

**7.01 Liability of Members of the Board and Officers.** The members of the Board, the officers and any agents and employees of the Association shall: (i) not be liable to the Members or Association as a result of their activities as such for any mistake of judgment, or otherwise, except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (ii) have no personal liability to a Member or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the

Members in their capacity as such; (iii) have no personal liability in tort to a Member or any other person or entity direct or imputed by virtue of acts performed by them as Board members and/or officers except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (iv) have no personal liability arising out of the use, misuse or condition of the Common Properties, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such Board members and/or officers.

**7.02 Indemnification by Association.** To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including without limitation counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Members or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board or an officer or agent or employee of the Association; provided, in the case of any settlement, that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association of the Board, or otherwise. The indemnification by the Association set forth in this Article VII shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

**7.03 Costs of Suit in Actions Brought by One or More Members on Behalf of All Members.** No suit shall be brought by one or more but less than all Members on behalf of all members without approval of a majority of Members and, if approval is obtained, the plaintiffs' expenses, including reasonable counsel's fees and court costs, shall be a Common Expense, unless such suit is brought by one or more Members against other Members, the Association or against the Board, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Members as defendants, in which event the plaintiffs' expenses, including counsel's fees and court costs, shall not be charged as a Common Expense.

**7.04 Notice of Suit and Opportunity to Defend.** Suits brought against the Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Common Properties as a whole, shall be directed to the President of the Association, who shall promptly give written notice thereof to the other members of the Board and any Mortgagees, and shall be defended by the Board, and the Association and all Members shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all Members, shall be directed to such Members, who shall promptly give written notice thereof to the Board and to the Mortgagees of the Lots affected, and shall be defended by such Members at their expense.

## **ARTICLE VIII GENERAL PROVISIONS**

**8.01 Businesses.** Nothing contained in these Bylaws shall be construed to give the Board the authority to conduct any business for profit on behalf of the Association or any Member.

**8.02 Notices.** Any notice required to be sent to any member under the provisions of these Bylaws shall be deemed to have been properly sent, and notice thereby given, when personally hand delivered or mailed, postpaid, to the last known address of the Member on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, under the provisions of these Bylaws shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

9284 Skyfall Drive  
Ooltewah, TN 37363

**8.03 Conflict.** In the event of any conflict between these Bylaws and the provisions of the Charter, the Charter shall control and govern. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control and govern.

**8.04 Nonwaiver of Covenants.** No covenants, restrictions, conditions, obligations or provision contained in the Declaration or these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**8.05 Agreements Binding.** All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and these Bylaws shall be deemed to be binding on all members, their heirs, successors and assigns.

**8.06 Severability.** The invalidity of any covenants, restriction, condition, limitation or any other provisions of these Bylaws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these Bylaws.

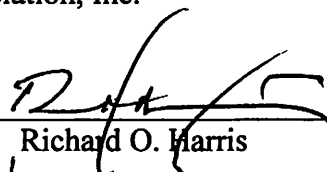
**8.07 Books and Records.** The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Charter and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable costs.

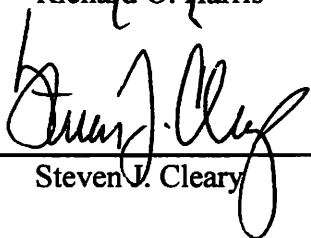
**8.08 Governing Law.** The substantive and procedural laws of the State of Tennessee shall govern these by-laws and the interpretation thereof



The foregoing By-Laws of Skyfall Homeowner's Association, Inc. containing Articles I through VIII, are hereby certified to be a true copy of the By-Laws adopted by the Developer of Skyfall Homeowners Association, Inc. effective as of the 11<sup>th</sup> day of July, 2017.

Skyfall Development Group, G.P, as  
Developer of Skyfall Homeowners  
Association, Inc.

