

This instrument prepared by:  
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Nashville, TN 37238

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### **DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIDDEN CREEK**

This Declaration of Protective Covenants, Conditions, and Restrictions for Hidden Creek ("Declaration") is executed, effective, and hereby declared as of the date of the recording of this Declaration in the Register's Office for Williamson County, Tennessee by RH Hidden Creek, LLC, an Ohio limited liability company ("Declarant"), so that covenants, conditions, restrictions, easements, reservations, rights-of-way, equitable servitudes, and other provisions stated in this Declaration and any amendment hereto shall run with the land and shall be binding upon the real property in Williamson County, Tennessee as further described herein and upon any parcels of property subsequently annexed hereto in accordance with the provisions of this Declaration and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in such real property and parcels, their heirs, personal and legal representatives, successors, and assigns.

#### **WITNESSETH:**

WHEREAS, Declarant, together the undersigned, owns certain real estate in Williamson County, Tennessee ("Development Property") as more particularly described and shown on Exhibit A attached hereto;

WHEREAS, Declarant may annex additional areas as future phases of the proposed development and add same to the Development Property ("Future Phase Property"), all or any portion of which may be made subject to this Declaration pursuant to the provisions hereof;

WHEREAS, Declarant desires to provide for the protection and preservation of the values, desirability, and character of the Development Property;

WHEREAS, Declarant desires to provide a system of administration, operation, and maintenance of the Common Areas and easements of the Development Property;

WHEREAS, Declarant further desires to establish for the mutual benefit, interest, and advantage of Declarant and each and every Person or other entity hereafter acquiring title to any portion of the Development Property certain rights, easements, privileges, obligations, restrictions, covenants, liens, assessments, and regulations governing the use and occupancy of the Development Property and the maintenance, protection, and administration of the common areas and easements thereof, all of which are declared to be in furtherance of a plan to promote and protect the operative aspects of residency or

occupancy within the Development Property. All such rights, easements, privileges, liens, assessments, obligations, restrictions, covenants, and regulations are intended to be covenants running with the land, which shall be binding on all parties having or acquiring in the future any right, title, or interest in and to all or any portion of the Development Property and shall inure to the benefit of each present and future owner thereof;

NOW, THEREFORE, Declarant, as legal title holder of the Development Property and for the purposes set forth above, declares as follows:

## **ARTICLE I DEFINITIONS**

The following words when used in this Declaration or any Supplemental Instrument hereto shall have the following meanings:

1. Administrative Functions. "Administrative Functions" shall mean and refer to all functions of, for, and on behalf of the Association that are necessary or proper under this Declaration, including, without limitation: (a) providing management and administration of the Association; (b) providing development review, control, and approval functions; (c) incurring reasonable attorneys' fees and accountants' fees; (d) obtaining insurance and bonds; (e) paying real estate, personal property, or other taxes levied against the Development Property; (f) incurring filing fees, recording costs, and bookkeeping fees; (g) obtaining and maintaining offices and office furniture and equipment; and (h) performing all other reasonable and ordinary administrative tasks associated with the operation of the Association.

2. Appointment Period. "Appointment Period" shall mean and refer to the period of time commencing as of the date of the recordation of this Declaration and continuing until one hundred percent (100%) of the Lots have been sold to an initial purchaser other than the Developer or a Builder.

3. Assessment. "Assessment" shall mean and refer to Common Assessments, Working Capital Fund Assessments, Special Assessments, Supplemental Assessments, and Reimbursement Assessments, all of which are further defined herein. Assessment shall include all costs and reasonable attorney's fees incurred in the enforcement thereof and shall additionally include interest thereon.

4. Assessment Year. "Assessment Year" shall mean and refer to the calendar year or such other period of twelve consecutive calendar months selected by the Board for the levying, determining, or assessing of the annual Assessments under this Declaration.

5. Association. "Association" shall mean and refer to the Hidden Creek Owners Association, Inc., a Tennessee non-profit corporation, its successors and assigns.

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

7. Budget. "Budget" shall mean and refer to a written, reasonably itemized estimate of the expenses to be incurred by the Association in the performance of its functions under this Declaration. A Budget will be prepared each Assessment Year prior to the commencement thereof as further provided herein.

8. Builder. "Builder" shall mean and refer to any Person in the business of constructing single family residences, who acquires any Lot within the Development Property for the purpose of constructing residential Improvements thereon for sale to a third party customer of the Builder.

9. By-Laws. "By-Laws" shall mean and refer to the By-Laws of the Association attached hereto as Exhibit C and made a part hereof, as same may be amended from time to time.

10. Common Area. "Common Area" shall mean and refer to any and all property and/or facilities on or within the Development Property owned by and/or reserved for maintenance by the Association and such other property as shall become the responsibility of the Association through easements or otherwise, including all open space, walking trails, entrances, rights-of-way, sign easements, landscape easements, recreational areas, maintenance facilities, and surface water detention facilities or other bodies of water, as shown on any current and future Plat. All Common Areas shall be maintained and landscaped by the Association and shall be reserved for the non-exclusive use, benefit, and enjoyment of the Owners and their family members, invitees, agents, and servants, subject to the conditions, restrictions, and limitations imposed by this Declaration.

11. Declarant or Developer. "Declarant" and/or "Developer" shall mean and refer to RH Hidden Creek, LLC, an Ohio Limited Liability Company, and its successors and assigns. A Person shall be deemed "successor and assign" of RH Hidden Creek, LLC as Declarant only if specifically so designated in a duly recorded written instrument or Supplemental Declaration under this Declaration. Such Person shall be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant that are specifically set forth in such recorded written instrument. Notwithstanding the foregoing, a successor to RH Hidden Creek, LLC by reason of consolidation or merger shall be deemed a successor or assign of RH Hidden Creek, LLC as Declarant under this Declaration.

12. Delinquency Interest Rate. "Delinquency Interest Rate" shall mean and refer to an annual interest rate established by the Board from time to time; provided, however, in no event shall the Delinquency Interest Rate exceed the maximum contract rate of interest allowed to be charged under applicable law as amended from time to time.

13. Development Property. "Development Property" shall mean and refer to the subdivided real property located in Williamson County, Tennessee, as further described and shown on Exhibit A, attached hereto and made a part hereof, together with any Future Phase Property.

14. Improvement. "Improvement" shall mean and refer to any infrastructure, building, building addition, deck, porch, alteration of exterior materials, outbuilding, garage, barn, running shed, detached structure, landscaping, fence, wall, swimming pool, recreational facility, driveway, parking area, walkway, satellite dish, mailbox, utility service, or such other improvement or structure constructed or located upon all or any portion of the Development Property. It is intended that the definition of "Improvement" be broad in scope and is intended to encompass any man-made alteration of the condition of any Lot or Common Area.

15. Lot. "Lot" shall mean and refer to any plot of land within the Development Property permitted to be used for single family residential purposes and so designated on the Plat by a Lot number.

16. Member. "Member" shall mean and refer to any person, persons, or entity that shall be an Owner, and as such, shall be a Member of the Association.

17. Mortgage. "Mortgage" shall mean any unreleased deed of trust to secure debt or other similar instrument of record, given voluntarily by the Owner of a Lot, encumbering all or any portion of the Lot to secure the performance of an obligation or the payment of a debt and which is required to be canceled upon performance of the obligation or payment of the debt. Mortgage shall not include a judgment lien, mechanic's lien, tax lien, or other similar lien or involuntary encumbrance upon a Lot.

18. Mortgagee. "Mortgagee" shall mean and refer to the Person who is the holder of indebtedness secured by a Mortgage.

19. Owner. "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee interest in any Lot within the Development Property, excluding, however, those parties holding such interest merely as security for the performance of an obligation or the payment of a debt, unless such Person is a Mortgagee in possession following a default under such security obligations or has acquired the fee simple title to the Lot by foreclosure. "Owner" shall also include Declarant as long as, Declarant retains ownership of all or any portion of the Development Property, or any land which may become a part of the Development Property.

20. Person. "Person" shall mean and refer to a natural person, as well as a corporation, partnership, firm, association, trust, or other legal entity. The use of the masculine pronoun shall include neuter and feminine references as applicable, and the use of the singular shall include the plural where the context so requires.

21. Plans. "Plans" shall mean and refer to the detailed plans prepared for construction of any Improvement within the Development Property, which shall comply with the architectural control provisions of this Declaration.

22. Plat. "Plat" shall mean and refer to the plat(s) to be recorded in the Register's Office for Williamson County, Tennessee subdividing the Development Property into Lots

and reflecting thereon the streets, common areas, utility easements, and other matters normally shown on subdivision plats.

23. Recording. "Recording" shall mean and refer to the recording of an instrument in the Register's Office for Williamson County, Tennessee.

24. Rules and Regulations. "Rules and Regulations" shall mean and refer to the rules and regulations concerning the use of the Lots and Common Areas, as may adopted from time to time by the Board. Any adopted and enforceable Rules and Regulations shall be maintained and be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

25. Supplemental Declaration. "Supplemental Declaration" shall mean and refer to a written instrument (including any amendments thereto) containing covenants, conditions, restrictions, reservations, easements, equitable servitudes, or other provisions, or any combination thereof, which is recorded in connection with this Declaration.

26. Transfer of Control. "Transfer of Control" shall mean and refer to the end of the Appointment Period as set forth herein.

27. Vote. "Vote" shall mean the vote in the affairs of the Association to which each Member is entitled as provided herein.

## **ARTICLE II PROPERTY SUBJECT TO DECLARATION**

1. Property Subject to Declaration. Declarant, for itself and its heirs, legal and personal representatives, successors, and assigns, hereby declares that the property located in Williamson County, Tennessee and is more particularly described and shown on Exhibit A attached hereto and made a part hereof, together with any Future Phase Property, as may be expanded pursuant to the provisions hereof shall be owned, held, transferred, leased, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration. The covenants and restrictions contained herein constitute covenants running with the land and shall be binding upon and shall inure to the benefit of all parties now owning or hereafter having or acquiring any right, title, or interest in any Lot within the Development Property or any portion thereof. Every Person hereafter acquiring such property, by acceptance of a deed thereto, shall accept such interest subject to the terms and conditions of this Declaration, and by acceptance of same shall be deemed to have consented to and be bound by the terms, conditions, and covenants of this Declaration.