By:   
Richard O. Harris

By:   
Steven J. Cleary

**EXHIBIT C**

**ARCHITECTURAL AND DESIGN REVIEW GUIDELINES**

## Architectural and Design Review Guidelines

### 1.01 General Standards.

(a) In order to preserve, to the extent possible, the natural beauty of the Property and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the development, and to promote and protect the value of the Property, Developer or the Board shall create a body of rules and regulations covering details of Dwelling Units, which shall be available for all owners or prospective Owners of Lots. The term "Lot," as used herein, shall be an inclusive term referring to a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as a residence. The term "Dwelling Unit," as used herein, shall mean a single-family residence to be constructed on a Lot. The term "Development," as used herein, means Hampton on the Lake, the planned unit development described in the Declaration.

(b) Developer shall have sole architectural and design reviewing authority for the Development until Developer has transferred governing authority to the Board in accordance with the By-Laws; provided, however, that prior to calling the meeting of the Association to elect a Board to succeed Developer as provided in the By-Laws, Developer may execute and record in the office of the Register a document stating that Developer reserves unto itself, its successors and/or assigns, the architectural and design reviewing authority provided herein and in Article 11 of the Declaration, and stating that said reservation, notice of which is thus provided, shall survive the election of the Board to succeed Developer. Thereafter, Developer shall continue to exercise the rights thus reserved to it until such time as it shall execute and record in the office of the Register a document assigning these rights to the Board. Upon such occurrence, the Board shall establish an Architectural Review Committee as soon as is practicable. When such Committee has been established, Developer shall transfer reviewing authority to it.

(c) No Dwelling Unit, other building, structure, fences, exterior lighting, walls, swimming pools, children's play areas, decorative appurtenances, or structures of any type, shall be erected, placed, added to, remodeled, or altered and no trees or shrubs shall be cut or removed and no grading shall be commenced until the proposed building plans and specifications (including height, and composition of roof, siding, or other exterior materials and finish), plot plan (showing the proposed location of the Dwelling Unit, building or structure, drives, and parking areas), drainage plan, landscape plan, or construction schedule, as the case may be, shall have been submitted to Developer or the Architectural Review Committee for approval at least thirty (30) days prior to the proposed date of construction. In addition, any repainting of a substantial portion of the exterior of any structure in a manner not previously approved by Developer or the Architectural Review Committee shall be subject to prior approval of Developer or the Architectural Review Committee as provided in the preceding sentence. Developer or the Architectural Review Committee shall give written approval or disapproval of the plans within thirty (30) days of submission. However, if written approval or disapproval is not given within forty-five (45) days of submission, the plans shall be deemed to have been approved. Developer

or the Architectural Review Committee may, by written notice given from time to time to the Owners of Lots, exempt certain matters of a non-essential nature from the review requirements, subject to the terms and conditions and for the time periods established by Developer or the Architectural Review Committee. In the event of the completion of any Dwelling Unit on any Lot, without any proceedings having been instituted in the courts of Hamilton County, Tennessee, to enjoin the construction thereof, the said Dwelling Unit shall be conclusively presumed to have had such approval.

(d) Developer or the Architectural Review Committee shall charge a fee for each application submitted for review. The amount of the fee shall be set, at the sole discretion of Developer or Architectural Review Committee, and shall initially be described below:

#### REVIEW AND CONSTRUCTION DEPOSIT

Upon initial application for each Dwelling Unit, the Lot Owner is required to submit a nonrefundable Application and Review Fee of \$400, together with an Owner's Construction Deposit of \$235, and the Builder is required to submit a Construction Deposit of \$1,000. The deposits are held in escrow by Developer or the Association until the building is completed and the Architectural Review Committee has approved its final inspection and received a copy of the certificate of occupancy. The deposits, as itemized below, are used to offset the cost incurred in the processing and review of plans by outside professionals, and to cover the cost incurred by Developer or the Association to repair damage to the properties caused by the Builder or its subcontractors:

a. Application and Review Fee (nonrefundable)	\$400
b. Owner's Construction Deposit	\$235
c. Builder's Construction Deposit	<u>\$1,000</u>
<b>TOTAL DEPOSIT REQUIRED</b>	<b>\$1,635</b>

If no damages occur from the construction process, no repairs of adjacent properties are required due to damages by the Builder, and all items of the approved construction and landscaping plans are completed satisfactorily; two hundred thirty-five dollars (\$235) will be refunded to the Owner and one thousand dollars (\$1,000) will be refunded to the Builder. If repairs are required, the charges for the repairs shall be deducted from the deposits at the discretion of Developer or the Board. The balance of the money will be refunded to the appropriate individual.

2.1 Application. It is expressly stipulated that the restrictions and conditions set forth herein apply solely to the Property as is described in The Declaration of Covenants, Conditions, and Restrictions for Hampton on the Lake, which Property is intended for

use as single-family residential Lots only. These restrictions are not intended to apply to any other lots, tracts, or parcels of land contiguous to the Property that are owned by Developer. Specifically, Developer, its successor or assigns, reserves the right to use or convey such other lots, tracts, and parcels with different restrictions. In a constant endeavor to improve the community, Developer reserves the right to amend materials, plans, and specifications.

## 2.2 Residential Use.

(a) All of the Lots shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed, or permitted to remain on any Lot other than as provided in the Declaration and these guidelines and in supplements hereto, or except as provided for in a deed of conveyance from Developer.

(b) "Residential," refers to a mode of occupancy, as used in contradistinction to "business" or "commercial" or "mercantile" activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Lots as well as to buildings constructed thereon.

(c) No Lot may be used as a means to service business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a party of the Property, unless specifically consented to by Developer or the Board in writing.

2.3 Zoning. Whether expressly stated so or not in any deed conveying any one or more of said Lots, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations applicable thereto.

2.4 No Multi-Family Residences, Business, Trucks. No residence shall be designed, patterned, constructed, or maintained to serve for the use of more than one single family, and no residence shall be used as a multiple family dwelling unit at any time, nor used in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes, or to store trucks or other equipment inconsistent with ordinary residential uses. No panel, commercial, or tractor trucks shall be habitually parked in driveways or overnight on streets in front of any of the Lots. Nothing contained herein shall prohibit Developer or the Association from permitting, maintaining, or operating concessions or vending machines on any Common Area.

2.5 Renting or Leasing. No Dwelling Unit may be rented or leased for a period of time that is less than six (6) months.

2.6 Minimum Square Footage. No Dwelling Unit shall be erected or permitted to remain in the Property unless it has at least 3,000 square feet of enclosed living area,

measured from the exterior walls, exclusive of open porches or screened porches, carports, garages, or basements. For the purposes of this section, enclosed living area shall mean the finished and heated living area contained within the Dwelling Unit, exclusive of open porches, garages, and steps. In the case of any question as to whether a sufficient number of square feet of enclosed living area have been provided, the decision of Developer or the Architectural Review Committee shall be final.

2.7 Set-backs. No building shall be erected on any Lot nearer than forty (40) feet to the front Lot line, twenty-five (25) feet from the rear Lot line and fifteen (15) feet from the side Lot lines, unless the side Lot line fronts on a street, in which case no building shall be erected nearer than twenty-five (25) feet to such side Lot line. For the purposes of this provision, steps and open porches shall not be considered as a part of the building; provided, however, this shall not be construed to permit any portion of any building on a Lot to encroach upon another Lot. No provision of this paragraph shall be construed to permit any structure to be constructed and erected upon any Lot that does not conform to the zoning laws and regulations applicable thereto; provided, however, that for good cause shown, an Owner may petition Developer or the Architectural Review Committee for a variance from such set-back requirements. If Developer or the Architectural Review Committee approves such petition, Developer or the Association will not oppose such Owner's attempt to obtain a variance from applicable zoning laws and regulations.

2.8 Rearrangement of Lot Lines. Not more than one Dwelling Unit shall be erected or maintained on any one Lot. With the written approval of Developer or the Board, contiguous Lots may be combined if the Lots have the same Owner, for the purpose of erecting an approved Dwelling Unit thereon; however, the assessments (fees) provided for herein will continue to be based upon the number of original Lots purchased. Except as provided herein, Lots may not be re-subdivided so as to create a smaller area than originally deeded to a Lot Owner and as shown on the subdivision plat.