2. Purpose of Declaration. This Declaration is executed: (a) in furtherance of a common and general plan for the Development Property and for those other parcels of land which may hereafter become part of the Development Property; (b) to protect and enhance the quality, value, desirability, and attractiveness of all land which is or becomes

part of the Development Property; (c) to establish an Association to hold, maintain, care for, and manage the Development Property and to perform functions for the benefit of owners thereof; (d) to define the duties, powers, and rights of the Association; and (e) to define certain duties, powers, and rights of Owners within the Development Property.

3. Acceptance of Development. By the acceptance of a deed to any Lot within the Development Property or any portion thereof, purchaser shall be deemed to have accepted and approved the Development Property and all Improvements constructed by that date including, without limitation, the utilities, drains, roads, landscaping, fences, entrance, decorative masonry, and all other infrastructure and improvements of Hidden Creek.

### **ARTICLE III ANNEXATION TO DEVELOPMENT PROPERTY**

1. Development Property. Declarant hereby declares that the real property, as further described and shown on Exhibit A, attached hereto, is made subject to this Declaration.

2. Future Phase Property. From time to time, Declarant may unilaterally add Future Phase Property to the Development Property and make same subject to this Declaration.

3. Manner of Annexation. Any parcel of real property may, from time to time, become part of the Development Property and become subject to this Declaration effective upon the Recording of a Supplemental Declaration that meets the following requirements. Each Supplemental Declaration for the purpose of annexing property shall:

- a. Be executed by the then Owner(s) of the Future Phase Property described therein;
- b. Contain an adequate legal description of the Future Phase Property;
- c. Contain a reference to this Declaration stating its Recording date and the book and page or instrument number; and
- d. Contain a statement that the Future Phase Property is declared to be part of the Development Property under this Declaration and that the Future Phase Property shall be subject to this Declaration.

4. Withdrawal of Future Phase Property by Declarant. Future Phase Property or any portion thereof for which a Supplemental Declaration has been recorded may be withdrawn from the Development Property, from this Declaration, and/or from such Supplemental Declaration related thereto. The withdrawal of such Future Phase Property or portion thereof may be accomplished by the execution and Recording of a written notice of such withdrawal ("Notice of Withdrawal").

## **ARTICLE IV ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

1. Owners Association. There has been or will be formed an owners association ("Association") having the name "Hidden Creek Owners Association, Inc.", a Tennessee non-profit corporation, which shall be the governing body for all Owners and shall be operated to provide for the Administrative Functions of the Development Property as provided in this Declaration and the By-Laws for the Association ("By-Laws"), which are attached to this Declaration as Exhibit C. The Articles of Incorporation for the Association ("Charter") are attached to this Declaration as Exhibit D. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of the Owners in accordance with the provisions of this Declaration and the By-Laws.

2. Board. The affairs of the Association shall be managed by the Board, which shall consist of neither fewer than three (3) nor more than five (5) Directors. Except as to matters set forth herein as requiring a Vote of the Owners, the Board shall have full authority to make all decisions and take any and all actions on behalf of the Association. During the Appointment Period, the Declarant shall determine the number of Directors and Declarant shall have the right to appoint all of such Directors.

a. By resolution, the Board may delegate portions of its authority to an executive committee or to other committees, tribunals, officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized executive committee, officer, agent, or employee without a Vote of Owners, except as otherwise specifically provided in this Declaration.

b. The election of the Board by the Owners shall be those Persons receiving the highest number of Votes with each Owner allowed one (1) Vote per Lot owned for as many candidates as there are Directors being elected at a meeting of the Owners for such purpose at which a quorum is present.

3. Members. Each Owner within the Development Property shall be a Member of the Association. Membership in the Association is appurtenant to and may not be separated from ownership of any Lot. An Owner's membership in the Association shall automatically terminate when he ceases to be an Owner. Upon the conveyance or transfer of an Owner's ownership interest to a new Owner, the new Owner shall simultaneously succeed to the former Owner's membership in the Association.

4. Voting. The voting rights of the Members shall be appurtenant to the ownership of their Lot. Each Member shall be entitled to cast a single vote for each Lot owned by such Member. When two or more Persons hold an interest (other than a leasehold or security interest) in a Lot, all such Persons shall be Members, but the Vote attributable to

such Lot shall be exercised by one of such Persons as proxy and nominee for all such Members and in no event shall more than one (1) Member be entitled to cast the Vote attributable to such Lot. Furthermore, neither the Declarant nor any other person or individual dealing with the Development Property shall have any duty to inquire as to the authorization of the Member casting the Vote for a Lot, but shall be entitled to rely upon the evidence of Voting as conclusive evidence of such Member's authority to cast the Vote for such Lot.

5. Effect of Delinquency. Any Member, who is delinquent in the payment of any Assessment or other charge duly levied by the Association against a Lot owned by the Member, shall not be entitled to Vote until all such Assessments and charges, together with reasonable penalties, interest, and costs of collection, as the Board may impose or incur, have been paid to the Association. In addition, the Board may suspend the right of such Member to use the Common Areas or any other facilities or services that the Association may provide until such delinquency is cured. The forgoing rights of the Board shall be in addition to all other rights set forth herein or available at law or in equity with respect to a failure to pay Assessments.

6. Manner of Voting. Except as specifically provided elsewhere herein, the Board shall have the authority to regulate the procedural rules governing Votes by the Members, the acceptance of proxies from Members, the validity of voice votes, ballot votes, or other manners of Voting and any regulation of the solicitation of Votes or proxies.

7. Non-Liability of Declarant, Board, and Officers. To the extent permitted by law, neither the Declarant nor the Board or officers of the Association shall be personally liable to Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Declarant, Board member, or officer, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. Owners and Association shall indemnify, hold harmless, and defend Declarant, the Board, and officers and their respective heirs, executors, administrators, successors, and assigns.

8. Binding Determination. In the event of any dispute or disagreement between any Owners relating to the Development Property, the use, right to use, or maintenance of any Common Area or any other questions of interpretation or application of the provisions of this Declaration, the By-Laws, or any Rule or Regulation, the determination thereof by the Declarant during the Appointment Period and thereafter the Board shall be final and binding on each and all Owners.

## **ARTICLE V DECLARANT'S RIGHTS AND RESERVATIONS**

1. Applicability and Term. Declarant shall have and hereby retains and reserves certain rights set forth in this Declaration with respect to the Association and Development Property. Declarant's rights and reservations set forth in this Declaration shall be deemed excepted and reserved in each recorded Supplemental Declaration, in each conveyance of property by Declarant to the Association, and in each deed or other instrument by which



any property within the Development Property is conveyed, whether or not specifically stated therein. The rights, reservations, and easements of Declarant set forth in this Declaration during the Appointment Period may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration, including any amendment of this Article. Declarant's consent to any such amendment shall not be construed as consent to any other or subsequent amendment. In the event of any conflict between the rights reserved to Declarant hereunder and any other provisions of this Declaration, then Declarant's rights shall control. In the event of Declarant default of its development loan or other financing related to the development of the Development Property that results in the transfer of ownership of the Development Property to the lender, then all of Declarant's rights, duties, obligations, liabilities and any other responsibility set forth in this Declaration shall automatically be transferred and assigned to such lender.

2. Additional Improvements. Declarant shall have and hereby reserves the right, at any time and from time to time, but shall not have the obligation, to construct, at its expense, additional Improvements on Development Property and any Future Phase Property which are for the betterment and enhancement thereof and for the benefit of the Association and Owners. Declarant will convey or transfer such Improvements to the Association, and the Association shall be obligated to accept title to, care for, and maintain the same as elsewhere provided in this Declaration.

3. Promotion and Marketing. Declarant shall have and hereby reserves the right to the reasonable use of Development Property and any Future Phase Property in connection with development, construction, promotion, marketing, sale, and leasing of properties within the Development Property and any Future Phase Property, by erecting and maintaining on any part of the Development Property and any Future Phase Property such signs as Declarant may reasonably deem necessary or proper in connection with the development, construction, promotion, marketing, sale, and leasing of parcels of real property within the Development Property and any Future Phase Property, and by permitting prospective purchasers of any of such parcels who are not Owners to enter upon Development Property and any Future Phase Property; provided, however, that Declarant shall pay all costs occasioned by such use, including without limitation maintenance and repair expenses.

4. Development Completion. No provision of this Declaration shall be construed to limit the right of Declarant to or require Declarant to obtain approval to: (a) excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, remodel, demolish, or replace any Improvements on any Development Property or any Future Phase Property; or (b) require Declarant to seek or obtain the approval of the Association for any such activity or Improvement to property by Declarant on any Development Property or any Future Phase Property. Nothing in this Paragraph shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

5. Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements and rights-of-way for access, utilities, water,

drainage, and other purposes incident to development, construction, or sale within the Development Property, located in, on, under, over, and across Development Property, any Future Phase Property, property owned by Declarant, provided that such easements and rights-of-way that are located within the Development Property do not unreasonably interfere with the rights of Owners.

6. Conveyance of Additional Property. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and improvements thereon to the Association at any time and from time to time in accordance with this Declaration.

## **ARTICLE VI ASSOCIATION DUTIES**

1. General Duties and Powers. The Association has been formed to further the common interests of the Owners. The Association, acting through the Board or through persons to whom the Board has delegated any authorized powers of the Board, shall have the duties and powers hereinafter set forth and, in general, the powers to perform its duties described in this Declaration, and subject to any limitation set forth in this Declaration, the powers to do anything that may be necessary or desirable to further the common interests of the Owners, to maintain, improve, and enhance the attractiveness and desirability of the Development Property.

2. Assessments. The Association shall levy and collect Assessments and other duly levied charges as elsewhere provided in this Declaration.

3. Taxes. The Association shall pay all ad valorem taxes and governmental assessments levied upon the Development Property to which the Association holds fee simple title and all taxes and assessments payable by the Association. Nevertheless, the Association shall have the right to contest in good faith any such taxes or assessments.

4. Borrowed Money. The Association shall have the power to borrow money but not the power to encumber Development Property as security for such borrowing.

5. Property and Facilities Transferred by Declarant. The Association shall accept title to any property, including any Improvements thereon and personal property, transferred to the Association by Declarant, together with the responsibility to perform any and all Administrative Functions associated therewith, provided that such property and Administrative Functions are not inconsistent with the provisions contained in this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, and licenses for use. Any property or interest in property transferred to the Association by Declarant shall be unencumbered by any Mortgage.