2.9 Developer Reserves Right. Notwithstanding any other provision herein to the contrary, Developer reserves unto itself, its successor and/or assigns, the following rights, privileges, and powers: to subdivide Lots; to combine Lots or parts of Lots; to rearrange boundaries of Lots; to cause any part of any Lot to become a party to a Common Area; and to cause portions of a Common Area to become a part of any of the Lots bordering them, provided that not more than 5,000 square feet of any Common Area may be added to any one given Lot bordering it.

2.10 Temporary Structures. No part of any Lot shall be used for residential purposes until a completed Dwelling Unit, conforming fully to the provision of these restrictions, shall have been erected thereon. The intent of this section is to prevent the use thereon of a garage, incomplete structure, trailer, barn, tent, outbuilding, or other structure as temporary living quarters before or pending the erections of a permanent building. No structure of temporary character, including trailers and similar structures, shall be erected or permitted to remain on any Lot except during the period of construction. No Dwelling Unit or other structure

may be moved from another location to a Lot in this Development. Neither the foregoing nor any other section of this Declaration shall prevent Developer or any Builder from constructing a Dwelling Unit for use as a model home that may contain office-type furniture and be used for conducting the business of either selling that Dwelling Unit or other Units within the Development, nor shall the foregoing or any other section of these restrictions prevent Developer from designating a Lot or Lots from time to time for the approved temporary placement of a trailer or other suitable structure for use as an office and/or sales center by Developer and/or Builders.

2.11 Utility Easement. A perpetual easement is reserved on each Lot, as shown on the recorded plat, for the construction and maintenance of utilities such as electricity, gas, water, sewerage, drainage, etc., and no structure of any kind shall be erected or maintained upon or over said easement.

2.12 Sewage Disposal. Before any Dwelling Unit on a Lot shall be occupied, a connection with the municipal sewer system shall be made in compliance with applicable municipal codes. There shall not be erected, permitted, maintained, or operated on any Lot any privy, cesspool, vault, or septic system without written approval from Developer or the Board.

2.13 Building Requirements.

(a) All Dwelling Units must be compatible with and complementary to other Dwelling Units. Approved architectural styles are Classic, Traditional, Southern, English Tudor and European- and French-influenced. Contemporary, Ultra-Modern, Log Structures, and A-frame styles shall not be permitted.

(b) All Buildings or structures of any kind constructed on any Lot shall have full masonry chimneys, and any portion of the foundation and retaining walls above grade level must be covered with stone, brick, or stucco to complement the Dwelling Unit. Wood accents shall be permitted with the prior written approval of Developer or the Architectural Review Committee.

(c) The entire exterior sides of each Dwelling Unit must be covered with stone, brick, stucco, wood, approved siding, or combination thereof. Masonite, dry vet, and stow or other artificial stucco materials are not permitted. All materials must be approved in writing by Developer or the Architectural Review Committee.

(d) All sheet metal work (roof caps, flashings, vents, chimney caps) must be painted to complement thereof.

(e) Gutters and downspouts must be painted in approved colors.

(f) All roof stacks and plumbing vents must be placed on rear slopes of roofs; provided, however, that for good cause shown, Developer or the Architectural Review Committee may make exceptions to the placement of such roof stacks and plumbing vents.

(g) There will be no above ground level pools.

(h) All Dwelling Unit exteriors shall have the same finish.

2.14 Frontal Appearance. All Dwelling Units shall have conventional and acceptable frontal appearance from the main street fronting said Lots.

2.15 Quality of Building Materials. Only good quality materials and design will be accepted on any structure built on any Lot. PermaStone and asbestos shingles are specifically prohibited. No concrete blocks shall be used above the finished ground elevation of any structure unless said blocks are covered with brick veneer, stone, wood, or other material acceptable to Developer or the Architectural Review Committee.

2.16 Exterior Siding. All exterior siding must be in compliance with Section 2.13(b) and be approved in writing by Developer or the Architectural Review Committee. Soffits may be wood or Hardie Board.

2.17 Windows and Doors. Materials to be used in window and glass doors must be approved by Developer or the Architectural Review Committee. All windows must have mullions. Metal and vinyl windows are not permitted, nor are aluminum awnings permitted. However, metal or vinyl exterior clad windows will be permitted

2.18 Roofs. Roof pitches must be a minimum of 10/12, unless otherwise approved by Developer or the Architectural Review Committee. All roofs must be of architectural quality dimensional shingle shakes or slate unless otherwise approved in writing by Developer or the Architectural Review Committee.

2.19 Fireplaces. All fireplace inserts must be capped with a shroud at the point where the flue reaches the top of the chimney.

2.20 Chimneys. Chimneys must be constructed of brick, stucco, or stone, and those chimneys on the exterior must have a foundation. Functional chimneys must have chimney shroud.

2.21 Decks and Porches. All exterior wood decks which face a Common Area, another Lot or street must be painted or stained. Front porches must be constructed of brick, stone, or other approved material in accordance with the requirements of Developer or the Architectural Review Committee. Front porches requiring handrails shall be constructed of material consistent with the front elevation. Side porch material shall be consistent with that of front porches with railing of wrought iron or wood.

2.22 Mailboxes. Mailboxes must be enclosed in structures made of the same brick or stone as the exterior of the Dwelling Unit. Mailbox structures shall have a minimum width of twenty inches(20") and an appropriate height and must complement the design of the Dwelling Unit. Mailbox structures must include a gas lamp approved by Developer, and the



bottom of the lamp fixture shall be positioned six inches (6") above the top of the mailbox structure. All mailbox structures must be approved in advance by Developer or the Architectural Review Committee. Each mailbox shall be maintained by the Owner to complement the Dwelling Unit and the neighborhood.

2.23 No Detached Buildings. There shall be no detached garages or outbuildings, without the prior written consent of Developer or the Architectural Review Committee.

2.24 Garages. Each Dwelling Unit shall have at least a double-car garage which is compatible with, and constructed at the same time as, the Dwelling Unit. Double car garage doors shall have a minimum width of sixteen feet (16'). The inside walls of the garage must be finished. Detached garages will be allowed only with written approval from Developer or the Architectural Review Committee. No carports will be permitted. No garage door may face the street upon which the Dwelling Unit fronts provided, however, that for good cause shown, an Owner may petition Developer or the Architectural Review Committee for a variance from such garage requirements. Garages are to be positioned opposite the main traffic flow. Garage doors may not be allowed to stand open.

2.25 Service Area for Ancillary Equipment. Each Dwelling Unit shall provide an area or areas on the rear or side yard of the Lot to accommodate air conditioner compressors, heating units, garbage cans, utility meters, or other ancillary residential equipment that by nature may present an unsightly appearance. A service area shall be convenient to the utility equipment and screened from view by an enclosure that is an integral part of the site development plan, using materials, colors, or landscaping that are harmonious with the Dwelling Unit.

2.26 Driveways. Each Dwelling Unit constructed upon a Lot must be served by a driveway constructed of concrete or stamped concrete; however, the portion of the driveway from the street to the edge of the sidewalk nearest to the Dwelling Unit must be stamped concrete. The driveways shall have the natural gray color of concrete. No driveway shall be constructed nearer than one (1) foot to any Lot line. Where a Lot borders on more than one street, the driveway shall be entered from the secondary street. It shall be obligatory upon all Owners to construct or place any driveways, culverts, or other structures or gradings, which are within the limits of any dedicated roadways, in strict accordance with the specifications therefor.

2.27 Sidewalks. It is the obligation of each Lot Owner subsequent to Developer to install a sidewalk along lines of the Lot which front a road. The sidewalks must be four feet (4') wide and two feet (2') from the street curb. Sidewalks must be completed by the date the Dwelling Unit is completed.