6. Property Acquisition and Improvement Construction. Other than property received from Declarant, the Association may acquire property or interests in property for

the common benefits of Owners, including Improvements and personal property. The Association may construct Improvements on property and may repair, maintain, remodel, and demolish existing Improvements upon property.

7. Property Management and Care. The Association shall manage, operate, care for, maintain, and repair all Development Property and keep them in a reasonable condition for the use and enjoyment of the Owners. The Association shall have a reasonable right of entry upon all Development Property and any portion thereof to make emergency repairs and to do other work reasonably necessary under this Declaration or under any applicable Supplemental Declaration for the proper performance of its duties hereunder and the proper maintenance and operation of the Development Property. In addition, the Association shall have the power to require that all Owners to manage, operate, care for, maintain, and repair their respective property and Improvements thereon and to keep them in an attractive and desirable condition and to otherwise enforce the provisions of this Declaration against all Owners.

a. Managing Agent. The Declarant during the Appointment Period and thereafter the Board shall have the authority to engage the services of an agent ("Managing Agent") to undertake any of the management duties and Administrative Functions for the efficient operation of the Development Property, or any part thereof, to the extent deemed advisable by the Declarant during the Appointment Period and thereafter the Board and to manage the affairs of the Association. The Managing Agent shall be required to have fidelity bond coverage on its employees handling Association funds, and the cost of such services shall be incurred by the Association.

b. Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for accounting, legal, and other services as may be necessary or desirable in connection with performance of any duties or exercise of any powers of the Association under this Declaration or any Supplemental Declaration.

c. Landscaping. The Declarant during the Appointment Period and thereafter the Board shall have the authority to engage the services of one exclusive landscaping company (the "Exclusive Landscaper") for all routine landscaping maintenance needs of the Common Areas of Development Property, such as lawn mowing, mulching, hedging and limb / leaf removal. All costs incurred in connection with the services furnished by the Exclusive Landscaper are to be charged to the Association.

8. Development Property Use Regulation. The Association shall have the power to regulate the use of Development Property by Owners, their family members, guests, agent, servants, or invitees to further and enhance the overall rights of use and enjoyment of all Owners, including imposing reasonable limits on the times of use and numbers of Persons permitted to use Development Property.

9. Public Use. The Association, acting through the Board, shall have the right to allow members of the general public to use Development Property.

10. Insurance. The Board shall have the authority to obtain such insurance as it deems reasonably desirable or necessary, in such amounts, from such sources and in such forms as it deems desirable. The Board may (but shall not be required to) require of those performing any maintenance, repair, or other work on the Development Property for which the Association is responsible, such liability or other insurance, including workmen's compensation, as it deems reasonably necessary or desirable given the nature, circumstances, and amount of the work to be performed.

a. Casualty Insurance. To the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire, and extended coverage insurance with respect to all improvements and personal property owned by the Association.

b. Liability Insurance. To the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage.

c. Fidelity Coverage. To the extent reasonably obtainable, the Association may obtain and keep in full force and effect at all times a fidelity policy or bond providing fidelity coverage against dishonest acts on the part of the Managing Agent, directors, officers, employees, and volunteers of the Association responsible for handling funds collected and held for the benefit of the Owners or otherwise belonging to or administered by the Association.

d. General Provisions. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Association and each Owner as against any officer, director, agent, or employee of any of the foregoing. To the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, insurance obtained by the Association shall name Declarant and any Managing Agent as an additional insured and contain a waiver of rights of subrogation as against Declarant, the Managing Agent, and any officer, director, agent, or employee of Declarant or Managing Agent. Casualty, fire, and extended coverage insurance may be provided under blanket policies covering the Development Property and/or property of Declarant. Each Owner hereby irrevocably appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (a) the collection and appropriate disposition of the proceeds thereof; (b) the negotiation of losses and execution of release of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose.

e. Premiums. The premiums for insurance procured pursuant to this Declaration shall be a Common Assessment.

11. Easements. The Association shall have the power to grant permits and

licenses, as well as easements for access, utilities, drainage, water facilities, and other matters, in, on, over, across, or under Development Property and any Common Areas, as may be reasonably necessary or useful for the proper maintenance of the Development Property or otherwise benefit the Association.

a. Public and Private Utilities. Easements for installation and maintenance of public and private utilities and drainage facilities are reserved as shown on any Plat concerning Development Property and as otherwise shown by public records. A blanket, perpetual, and non-exclusive easement in, upon, over, across, and through the Common Areas is hereby reserved for the purpose of the installation, maintenance, repair, service, and replacement of all sewer, water, power, telephone, cable television systems, pipes, mains, conduits, poles, or transformers as well as any and all other equipment or machinery necessary or incidental to the proper functioning of any utilities systems servicing the Development Property, which easement shall be for the benefit of the Declarant, the Association, and any governmental agency, utility company, or other entity (public or private) which requires same for the purpose of furnishing one or more of the foregoing services.

b. Declarant. During the Appointment Period, an easement is reserved to Declarant in, upon, over, under, across, and through the Common Areas in order to maintain such facilities and perform such operations as in the sole discretion of Declarant may be reasonably required, convenient, or incidental to the construction and maintenance of Improvements of any kind, including, without limitation, a business or sales office(s), storage area(s), construction yards and signs.

c. Association. A blanket, perpetual, and non-exclusive easement of unobstructed ingress and egress in, upon, over, across, and through the Common Areas is hereby reserved to the Association, the Board, Managing Agent or their respective agents or employees for the purpose of maintaining, repairing, and replacing the Common Areas, or any equipment, facilities, or fixtures affecting or servicing same as well as to remedy any violations of the provisions of this Declaration, the By-Laws, or any Rules and Regulations of the Association; provided that requests for entry upon any Lot are made in advance and that any such entry is at a time reasonably convenient to the Owner. In the case of an emergency or the Owner's uncooperative or untimely response to such request, the right of entry shall be immediate, whether the Owner is present at the time or not.

d. Federal, State, and Local Entity. An easement is hereby established for the benefit of any applicable federal, state, or local entity over all portions of the Development Property for the setting, removing, and reading of water meters; for maintaining and replacing water, sewage, and drainage facilities; for police protection, fire fighting, and garbage collection; and rendering of such other services as are appropriate and necessary for the use and enjoyment of the Development Property.

12. Public Dedication. The Association shall have the power to grant, convey, dedicate, or transfer any Development Property or facilities to any public or governmental agency or authority for public use.

**13. Condemnation: Common Areas.** If any Common Areas or interests therein are taken under exercise of the power of eminent domain or by purchase under threat thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property. The Association shall have the exclusive right to participate in such condemnation proceedings as they pertain to the Common Areas and to represent the interests of all Owners in such proceedings. Each Owner hereby irrevocably appoints the Association and any such duly appointed trustee as such Owner's attorney-in-fact for such purposes. All condemnation compensation, damages, or other proceeds received by the Association shall be held by the Association as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of Development Property, or may be used for improvements or additions to, or operation of, Development Property; provided, however, if an allocation of such condemnation compensation damages or other proceeds is already established in negotiation, judicial decree, or otherwise, then in allocating such condemnation compensation, damages, or other proceeds the Association shall employ such allocation.

**14. Rules and Regulations.** The Association, acting through the Board, or the Improvement Review Committee, may from time to time adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration or any Supplemental Declaration, the operation of the Association, and the use and enjoyment of Development Property. Any such Rules and Regulations shall be uniformly applied, but the applicability of a particular rule to a particular situation shall be in the sole discretion of the Board. Each Owner shall comply with such Rules and Regulations. In the event of any conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

**15. Enforcement.** The Association shall have the power to enforce the provisions of this Declaration, any Supplemental Declaration, and the provisions of the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Owner. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration, any Supplemental Declaration, and the Rules and Regulations by any one or more of the following means: (a) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, any Supplemental Declaration, or the Rules and Regulations, by mandatory injunction or otherwise; (b) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration, any Supplemental Declaration, or the Rules and Regulations and for all expenses incurred in connection therewith, including reasonable attorney's fees; (c) by levying and collecting reasonable and uniformly applied fines and penalties established for breach of this Declaration, any Supplemental Declaration, or the Rules and Regulations; (d) by taking such action as reasonably necessary to bring a Lot and any Improvements thereon into compliance with this Declaration, any Supplemental Declaration, or the Rules and Regulations, the costs of which shall be at the Owner's sole expense; and (e) by exercising any remedy or remedies for nonpayment of Assessments as provided herein. The Association shall have a lien on

any Lot and any Improvement thereon to secure payment of the amounts described in this Paragraph, and such lien may be enforced in the same manner and with the same priority as that of a lien for Assessments as provided herein.

16. No Waiver. The failure by the Declarant or the Board to enforce any covenant, restriction, or Rule and Regulation provided in or by this Declaration, Supplemental Declaration, Articles of Incorporation, By-Laws, or Rules and Regulations of the Association shall in no event be deemed a waiver of the right to do so thereafter.

17. General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Tennessee nonprofit corporation, including without limitation, the power and right to enter into partnerships and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or the By-Laws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration, under any Supplemental Declaration, or under the Articles of Incorporation, By-Laws, or Rules and Regulations, and to do and perform any and all acts which may be necessary or desirable for or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration, under any Supplemental Declaration, or under the Articles of Incorporation, By-Laws, or Rules and Regulations.

## **ARTICLE VII ASSESSMENTS**

1. Covenant to Pay and Commencement. Each Owner, by acceptance of a deed to his Lot, whether or not it shall be so expressed in such deed, is thereby deemed to covenant and agree to pay to the Association: (a) Common Assessments, (b) Working Capital Fund Assessments; (c) Special Assessments, (d) Supplemental Assessments, (e) Reimbursement Assessments, and (f) fines or charges which may be imposed against such Lot in accordance with the provisions of this Declaration. An Owner's obligation to pay Assessments and any other duly levied charge shall commence on the first day of the first month following the date of the Recording of the first deed conveying the Lot from Declarant to the first non-Declarant Owner. The Assessments for the then current Assessment Year shall be prorated on the basis of the number of months remaining in such Assessment Year. Notwithstanding the foregoing, Common Assessments shall not commence as to any Builder until the later of: (a) one (1) year following the conveyance of the Lot from Declarant to Builder or (b) such later date as may be agreed on in writing by Declarant and the Builder.