2.28 Curbs. No permanent cuts may be made in the curbs for any purpose other than driveways. Curb cuts shall be made with a concrete saw at the curb and along the gutter. Irregular cuts using sledge hammers and the like are prohibited. A driveway shall be constructed so as to form a smooth transitional surface with the remaining curb at locations where the driveway meets the street. Damaged curbs shall be replaced by the Owner unless

the damage is caused by another who causes the damage to be corrected. Notwithstanding the foregoing, nothing herein shall permit any curb cuts where such cuts are prohibited by any applicable city, county, or state regulation, ordinance, or law.

2.29 Fences. Fences are permitted behind the Dwelling Unit and may not extend beyond the mid-point of the Dwelling Unit. Fences may be no more than six feet (6') in height, except for Lots on a downhill slope, which may be more than six feet high for privacy requirements. Wire or chain link fences are prohibited. All wood fences must be painted or stained. All fence proposals, showing materials, design, height, and location, shall be submitted to Developer or the Architectural Review Committee for approval prior to construction.

2.30 Excavation. There shall be no excavation or extraction of earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the prior written consent of Developer or the Architectural Review Committee is obtained.

2.31 Rainwater Drainage. Each Lot must be landscaped so that rainwater will drain into the street adjoining the Lot or into a drainage easement that drains into a street. Unless otherwise set forth on the recorded plat, Lot lines shall be the drainage easements. A Lot may not be landscaped so that rainwater runs into another Lot across an established drainage easement.

2.32 Adjoining Lot Damage. If a Builder employed to build improvements on a Lot causes damage to any adjacent or adjoining Lot, that damage will be repaired immediately at the expense of the Owner or Builder. Temporary construction support must be provided for the curbs and sidewalks by the Owner or Builder during the time of construction. All construction debris shall be removed weekly and the street must be kept clean during construction.

2.33 Landscaping. A landscape plan shall be submitted to Developer or the Architectural Review Committee for approval. If a Dwelling Unit has a rear exterior which faces Common Areas, another Lot, or a street, the Architectural Review Committee may require the placement of up to two three (3") to four (4") inch caliper trees in the rear of the Lot to provide cover for the Dwelling Unit. Landscaping, in accordance with the approved landscape plan, must be substantially completed within sixty (60) days after completion of the Dwelling Unit, weather permitting. Nothing but grass will be planted between the sidewalk and the street curb, except for shrubbery plantings to conceal utility boxes, which plantings shall not impede the vision of vehicle operators. The placement of a three (3") inch caliper maple tree is required within the area that begins three feet (3') and ends ten feet (10') from the sidewalk.

2.34 Sodding. Prior to occupancy of a Dwelling Unit, the front, side, and rear yards of the Lot must be sodded. A sprinkler system is required. Occupancy prior to sodding may be approved by Developer or the Architectural Review Committee if weather conditions prohibit sodding.

2.35 Tree Removal. No live trees or shrubs having a diameter greater than six (6) inches shall be removed prior to obtaining approval of Developer or the Architectural Review Committee. Any Owner, without having obtained approval from Developer or the Architectural Review Committee, who cuts down or allows to be cut down any tree having a diameter of six (6") inches or greater shall be liable to the Association for liquidated damages in the amount of One Thousand Dollars (\$1,000) for each tree so cut. The majority of the trees may not be removed from any Lot except in the area of the Lot upon which the Dwelling Unit and driveway are to be constructed. Except for view enhancement, excessive removal of trees will be deemed to be a nuisance to the adjoining neighbors and will mar the beauty of the Development.

2.36 Maintenance. Each Owner shall, at all times, maintain all structures located on his Lot, including driveways and permitted fences, in good repair, which shall include exterior painting as needed, and each Owner shall keep all vegetation and landscaping in good condition.

2.37 Lawn Care. All unimproved Lots (except those owned by Developer) and all improved Lots must be kept fully seeded with grass (except where other provisions hereof require sodding) and regularly cut.

2.38 Permitted Entrances for Property Maintenance. In order to implement and effect insect, reptile, and fire control, and to maintain unsightly Lots, Developer or the Board, or their respective agents, may enter upon any Lot on which a Dwelling Unit has not been constructed and upon which no landscaping plan has been implemented for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, or other unsightly growth, which in the opinion of Developer or the Board detracts from the overall beauty, setting, and safety of the Property or Lots. Such entrance for the purpose of mowing, cutting, clearing, or pruning shall not be deemed a trespass. Developer and its agents or the Board and its agents may likewise enter upon a Lot to remove any trash which has collected on said Lot, without such entrance and removal being deemed a trespass. The provisions of this section shall not be construed as an obligation on the part of Developer and its agents or the Board and its agents to mow, clear, cut, or prune any Lots or to provide garbage or trash removal services. Expenses incurred for any of the foregoing shall be chargeable to and recoverable from the Owner of the Lot upon which such work is done.

2.39 Unsightly Conditions. All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). Tree limbs, rocks, and other debris must be kept out of the streets. In the event that an Owner of a Lot in the Development fails, of his own volition, to maintain his Lot in a neat and orderly condition, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the

Owner two hundred fifty percent (250%) of the cost of such work. All Owners in the Development are requested to keep cars, trucks, and delivery trucks off the curbs of the streets.

2.40 Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economic value of all Lots within the Development, each Owner and Developer (with respect to improved Property owned by Developer) shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, improvement, or significant vegetation which shall be damaged or destroyed by fire or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of these restrictions would be best effected by allowing such a variation. Variations to this section are to be strictly construed and the allowance of any variance by Developer or the Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners.

2.41 Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment, or nuisance to the Development.

2.42 Animals. No poultry, livestock, or animals shall be allowed or maintained on any Lot at any time except that the keeping of dogs, cats, or other household pets is permitted, providing that nothing herein shall permit the keeping of dogs, cats, or other animals for commercial purposes. Pet owners shall not allow pets to roam unattended. Pet owners will remove waste deposited by their pets from all areas. The pet owners shall also muzzle any pet which consistently barks. If the barking persists, the pet owner shall have the pet removed from the Development. If the pet owner refuses, it shall be deemed an "offensive activity."

2.43 For Sale Signs. One sign offering the Lot and/or Dwelling Unit for sale with the name of the Builder may be placed upon a Lot. Such sign must be in a form approved by Developer or the Architectural Review Committee. No other signs shall be erected or maintained on any Lot, except in accordance with approved standards for signs established by Developer or the Architectural Review Committee.

2.44 Playground Equipment. No metal playground equipment (swing set) is permitted. Basketball goals may be permanently installed. Other portable sports equipment is allowed but must be stored out of sight when not in use.

2.45 Antennas and Satellite Dishes.

(a) No television antenna, radio receiver, or sender or other similar device shall be attached to or installed on the exterior portion of any Dwelling Unit or other structure on the Property or any Lot within the Development without the prior written consent of Developer or the Architectural Review Committee; nor shall radio, television signals, nor any other

form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot. Notwithstanding the foregoing, the provisions of this section shall not prohibit Developer from installing equipment necessary for a master antenna system, security system, cable television, mobile radio system, or other similar systems within the Development.

(b) Satellite dishes are permitted provided they are no more than eighteen inches (18") in width and are attached to the roof or the rear exterior wall of the Dwelling Unit or mounted on the ground. Roof-mounted satellite dishes must not be visible from the street, and ground-mounted dishes must be screened by fencing, trees, or shrubbery from the street. On Lots that border on two streets, dishes on the exterior rear wall of the Dwelling Unit must be located at least fifteen feet (15') from the corner of the Dwelling Unit nearest the secondary street. The location of all satellite dishes must be approved in advance by Developer or the Architectural Review Committee.