2. Common Assessment. The Board shall have the power and authority to levy a "Common Assessment" to fund the annual or other periodic costs of operating the Association, including expenses incurred in connection with any Administrative Function and other expenses duly incurred by or on behalf of the Association which are to be paid by each Owner to the Association. Expenses which may be duly incurred on behalf of the Association in connection with the performance of Administrative Functions include, without limitation, the following:



a. Utility charges for utilities serving the Common Areas and for the lighting of streets throughout the Common Areas, as well as charges for other common services for the Development Property.

b. Expenses of maintenance, operation, repair, replacement, and security of the Common Areas, including, without limitation, costs of labor, equipment, and materials incurred in connection therewith.

c. Expenses related to sprinkler systems, supplemental trash disposal, recycling collection, seasonal decorative lighting, and other seasonal landscaping.

d. Principal, interest, and other charges payable with respect to: (i) loans to the Association to provide funds to perform any Administrative Function or to pay any other obligation of the Association, including, without limitation, loans financing the construction of improvements for the Development Property and (ii) loans from Declarant made to the Association to fund Association expenses prior to the time when Common Assessments payable by Owners other than Declarant are sufficient to fund the normal operating expenses of the Association.

e. Other expenses as may be determined from time to time by the Board to be incurred necessarily or appropriately for the performance of Administrative Functions, including, without limitation, taxes, insurance premiums, utility charges, and government charges not separately assessed against Lots.

f. The establishment and maintenance of a reasonable reserve fund or funds for (i) maintenance, repair, and replacement of those portions of the Development Property and Improvements thereon that are the responsibility of the Association and that must be maintained, repaired, or replaced on a periodic basis; and (ii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

3. Common Assessment Calculation. Prior to commencement of each Assessment Year, the Board shall fix the amount of the Common Assessment by preparing a Budget for the Administrative Functions to be provided by the Association in the coming Assessment Year. The proposed Budget is to show, in reasonable detail, the categories of expenses and the anticipated amounts of expenses for which Common Assessments are determined by the Board to be necessary or desirable, and shall reflect any expected income and estimated sources and amounts thereof of the Association for such Assessment Year as well as any expected surplus from the prior Assessment Year. At the office of the Association or its agent, copies of the proposed Budget and the Budget for the current Assessment Year will be made available by the Association to any Person requesting a copy thereof upon payment of the reasonable expense of copying same. The Board shall allocate the Common Assessment equally among the Lots. The per Lot Common Assessment allocation for the 2013 Assessment Year is Six Hundred and No/00 Dollars (\$600.00).



4. Assessment Notice. Notice of any Assessment set forth herein shall be sent by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, facsimile transmission, or electronic transmission at the address or other contact information provided to the Board by the Owner for notices provided herein or in the event no separate address or other contact information has been provided, then by prepaid U.S. Mail or hand delivery to the Owner's Lot. Such notice shall state the type of Assessment being levied, the amount to be paid, payment frequency (annual, quarterly, monthly, or as otherwise set by the Board), and the payment due date(s), as well as any other required information. Notices will be given to Owners in a reasonable period of time prior to the payment or first installment due date. Common Assessments shall be paid in advance on a quarterly basis due on the first date of each quarter (January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup>), until such time as this payment frequency and due dates for Common Assessments is altered by the Board.

5. Delinquent Payment. All Assessments or other duly levied charge or fine under this Declaration shall be due and payable on date set forth in the notice related thereto. Any Assessment or any portion thereof not paid when due shall be deemed delinquent. Any Assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as may be determined by the Board from time to time and shall bear interest from the date due at 10% per annum until paid.

6. Failure to Establish Common Assessments. The failure by the Board to levy Common Assessments for any Assessment Year shall not be deemed a waiver or modification of any of the provisions of this Declaration or a release of liability of any Owner to pay Common Assessments, or any installment thereof, for that or any subsequent Assessment Year. In the event of such failure, the amount of the Common Assessment for that Assessment Year shall be, until subsequently modified by the Board, the same as for the most recent year for which Common Assessments shall have been levied.

7. Exempt Property. Assessments created under this Article shall not apply to Lots owned by the Declarant during the Appointment Period so long as the Declarant has elected to make contributions pursuant to option "(a)" as set forth in the following paragraph. Development Property or any portion thereof that is dedicated to and accepted by a local public authority, that is granted to or used by a utility company, or is designated as part of the Common Areas shall be exempt from Assessments.

8. Developer Responsibility. Pending the termination of the Appointment Period, to the extent that the Association is unable to pay all costs of the Administrative Functions, Declarant may elect either: (a) loan monies to the Association on an interest free basis to fund any such deficits; or (b) to have Lots owned by Declarant assessed in the same manner as the those that have been sold to purchasers other than the Declarant. After the termination of the Appointment Period, Lots owned by Declarant shall be assessed in the same manner as those that have been sold to purchasers other than the Declarant, and the obligation of Declarant to fund any deficit in the operations of the Association thereafter accruing shall terminate and be of no further force and effect. In the event Declarant expends any of its own funds for Administrative Functions, Declarant shall be entitled to reimbursement from the Association or a credit for such sums against any Assessment that

Declarant might be required to pay by virtue of being an Owner. Declarant will not be obligated to pay any operating fund deficiencies that are due to non-payment of Assessment by Owners other than Declarant, and nothing contained in this Paragraph shall be deemed to relieve or release any Owner from the obligation of that Owner to pay Assessments. The obligation of Declarant to fund any deficit provided for herein may be satisfied in the form of a cash substitute or by "in kind" contribution of materials and substances or a combination thereof. All "in kind" contributions of services and materials shall be valued at the reasonable market value of such service or materials.

9. Working Capital Fund Assessment. Each Owner of a Lot shall pay a "Working Capital Fund Assessment" in the amount of Three Hundred, Fifty and No/00 Dollars (\$350.00) to the Association at the closing of the sale of the completed dwelling. The Working Capital Fund Assessment will apply to the first sale of a completed dwelling upon a Lot and to every subsequent sale of such Lot. The Working Capital Fund Assessment shall not be considered as advance payment of any Assessment or other duly levied charge. The Working Capital Fund Assessment shall be held and disbursed for the following purposes in the order of priority:

a. To fund costs of maintenance of the Common Areas and the Administrative Functions of the Association that cannot be funded by Assessments.

b. To reimburse the Declarant for all amounts loaned by Declarant to the Association to fund any operating deficits.

c. To assure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board.

10. Special Assessments. The Board may levy one or more Assessments to be known as "Special Assessments" for the purpose of raising funds, not provided by Common Assessments to: (a) construct or reconstruct, repair, remodel, replace, or maintain Improvements upon Development Property, including necessary personal property related thereto, and to pay ad valorem taxes and insurance on Development Property; (b) add to the Development Property; (c) provide for necessary facilities and equipment to offer the services authorized in this Declaration; (d) repay any loan made to the Association to enable it to perform any duty or function authorized in this Declaration; or (e) pay for any other cost or expense as determined by the Board. The amount of Special Assessment to be paid by each Owner shall be calculated in the same manner as Common Assessments and may be made payable in installments over a period that may extend beyond the Assessment Year in which the resolution was adopted. In addition to the other information required to be set forth in Assessment notices, a Special Assessment notice shall state the purpose of the Special Assessment.

11. Supplemental Assessments. In any Assessment Year, if the Board determines that the important and essential functions of the Association may not be fully funded by the Common Assessment received or receivable for that Assessment Year, the Board may

levy one or more Assessments to be known as "Supplemental Assessments," applicable to that year only, by resolution authorizing same. The amount of Supplemental Assessment to be paid by each Owner shall be calculated in the same manner as Common Assessments and may be made payable in installments over a period that may extend beyond the Assessment Year in which the resolution was adopted. In addition to the other information required to be set forth in Assessment notices, a Supplemental Assessment notice shall state the amount of the deficit and the reasons therefor.

12. Reimbursement Assessment. Subject to the provisions hereof, the Board may levy an Assessment, known as a "Reimbursement Assessment" against any Owner(s) to reimburse the Association for any loss sustained by reason of the willful or negligent failure of such Owner(s) to comply with this Declaration, any Supplemental Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations which resulted in the expenditure of funds by the Association to remedy a problem or to cause such compliance. In addition to the other information required to be set forth in Assessment notices, a Reimbursement Assessment notice shall state the reason(s) therefor.

13. Enforcement: Liens and Personal Obligation. In order to secure payment of Assessments, fines, or other duly levied charges assessed against any Lot within the Development Property pursuant to this Declaration as same become due, there shall arise a continuing lien and equitable charge ("Assessment Lien") in favor of the Association for all such sums, together with court costs, reasonable attorney's fees, late charges, any other collection costs, and interest thereon as provided herein (collectively, "Non-compliance Damages"). If any Assessment, fine, or other duly levied charge remains unpaid for sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect Noncompliance Damages, foreclose its Assessment Lien, or both. The Assessment Lien shall be in favor of the Association and each Owner, by acceptance of a deed to a Lot vests in the Association or its agents the right and power to sue or otherwise proceed against such Owner for the collection of Noncompliance Damages and/or to foreclose the Association's Assessment Lien. The Association shall have the power to bid on the Lot at any such foreclosure sale and to acquire, hold, lease, mortgage, and convey same except that the amount the Association may bid at any such sale may not exceed the total amount owed to the Association by the delinquent Owner. The Noncompliance Damages shall also be the personal obligation of the Person who was the Owner at the time the Assessment, fine, or other duly levied charge became due. Such personal obligation shall not pass to successors in title unless expressly assumed by them. Any sale or transfer described herein shall not relieve such Lot from liability for any Assessments accruing after such sale or transfer.

14. Priority of Assessment Lien. The Assessment Lien described in the preceding Paragraph shall be superior to all other liens and encumbrances on such Lot except for: (a) liens of ad valorem taxes; and (b) a lien for all sums unpaid on a first Mortgage, on any secondary purchase money Mortgage, or on any Mortgage to Declarant, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument; provided, however, that the subordination of the Assessment Lien to the foregoing Mortgages shall apply only to Assessments that shall have become

due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure. Further, notwithstanding the foregoing, any Mortgage held by a party related to, affiliated with, or controlled by the Owner of the Lot on which such Mortgage exists shall not be entitled to such priority unless such Mortgagee obtains the written agreement of the Association that it will be entitled to such priority before making such Mortgage. All Persons acquiring other liens or encumbrances on any Lot after the recording of this Declaration shall be deemed to consent that such liens or encumbrances shall be inferior to such future equitable charges and liens for Assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

15. No Offsets. All Assessments shall be payable in the amounts specified in the notice related thereto, and no offsets or reductions thereof shall be permitted for any reason, including, without limitation, any claim of non-use of Development Property or Improvements thereon or any claim that the Association, the Board, or any committee of the Board is not properly exercising its duties and powers under this Declaration.