2.46 Sound Devices. No exterior speaker, horn, whistle, bell, or other sound device which is unreasonably loud or annoying, except devices used exclusively for security purposes, shall be located, used, or placed upon Lots within the Development. The playing of loud music from any balcony or porch shall be considered an offensive and obnoxious activity creating a nuisance.

2.47 Air Conditioning and Heating Units. Air conditioning and heating units shall be architecturally screened or landscaped so as not to be visible from any street.

2.48 Tanks and Garbage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and such tanks or receptacles may be installed only within a Dwelling Unit, within a screened area or buried underground. All garbage and trash containers must be placed in enclosed areas of the rear or side yard and must not be visible from adjoining Lots, Dwelling Units, or from any street.

2.49 Wells. No private wells may be drilled or maintained on any Lot without the prior written consent of Developer or the Architectural Review Committee.

2.50 Laundry. No Owner, guest, or tenant, shall hang laundry from any area within or outside a Dwelling Unit if such laundry is within the public view. This provision may, however, be temporarily waived by Developer or the Board during a period of severe energy shortages or other conditions where enforcement of this section would create a hardship.

2.51 Vehicle Parking. Cars owned by Lot Owners shall be parked only in the Owner's garage or driveway. No inoperable vehicle, tractor, or other machinery shall be stored outside on the premises at any time, even if not visible from the street. No house-trailer or similar vehicle shall be stored on a Lot. Recreational vehicles, vacation trailers, campers, and boats must be stored and hidden from view within the garage. Such vehicles may not be stored anywhere else on the Lot.

2.52 No Pond Use. Neither boats of any kind nor swimming shall be permitted in any pond on a Common Areas. No garbage, trash, or other refuse shall be dumped into any pond on a Common Areas. Owners will be assessed a \$500 fine for each violation of this provision in addition to assessments for the cost of removal of such material.

2.53 Occupancy Before Completion. Except with the written consent of Developer, based on adequate assurance of prompt completion of a Dwelling Unit, an Owner shall not occupy a Dwelling Unit until the Dwelling Unit and landscaping conforming to the approved construction plans and the provisions of the Declaration shall have been erected and fully completed thereon. Once the footings of any Dwelling Unit or other structure are poured, construction must progress continuously (with allowance for weather conditions, labor conditions, and availability of materials) until the Dwelling Unit is fully completed. The exterior (including landscaping) must be completed within twelve (12) months after commencement of construction. The Owner of any Lot violating either of these provisions shall be liable to the Association for liquidated damages at the rate of Fifty Dollars (\$50) per day the violations occur, and to payment of such court costs and attorney's fees incurred in the enforcement of these provisions. In the event construction does not progress continuously, the liquidated damages shall commence ten (10) days after notice from Developer or the Architectural Review Committee if construction is not resumed within said ten (10) days.

2.54 Violations and Enforcement.

(a) In the event of the violation, or attempted violation, of any one or more of the provisions of these guidelines, Developer, its successors and/or assigns, or the Association, its successors and/or assigns, including all parties hereinafter becoming Owners, may bring an action or actions against an Owner for such violation or attempted violation, and the said Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. In the event of a minor violation of front, rear, or side set-back lines, a waiver therefor may be made by Developer or the Board, their successors or assigns. Further, Developer or the Board may grant variances from these guidelines if such variances do not, in the sole discretion of Developer or the Board, adversely affect the purposes sought to be obtained hereby.

(b) By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots (subject to rights of variances reserved by Developer and the Board), it shall not be incumbent upon Developer or the Board to enforce the provisions of these restrictions or to prosecute any violation thereof. Developer shall not be responsible or liable for any violation of these restrictions by any person other than itself

2.55 Swimming Pools. Swimming pools are allowed, however, they are to be fenced and landscaped using designs and materials approved by Developer or the Architectural Review Committee. Above ground pools will not be allowed. Decks and screening must not be closer than five (5') feet from the Lot line.

2.56 Speed Limit. The speed limit for Skyfall Subdivision is 15 miles per hour unless

posted otherwise. The Hamilton County Sheriff's Department shall have the authority to enforce speed limits.