16. Estoppel Certificate. Upon the payment of such reasonable fee as may be determined from time to time by the Board and upon the written request of any Owner or any Mortgagee or Person intending to acquire any right, title, or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and owing to the Association and then unpaid with respect to such Lot and/or the Owner thereof as well as the amount of any assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association to establish that no greater or other amounts were then due or accrued and unpaid and that no other Assessments were then levied and unpaid against such Lot.

17. Records of Assessments. The Association shall cause to be maintained in the office of the Association or its Managing Agent a record of all Owners, their Lot(s) and/or Unit(s) and the Assessments, fines, and/or other duly levied charges applicable thereto that shall be open to inspection by any Owner.

## **ARTICLE VIII IMPROVEMENT CONSTRUCTION AND ALTERATION**

1. Designation of Committee. The Association may have an Improvement Review Committee ("IRC"), which shall consist of neither fewer than three (3) nor more than five (5) members. During the Appointment Period, the Declarant shall appoint the members of the IRC, who shall be subject to removal at any time by Declarant. Declarant in its sole discretion, may alone constitute the IRC and until the IRC is so appointed, all references herein to the IRC shall mean the Declarant. After the Transfer of Control, the members of the IRC shall be appointed and shall be subject to removal at any time by the Board. After the Transfer of Control, the Board alone may constitute the IRC and until the IRC is so appointed, all references herein to the IRC following the Transfer of Control shall mean the Board. The IRC shall designate an individual as its secretary, and all communications with the IRC shall be conducted through the secretary.

2. Function of Improvement Review Committee. No Improvement shall be erected, constructed, placed, maintained, or permitted to remain on any portion of the Development Property until the Plans and specifications therefor showing the nature, kind, shape, height, materials, color, location, and any other information required by the IRC have been submitted to and approved in writing by the IRC. The IRC shall determine in its sole discretion whether or not the proposed Improvement, and all features thereof, is consistent with the overall development scheme for Hidden Creek and otherwise compatible with other Improvements constructed within the Development Property. The IRC shall be the sole judge and arbiter of such consistency and compatibility. As a prerequisite to consideration for such approval, and prior to commencement of proposed work, the Owner, Builder, or any agent thereof shall make the necessary submissions as required by the IRC, together with the applicable fee(s), if any, to be charged by the IRC to defray its costs incurred in considering and acting upon any proposed Plans that may require changes for approval, including costs incurred in relation to an architect's review of the proposed Plans, if necessary. The IRC may refuse approval of any Plans that in its sole judgment are inconsistent with the overall purpose and aesthetic values of the Development Property or the architectural standards described in the Design Guidelines, if any. The IRC shall be the sole arbiter of submitted Plans and may withhold its approval for any reason, including purely aesthetic reasons. The IRC has the authority to waive the requirements set forth in this Article or any portion thereof as well as to pre-approve Plans and specifications for Builders constructing Improvements upon multiple Lots.

3. Design Guidelines. The IRC may, in its discretion, promulgate Design Guidelines specifying acceptable architectural styles, permissible materials, and acceptable locations for the construction of all Improvements within the Development Property. All Plans for Improvements must be consistent with such Design Guidelines, which may be amended from time to time by the Declarant during the Appointment Period and thereafter the Board.

4. Submission of Plans. Any Owner, Builder, or any agent thereof desiring to construct an Improvement upon any Lot shall first have detailed Plans prepared for such Improvement, which shall be prepared by a licensed architect or approved home designer acceptable to the IRC. The scaled Plans to be submitted for IRC review shall include at a minimum the following: (a) plot plan, survey or copy of the recorded plat showing the dimensions of the Lot, the proposed location of all Improvements to be placed upon the Lot, including but not limited to any detached structures such as sheds, garages, swimming pools, pool houses, guest houses, walls and/or fences; and the relationship of all such Improvements to the front, rear, and side property lines; (b) elevation drawings of the front, sides, and rear of any new structure included within the Improvements, together with all exterior color selections / schemes and building materials to be used; (c) a landscaping plan, including all driveways, sidewalks, and terraces; and (d) such other information as may be necessary or otherwise requested by the IRC.

5. Approval of Plans. The IRC will certify its approval or disapproval of the Plans within sixty (60) days of the IRC's acknowledged receipt of the Plans, specifications, review fee, and/or other requested information and/or materials. In its sole and uncontrolled discretion, the IRC may grant or withhold its approval of the Plans. By the purchase of

property within the Development Property, every Owner shall be conclusively presumed to have consented to the exercise of discretion by the IRC. The IRC's approval of Plans for any Improvement shall be effective for a period of six (6) months only; and if construction of the proposed Improvements shall not have commenced within that time period, the approval shall no longer be valid. In the event written approval is not received within sixty (60) days after the Plans, specifications, review fee, and all requested additional information have been submitted and acknowledged as received by the IRC, then the request for approval shall be deemed Approved.

6. Construction Compliance. If the IRC approves Improvement Plans, the Owner shall make a construction compliance security deposit or post a bond, letter of credit, or other acceptable collateral in such amount in the sole discretion of the IRC ("Construction Deposit") in order to insure compliance with the Plans by the Owner, his representatives and/or agents. Upon Owner's completion of construction, including the removal of all trash and debris, Owner shall notify the Board of same so that the completed construction and clean-up may be inspected, confirmed, and approved. Once the completed construction and clean-up have been inspected and approved, the Construction Deposit shall be refunded or released to the Owner; provided, however, the Board shall be entitled to deduct from the Construction Deposit any costs incurred by Declarant or the Association to repair any damage to Common Areas or other Improvements within the Development Property and otherwise to maintain same in a clean and orderly fashion free of mud, dirt, or other debris. Further, the Board shall be entitled to deduct from the Construction Deposit the full amount of any fine assessed against the Owner by the Board for non-compliance with the approved Plans and/or covenants set forth herein.

7. Construction of Improvements. Once the IRC approves the Plans and the Owner has made the Construction Deposit, the Owner, Builder, or any agent thereof shall construct the Improvements in substantial conformity with the approved Plans. Actual construction shall be the responsibility of the Owner and shall commence before the expiration of the IRC's approval as provided herein above. At all times during the construction of any Improvement, the Declarant during the Appointment Period and thereafter the Board or an authorized agent thereof shall have access to same the purpose of inspection and confirmation that the construction is in substantial accordance with the Plans as approved by the IRC and in compliance with this Declaration or any Supplemental Declaration. If the construction is found not to be in substantial accordance with the Plans as approved by the IRC and/or in compliance with this Declaration, then the Declarant during the Appointment Period and thereafter the Board or an authorized agent thereof shall give written notice to the Owner of such non-compliance and the basis therefor. If the violation is not brought into compliance or a satisfactory resolution is presented in writing by the Owner and accepted by the Declarant during the Appointment Period and thereafter the Board within five (5) business days of the delivery of this written notice, then the Declarant during the Appointment Period and thereafter the Board shall be authorized: (i) to stop construction and all activities related thereto concerning any Improvement until same is made compliant; (ii) to assess reasonable fines related to the non-compliance; and (iii) to make the necessary corrections or to take necessary action to make the Improvements compliant at the Owner's expense.

8. Setback Restrictions. No residence, Building, structure, or any part thereof shall be located on any Lot or Site nearer to the front line, rear line, or any side line than the minimum building setback lines required by any applicable governing authority, and as may be shown on the recorded Plats. No encroachment upon any utility easements reserved on the Plat shall be authorized or permitted.

9. Limited Effect of Plan Approval. The approval by the IRC of an Owner's Plans for the construction of an Improvement is not intended to be an approval of the structural stability, integrity, or design of a completed Improvement, the safety of any component therein, or the compliance thereof with the regulatory requirements or any federal, state, or local law, regulation, or ordinance. This approval by the IRC is required solely for the purpose of insuring compliance with the covenants contained herein and further to insure the harmonious and orderly architectural and aesthetic development and improvement of Hidden Creek. Notice is hereby given to any future Owner and/or occupant of any completed Improvement and all invitees and other persons who may from time to time enter or go on or about such completed Improvement that no permission or approval granted by the IRC, the Declarant, or the Association with respect to the construction of any Improvement pursuant to this Declaration shall constitute or be construed as an approval of the structural stability, integrity, or design of a completed Improvement, the safety of any component therein or the compliance thereof with the regulatory requirements or any federal, state, or local law, regulation, or ordinance. As such, no liability shall accrue to the Declarant, the IRC, or to the Association in the event that any such construction shall subsequently prove to be defective or not in compliance with such requirements.

10. Compliance and Penalty. Failure to comply with any provision of this Article, Declarant during the Appointment Period and thereafter the Board may take such action as necessary to achieve compliance therewith, including, without limitation, assessment of fines that may be debited against the Construction Deposit. The Owner shall, upon demand, immediately reimburse Declarant or other performing party for all expenses incurred in so doing, including reasonable attorney's fees. Declarant and thereafter the Association shall have a lien on the Lot and the Improvements thereon to secure the repayment of such amounts. Such lien may be enforced in the same manner and with the same priority that the lien for Assessments may be enforced.

## **ARTICLE IX IMPROVEMENT RESTRICTIONS**

1. General. The construction or installation of Improvements upon Development Property shall comply with Notes on any Plat, as may be amended from time to time and shall comply with all other applicable laws, ordinances, and regulations of governmental agencies (federal, state, and local). In addition, the following provisions shall govern the construction and installation of all Improvements upon the single family residential Lots within the Development Property.

2. Lot Combination. If one or more contiguous Lots are owned by the same Owner, they may be combined subject to compliance with applicable subdivision laws and regulations upon consent of Declarant during the Appointment Period and thereafter the Board for the purpose of placing approved Improvements thereon. Once combined, however, they shall retain their status as individual Lots for purposes of Voting and Assessments.

3. Lot Re-subdivision. No Lot shall be re-subdivided in order to create additional building sites except by Declarant, unless such re-subdivision is first approved by the applicable governing authority and the Association. Declarant shall have the right, but not the obligation, to re-subdivide Lots by recorded plat or in any other lawful manner, and such lots, as re-platted, shall be subject to this Declaration as if such lots were originally included herein as Lots. Any such re-plat must comply with pertinent re-platting ordinances, statutes, regulations, and requirements.

4. Dwelling Size. All one story dwellings shall contain not less than 2,000 square feet of living space (HVAC floor area), excluding basement, garage, carport, open porches, or patios ("Living Space"). Two story dwellings shall have not less than 1,100 square feet of Living Space on the ground floor. Living Space bonus rooms above the ground floor shall not cause the dwelling to be considered a two story dwelling.

5. Exterior Materials. The exterior building material of all dwellings (exclusive of windows) shall extend to the ground level and shall be comprised of at least eighty percent (80%) brick, stone, stone veneer, or other material approved by the IRC in its sole discretion. No exposed concrete block will be permitted above ground level.

6. Garages. All garages shall be attached to the dwelling and shall have a minimum of two (2) vehicular stalls, which may be served by a single large door. Garages are to be side, rear, or courtyard entry.

7. Roofs. The roof of the dwelling or other approved structure shall be constructed or covered with asphalt or composition type shingles or metal unless otherwise approved by the IRC. To the greatest extent possible, all roof stacks and plumbing vents shall be located on the rear slopes of the roof, and any alternative placement must be approved by the IRC.

8. Driveways and Sidewalks. The IRC shall approve the location, construction, design, and types of materials for all driveways and sidewalks. Except as otherwise approved by the IRC, all driveways shall be finished with a hard surface of an approved material that is compatible with the Improvements located on the Lot and the overall Development Property. At the time of the construction of the dwelling, every Owner shall be responsible for the installation of the portions of the sidewalk across the Owner's Lot according to the specifications set by the IRC.

9. Mailboxes. The IRC shall have the power to designate a specific, uniform type of mailbox for the Development Property or any subsection thereof. In the event that the



specific, uniform mailbox required herein is not reasonably available, the IRC shall select the replacement mailbox to be used.

10. Fencing, Walls, and Hedges. Location, style, type, and materials of fencing, walls, and/or hedges must be approved by the IRC. No fence nor wall shall be erected or maintained nearer to the front lot line than the rear of the dwelling, and for corner lots, not nearer to the lot line facing the more minor side street than the side the dwelling. Hedges, shrubbery, or evergreens may be located nearer to the lots lines than fencing and walls, but their location must be approved by the IRC. No fence, wall, or hedge shall be allowed in any drainage easements that may exist on a Lot. No fence, wall or hedge shall be more than six (6) feet in height, unless otherwise approved. Chain link, wire, and wood fences are specifically prohibited. Preferred fencing is black aluminum or wrought iron to be (4) foot in height at locations where such fencing abuts the Common Area four (4) feet fencing and four (4) to six (6) feet at other locations.

11. Yards. Lots are to be landscaped and maintained in an attractive manner that is compatible with neighboring Lots and respectful of views and privacy of adjacent Owners. Flowers, hedges, shrubs, trees, and other vegetation may be planted in the rear yard without IRC approval; however, Owners shall replace any vegetation on their Lot that should die in a diligent manner.

12. Grading and Drainage. No Owner shall excavate earth from any Lot for any business purpose, except for the construction of the approved Improvements thereon, and no elevation changes will be permitted that could materially affect the surface grade of the Lot without the consent of the IRC, which must also approve the nature, manner, and methods of the earthwork. Drainage of each Lot shall conform to the general drainage plans for the Development Property. No storm water drain, roof down-spout, or ground water shall be introduced into the sanitary sewage system.

13. Swimming Pools and Spas. Outdoor swimming pools, therapy pools, and spas for the use of Owners and their guests may be constructed on Lots so long as: (a) they are below ground level and of a permanent nature; (b) the location complies with the minimum setback requirements shown on the Plat; (c) all applicable laws, ordinances, rules, and regulations of governmental agencies are satisfied and all necessary governmental permits are obtained by the Owner at his expense; (d) such pools and spas are completely fenced in a manner approved by the IRC; (e) the IRC has approved the design and location that shall be in the rear yard only; and (f) construction is not commenced until after the commencement of the construction of the dwelling. Notwithstanding the foregoing, hot tubs, Jacuzzis, or spas may be above ground so long as same are incorporated into other improvements such as decking, gazebo, or otherwise and are appropriately screened from view as approved by the IRC.

14. Compliance and Penalty. Failure to comply with any provision of this Article, Declarant during the Appointment Period and thereafter the Board may take such action as necessary to achieve compliance therewith, including, without limitation, assessment of fines or corrective action to bring such violation into compliance. The Owner shall, upon

demand, immediately pay the fine and/or reimburse Declarant or other performing party for all costs incurred, including reasonable attorney's fees. Declarant and thereafter the Association shall have a lien on the Lot and Improvements thereon to secure payment of fines and/or reimbursement for such costs. Such lien may be enforced in the same manner and with the same priority that the lien for Assessments may be enforced.

## **ARTICLE X USE RESTRICTIONS**

1. General. The following use restrictions apply to all Lots and Improvements constructed thereon within the Development Property.

2. Residential Use. No Lot shall be used for any purpose other than private, single family residential purposes and purposes incidental and necessary thereto. The foregoing restriction shall not, however, be construed in such a manner as to prohibit an Owner from: (i) keeping his personal business or professional records or accounts; or (ii) handling his personal business or professional calls or correspondence from his Lot. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restriction. Further, the foregoing restriction shall not preclude real estate sales offices and construction trailers from being maintained on Lots by or on behalf of Declarant for purposes of construction, development, and sale of the Lots.

3. Occupancy Permit. No dwelling upon any Lot may be occupied prior to the issuance of a final use and occupancy permit related to same by the applicable governing authority and approval of the IRC.

4. Lease. No dwelling, or interest therein, shall be leased by a Owner except by a written lease. The Lessee under such lease shall be bound by and subject to all of the terms, conditions, restrictions, rights, and obligations of this Declaration, By-Laws, and the Rules and Regulations, which shall be expressly provided in the lease. Failure to comply with the this Declaration shall be a default under such lease. No Owner may lease less than the whole of a dwelling. This restriction shall not be deemed to prohibit Mortgagee who takes title to a Lot pursuant to the terms of its security instrument from leasing same for a limited time until the Mortgagee can find a buyer for the Lot.

5. Yards and Landscaping. Lawns shall be maintained in a neat and orderly fashion so that the grass does not become overgrown. In the event an Owner fails to maintain his lawn as provided in this Paragraph after three (3) days written notice to do so, the Association shall have the right to complete the lawn maintenance and the cost thereof shall be a lien against the Lot to secure the repayment of such amounts. Such lien may be enforced in the same manner and with the same priority that the lien for Assessments may be enforced. Yard art and water features shall not be permitted in the front yard or otherwise visible from any street.

6. Clotheslines and Lighting. No clotheslines, clothes hanging devices, or the like upon any Lot shall be permitted. Outside lights at eaves and door entrances, flood lights,

and spot lights shall be permitted; provided, however, these lights must be adjusted so that the rays of any beam or floodlight shall not interfere with neighboring Lots. Exterior flashing lights or spot/flood lights on the exterior that shine on or into adjacent Lots shall be prohibited. Any walkway, driveway, or landscape lighting shall be of low intensity. Seasonal decorative lighting shall be permitted only during the holiday season. Any lighting inconsistent with these restriction must be approved by Declarant during Appointment Period and thereafter the Board.

7. Screening of Mechanical and Storage Areas. Excepting the initial construction period, any and all equipment, air conditioner condensers, garbage cans, woodpiles, or storage piles on any Lot, whether temporary or permanent, shall be screened to conceal same from the view of neighboring Lots, streets, or Common Area with the Plans for any screening, fences, and/or landscaping being approved by the IRC.

8. Outside Recreation Equipment. All playground and recreational equipment (e.g. swings, slides, trampolines, playhouses, basketball hoops / backboards) shall be approved by the IRC prior to installation and must be used, erected, placed, or maintained to the rear of the Lot. The Association shall have the authority to govern the location, any required screening, materials, and types of various recreational equipment.

9. Antennae and Flags. No transmitting or receiving equipment (antennas, dishes, etc.) in excess of eighteen (18) inches in diameter (or such larger size as shall be expressly authorized by the regulations of the Federal Communications Commission) for radio, television, or communications may be located on the exterior of any Improvement or on the Lot without the approval of the IRC as to location and screening, if necessary. In no event, may such equipment be in the front of any Lot or be visible from the roads. No flag poles or flag mounting structure or devise may be located on a Lot without the approval of the IRC as to location and size.

10. Utility Services. All dwellings shall be connected to the public water and sanitary sewer systems. No Lot shall contain an above ground propane, gasoline, or other combustible fuel tank.

11. Window Units. All supplements to the central air conditioning system must be used, erected, placed, or maintained on the rear of the dwelling structure. No window or wall type air conditioning system shall be permitted to be seen from the street view of any Lot, and all such systems shall be installed flush with the exterior wall surface

12. Solar Panels. Solar panels, if approved by the IRC, shall not face the street and shall be compatible with the adjoining surface upon which they are mounted. The type, size, and location of any such solar panels shall be shown on Plans related to such Improvement and shall be subject to approval of the IRC, in its sole discretion.

13. Temporary Structures. No trailer, camper, garage, tent, shack, barn, shed, carport, or other outbuilding shall be erected, moved onto, stored or used on any Lot as a residence, temporarily or permanently, nor shall any residence of a temporary character

be permitted. For Lots, any detached structure must be located in the rear yard.

14. Prohibited Structures. Except for temporary use during the construction of Improvements, no house trailers, portable buildings, or manufactured housing shall be permitted.

15. Detention Pond. Any detention pond or detention area, which encroaches on or lies wholly or partially within any Lot shall not be filled, disturbed, or altered in any way by the Owner. The visible areas of these detention ponds or detention areas will be maintained and mowed within the boundaries of same as shown on the Plat. A perpetual easement is reserved to Declarant or any successor, assignee, or appointee of Declarant and/or the Association across any Lot to repair or maintain such areas.

16. Curb Cuts and Damage. Any Owner or Builder who makes a curb cut or damages any Common Area shall be responsible for repairing same at his sole expense and at the direction and to the satisfaction of Declarant or the Board. Any such Owner or Builder shall reimburse Declarant or the Association for the cost of any such repairs, if Declarant or the Association repairs the damages.

17. Garage / Yard Sales. Garage sales or any other similar private or public sale of goods, personal property, or services shall not be allowed except for Association sponsored sales to be authorized by the Board and held only on specified days and at specified times on a community-wide basis and in accordance with any Rules and Regulations to be established by the Board in connection therewith.

18. Garbage Disposal. Trash, garbage, or other waste shall be kept in sanitary containers and shall be disposed of in a clean and sanitary manner. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be kept inside the garage or other designated area serving the Lot in question. No garbage cans, trash containers, recycling containers, nor any other such trash receptacles shall be permitted in public view except for a twenty-four (24) hour period surrounding the designated date and time for trash pickup as set by the provider of said services.

19. Vehicle Storage. No mobile home, bus, camper, boat, trailer, truck, or vehicles having a load capacity in excess of one ton may be parked or stored on any street or in public view on or within the residential areas of the Development Property, except for vehicles and equipment necessary for and being used in the development, construction, repair, or service of same. No commercial trucks, vans, or trailers shall be parked on driveways or in streets for periods of time exceeding twelve (12) consecutive hours or for more than seventy-two (72) hours in any calendar week.

20. Vehicle Service. Junk vehicles, inoperable vehicles, unlicensed vehicles not for immediate use, or vehicles of any kind in disrepair, may not be kept or parked on any street or in public view within the Development Property. Vehicles may not be assembled or serviced unless completely hidden from public view. For purposes of this Paragraph, "serviced" shall not be deemed to include the cleaning, washing, or polishing of a vehicle;

the changing of oil, lubricants, anti-freeze, or other fluids; nor the replacing of air, oil, or other filters used in the vehicle.

21. Parking and Entertainment. All Owners shall park their vehicles first, to the extent possible, in the garage for that Lot and then in the driveway. Owners shall take all steps necessary to keep garage doors closed except for such limited and reasonable periods of time which may be necessary for access and/or repair. Vehicles may not be parked on grass or yard areas, except when entertaining. No Owner shall permit any vehicle (operable or inoperable) owned by such Owner or by any person occupying his Improvements or by any guest or invitee of such Owner to remain parked on any street within the residential areas of the Development Property for a period of more than seventy-two (72) consecutive hours. Any vehicle which remains parked on the street in violation of the foregoing covenant, or in violation of any other rules and regulations now or hereafter adopted by the Board, may be towed at the expense of the owner of such vehicle or the Owner of the Lot visited by such vehicle owner. Neither the Declarant, the Association, nor the Board shall be liable to the owner of such vehicle for trespass, conversion, or otherwise, nor be guilty of any criminal act by reason of such towing. Neither the removal nor the failure of the owner of such vehicle to receive any notice of said violation shall be grounds for relief of any kind. The term "vehicle" as used herein shall include, without limitation, motorhomes, watercraft, trailers, golf carts, motorcycles, scooters, trucks, all-terrain vehicles, campers, buses, and automobiles.

22. Burning. No Owner shall permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to interfere with the use and enjoyment by other Owners of their Lots. Burning of leaves or refuse shall not be permitted within the Development Property without approval of the IRC and local governing authorities.

23. Livestock, Poultry, and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred, or maintained for commercial purposes. At all times, when such household pet is not confined on the Lot of its owner, said pet shall be leashed or otherwise under the immediate control of the Person(s) with it. It is the responsibility of the pet owner to clean and dispose of any waste produced by the pet anywhere other than on the Lot of its owner.

24. Codes. Each Owner shall observe all governmental building codes, health restrictions, zoning restrictions, and other regulations applicable to his Lot. In the event of any conflict between any provision of such code, regulation, or restriction and any provision of this Declaration, the more restrictive provision shall apply.

25. Signs. The following restrictions shall apply to signs:

a. Declarant shall have the right to erect and to approve the erection of reasonable and appropriate signs for its own use and the use of Builders and other parties engaged in the construction and sale of Improvements within the Development Property. Declarant

shall have the right to remove any unapproved sign, billboard, poster, or advertising device that is placed on any Lot or Improvement thereon and in doing so shall not be subject to any liability for trespass or other course of action in connection therewith or arising from such removal.

b. No sign, billboard or poster of any kind of a permanent nature shall be erected, exhibited, maintained, or placed upon any Lot. Temporary signs, not to exceed a maximum surface area of six (6) square feet, such as "For Sale" signs, shall be permitted so long as there are no more than two (2) signs per Lot, and no such sign shall be placed outside the boundary of the Lot, within any right-of-way, Common Area, or Lot owned by another Person. All signs shall comply with regulations that may be adopted by the Association from time to time.

c. All Owners grant to Declarant and thereafter to the Association the right to remove all signs not in compliance with the sign restrictions and in doing so shall not be subject to any liability or criminal action for trespass, destruction of property, or other tort in connection therewith or arising from such removal.

26. Hobbies. The pursuit of hobbies that are inherently dangerous shall be conducted only in garages and such activities must not be visible from streets, Common Areas, or neighboring Lots. Activities such as the shooting of firearms, fireworks, or pyrotechnic devices of any type or size and other such activities shall not be pursued or undertaken on any part of any Lot or upon the Common Areas without the consent of the Board, which may be granted in the sole discretion of the Board.

27. Recreational Activities. Recreational activities may be conducted on the portion of the Common Areas designated for such purposes on any current or future Plat.

28. Noise. No Owner shall cause or allow any use of his Lot that results in noise which disturbs the peace and quiet of the Development Property. This restriction includes, without limitation, dogs whose loud and frequent barking, whining, or howling disturbs other Owners, exterior music systems, public address systems, or other noise sources which disturb other Owners' ability to peacefully possess and enjoy their Lot.

29. Nuisances. Each Owner shall refrain from any act or use of his Lot that could reasonably cause embarrassment, discomfort, annoyance, or nuisance to the neighboring Lots. No noxious, offensive, or illegal activity shall be carried out upon any Lot.

30. Additional Prohibited Activities. The Board may from time to time reasonably prohibit certain activities on or within the Development Property and such prohibition shall be final and binding on all Owners.

31. Compliance and Penalty. Failure to comply with any provision of this Article, Declarant during the Appointment Period and thereafter the Board may take such action as necessary to achieve compliance therewith, including, without limitation, assessment of fines or corrective action to bring such violation into compliance. The Owner shall, upon

demand, immediately pay the fine and/or reimburse Declarant or other performing party for all costs incurred, including reasonable attorney's fees. Declarant and thereafter the Association shall have a lien on the Lot and Improvements thereon to secure payment of fines and/or reimbursement for such costs. Such lien may be enforced in the same manner and with the same priority that the lien for Assessments may be enforced.

## **ARTICLE XI DEVELOPMENT PROPERTY**

1. General Owner Use and Enjoyment Rights. Except as may be provided in a Supplemental Declaration, every Owner shall have a right and easement of enjoyment in and to the Development Property, which shall be appurtenant to and shall pass with the title to each Lot, subject to applicable law, the provisions contained in this Declaration, in any Supplemental Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations. All Owners may use the Development Property, unless otherwise provided by law or in this Declaration or unless provided in Supplemental Declarations governing the Lot of such Owner.

2. No Partition. No Owner shall have the right to partition or seek partition of the Development Property or any part thereof.

3. Owner Liability for Damage. Each Owner and any tenant, occupant, family member, guest, agent, servant, or invitee thereof shall be liable to the Association for any damage to the Development Property or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or tenant, occupant, family member, guest, agent, servant, or invitee of such Owner and for any violation by such Owner or tenant, occupant, family member, guest, agent, servant, or invitee of this Declaration, any Supplemental Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations. The Association shall have the power, as elsewhere provided in this Declaration to levy and collect Reimbursement Assessments against an Owner to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration, Bylaws, or Rules and Regulations, or for any increased insurance premiums directly attributable to any such damage or any such violation.

4. Damage, Destruction, or Required Improvements. In the event of damage to Common Areas by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Development Property, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Development Property by fire or other casualty shall be paid to the Association and shall be used and disbursed as provided in Article VI herein. If funds from insurance proceeds or available reserves are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or

Improvement, levy a Special Assessment as provided herein, or if an Owner or group of Owners is liable or responsible for such damage, levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, to provide the additional funds necessary as elsewhere provided in this Declaration. Repair, reconstruction, or replacement of Development Property shall be done under such contracting and bidding procedures as the Board shall reasonably determine are appropriate.

5. Lot Damage, Destruction, or Maintenance. In the event of damage or destruction to any Improvement located on a Lot, the respective Owner thereof agrees as follows:

a. In the event of total destruction, the Owner shall promptly clear the Lot of debris and leave same in a neat and orderly condition. To the extent the Owner desires to reconstruct the Improvement, any such reconstruction shall be accomplished in conformity with the Plans and specifications of the original structure so destroyed, subject to any changes or modifications as approved by the IRC.

b. In the case of partial damage or destruction, the Owner shall promptly clear the Lot of debris and cause the damage or destruction to be repaired and restored in a first class condition in accordance with the Plans and specifications of the original structure. Any change or alteration must be approved by the IRC. In no event, shall any damaged structure be left unrepaired and unrestored in excess of ninety (90) days.

c. If the correction of a maintenance or repair problem incurred on one Lot necessitates construction work or access on another Lot, the Owner shall have an easement on the property of the other Owner for the purpose of this construction. The Lot Owner performing said construction or repairs shall be responsible for the cost of restoration on any such Lot necessitated by the use of the easement thereon.

6. Title to Association Properties upon Dissolution. In the event of the dissolution of the Association, the Development Property shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies, or to a non-profit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for purposes similar to those for which the Development Property was held by the Association. To the extent the foregoing is not possible, the Development Property and the proceeds from the sale or disposition shall be distributed equally to the Owners.

## **ARTICLE XII MORTGAGEE RIGHTS**

1. General. In addition to any other rights granted to Mortgagees elsewhere in this Declaration, the rights and protections of this Article are hereby granted to and for the benefit of any Mortgagee.



2. Actions Requiring Mortgagee Approval. Without the prior written consent of at least fifty-one percent (51%) of all recorded first Mortgagees of Lots or the beneficiaries thereunder of record (based upon one vote for each Lot upon which a Mortgage is owned), the Association shall not be entitled by act or omission to seek to abandon or terminate the restrictions declared herein; provided, however, approval of such action shall be implied against any eligible Mortgagee in the event such Mortgagee fails to submit a response in writing to the Association within sixty (60) days of service of such notice by certified or registered mail, return receipt requested, to said Mortgagee at the address listed in the records of the Association as must be established and maintained.

3. Records Examination. Mortgagees shall have the right to examine the books, records, and financial statements of the Association, as well as this Declaration, the By-Laws, and other rules concerning the Development Property at reasonable times and upon reasonable notice.

4. Insurance Policy. Mortgagees shall have the right, upon written request, to receive notice from the Association of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

5. Mortgagor Default. Mortgagees, upon written request, shall be notified by the Association in writing of any default by the mortgagor of a Lot in the performance of such mortgagor's obligations under this Declaration and its constituent documents not cured within sixty (60) days from the date of such default.

6. Disposition by Mortgagee. Any Mortgagee who obtains title to a Lot pursuant to remedies provided in the Mortgage or deed of trust, or upon foreclosure of the mortgage or deed of trust, or upon receiving a deed (or assignment) in lieu of foreclosure, shall take the Lot free of any claims for unpaid Assessments and charges against the mortgaged Lot, which accrue prior to the time such holder comes into possession of same. Specifically, and without limitation, the provisions of this Declaration, Supplemental Declarations, By-Laws or any other constituent documents shall not impair the rights of any Mortgagee to: (a) foreclose or take title to a Lot pursuant to remedies provided in the Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or (c) sell a Lot acquired by the Mortgagee.

7. Insurance Proceeds. No Owner or any other party shall have priority over any rights of the Mortgagees pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

8. General Notice. Mortgagees shall request notice of the matters set forth herein by making written request to the Association upon becoming an Mortgagee hereunder and requesting that the name and address of such Mortgagee and the Lot so encumbered be identified by the Association in its records pertaining thereto. Any notice requesting approval of any Mortgagee as required herein shall advise said Mortgagee that failure to respond within sixty (60) days of said notice shall be deemed to be approval by said Mortgagee of the matter for which approval is being sought.

## **ARTICLE XIII AMENDMENTS**

1. Owners. Except as otherwise provided herein, the provisions of this Declaration may be changed, modified, or amended by Supplemental Declaration or other written and properly recorded instrument setting forth such change, modification, or amendment, upon the affirmative Vote of not less than fifty percent (50%) of the Members present at a duly called meeting of the Association or the affirmative written consent of such percentage of the Members at which a quorum is present unless a higher percentage Vote is required elsewhere in this Declaration or applicable law. However, any such change, modification, or amendment that would change or delete any right, remedy, benefit, or privilege afforded to the Declarant under this Declaration shall require the verified written consent of the Declarant upon such instrument in order to be effective. Unless a higher percentage is required by law, revocation of this Declaration shall require the affirmative Vote of not less than sixty-seven percent (67%) of the all the Members of the Association entitled to Vote at a duly called meeting of the Association or the affirmative written consent of such percentage of the Members at which a quorum is present. Any such change, modification, amendment, or revocation shall not become effective until the instrument evidencing such change has been recorded in the Register's Office for Williamson County, Tennessee.

2. Declarant. The Declarant hereby reserves and shall have the right, power, privilege, and authority, in its sole discretion, to amend this Declaration and any Exhibit hereto without the consent, joinder, or approval of the Association, the Board, Owner, any Person having a contractual right to purchase a Lot, any Mortgagee or beneficiary of any Mortgage or deed of trust on any Lot, or any other Person. Such right, power, privilege, and authority of Declarant shall expire two (2) years after the Transfer of Control. Declarant shall be in no way obligated to amend this Declaration or any Exhibit hereto pursuant to this Paragraph.

3. Discrimination. No amendment shall discriminate against any Owner or against any group of Owners, unless the Owner(s) so affected shall consent. No amendment shall change the Voting rights provided herein unless the Owner(s) so affected shall consent.

## **ARTICLE XIV MISCELLANEOUS PROVISIONS**

1. Duration. The covenants and restrictions of this Declaration shall run with and bind title to the Development Property, shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect until the twenty-fifth (25<sup>th</sup>) anniversary of the date of the recording of this Declaration, whereupon this Declaration shall be automatically renewed for successive terms of twenty-five (25) years unless Owners holding at least two-thirds of the Vote of all Owners entitled to cast a Vote elect to terminate the Declaration. Notwithstanding the foregoing, any easements granted pursuant hereto or in any Supplemental Declaration are and shall be perpetual, except to the extent, if any, otherwise provided in the creation of any such

easement, and except that any dedication to and acceptance by an appropriate governmental authority or any conveyance or grant to any appropriate public utility of the facilities that are the subject of any such easements shall terminate those easements if such dedication, conveyance, or grant so provides.

2. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the former President of the United States, George H. W. Bush.

3. Notice to Owners. Notice to any Owner set forth herein shall be sent by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, facsimile transmission, or electronic transmission at the address or other contact information provided to the Board by the Owner or in the event no separate address or other contact information has been provided, then by prepaid U.S. Mail or hand delivery to the Owner's Lot. It shall be the obligation of every Owner to notify the Association in writing of any change in address. Any Person who becomes the Owner after the date on which notice was made upon such Owner's predecessor in title to the Lot shall be deemed to have received such notice.

4. Notice to Declarant or Association. The address of the Declarant or the Association for the purposes of furnishing notice(s) as provided in this Declaration or the By-Laws shall be the Declarant's and/or the Association's principal office of record in the Office of the Secretary of State for the State of Tennessee, unless and until notice of an alternative address is given in writing to all Owners. Notices addressed as above shall be delivered in person with written acknowledgment of the receipt thereof or sent by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, receipt signature required.

5. Statute of Limitation. No action in contract, tort, or otherwise against the Association, the Board, or the Declarant for any action or inaction by the same or to challenge the validity of this Declaration, any Supplemental Declaration or other duly adopted amendment may be brought more than one (1) year after the occurrence of such action or inaction or the date this Declaration, the Supplemental Declaration, or other instrument is recorded.

6. Books and Records. Except for confidential, non-public information of the Association or that affecting the privacy rights of third parties or otherwise subject to confidentiality or non-disclosure protections or objections under any basis, the books and records of the Association is subject to inspection at the principal office of the Association by any Owner during reasonable business hours and upon ten (10) days prior written notice. Copies of such records may be purchased at a reasonable cost.

7. Right To Mortgage Information. Each Owner hereby authorizes any Mortgagee holding a Mortgage on such Owner's Lot to furnish information to the Board concerning the status of such Mortgage and the loan which it secures, to the extent such information is appropriate to assist the Association in determining if such loan is a valid first Mortgage or

secondary purchase money Mortgage.

8. Limitation on Liability. The Association, the Board, the IRC, any other committee established by the Board, the Declarant, and any member of the Board or any committee, officer, agent, or employee of any of them (collectively the "Indemnitees") shall not be liable to any Person for any mistake of judgment, whether negligent or otherwise, or for any action or any failure to act under this Declaration or any Supplemental Declaration. In addition, the Board and the officers of the Association shall have no personal liability with respect to any contract or other commitment made by them, on behalf of the Association (except to the extent that such directors or officers may also be Owners) and the Association, as an Administrative Function, shall indemnify, hold harmless, and defend the Board and such officers from any and all expense, loss, or liability to others on account of any such contract or commitment. In addition, the Indemnitees shall be indemnified and held harmless by the Association, as an Administrative Function, from any expense, loss, or liability to others by reason of having served in such capacity, against all expenses, losses, and liabilities, including court costs and reasonable attorney's fees incurred by or imposed upon such Person in connection with any proceeding to which he may be a party or may have become involved by reason of holding such position, whether or not he holds such position at the time such expenses are incurred, except in cases in which the expenses, losses, and liabilities arise from a proceeding in which such Person is adjudicated guilty of willful misfeasance, gross negligence, or bad faith in the performance of his duties and for which indemnification is prohibited by law under the Tennessee Not For Profit Corporation Act. In the event of a settlement of any such proceedings, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right of indemnification provided in this Paragraph shall not be exclusive of any other rights to which an Indemnatee may be entitled.

9. Land Outside Development Property. The restrictions created by this Declaration benefit and burden only the Development Property and no other land whatsoever. Notwithstanding any possible sharing of present or future facilities by other land, whether developed by Declarant or others, the general plan created by the restrictions of this Declaration extends only to the Development Property, and such restrictions are not intended to benefit any Persons other than those having an interest in the Development Property. No Person owning land or having an interest in land outside of the Development Property shall have any right whatsoever to enforce this Declaration for the benefit of such land, and neither the Association nor any Owner shall have the right to extend the enforcement of this Declaration to any real property not within the Development Property. Provided, however, nothing contained herein shall in any way preclude or limit the applicable governing bodies from enforcing the terms of this Declaration.

10. General Development Information. Any brochures, maps, models, handouts, schematics, plans, and facilities provided or available in connection with the Development Property or the development, construction, promotion, sale, marketing, or leasing of Development Property or Improvements thereon: (a) are provided for general information purposes only; (b) are subject to change and deletion without notice by Declarant or by

public or governmental authorities; and (c) shall not obligate Declarant to develop, construct, promote, market, sell, or lease any such property or Improvements whatsoever or in any particular manner, or to add to the Development Property any portion of the Future Phase Property.

11. Governing Law. This Declaration shall be construed, governed, and enforced under and in accordance with the laws of the State of Tennessee.

12. Interpretation. The Board shall have the right, power, and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret its provisions, and any determination, construction, or interpretation made in good faith by the Board shall be binding on all Owners. In all cases, the provisions set forth in this Declaration shall be construed, in the opinion of the Board, to best effect the intent of the general purposes of this Declaration. The provisions hereof shall be liberally interpreted to effectuate the purposes set forth herein, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

13. Remedies Cumulative. The rights, powers, and remedies provided in this Declaration shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise by a Person of any particular right, power, or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers, or remedies available to it.

14. Partial Invalidity. Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall not affect any other provision not expressly held to be void or the provisions so void in circumstances or applications other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

15. Severability. If any provision of this Declaration, the By-Laws, or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid; the validity of the remainder of this Declaration and the By-Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby, and the remainder of this Declaration or the By-Laws shall be construed as if such invalid part was never included therein.

16. Captions and Gender. The captions herein are inserted only as a matter of convenience, and in no way define, limit or describe the scope of these provisions or the intent of any provision hereof. The use of the masculine gender in this Declaration and in the By-Laws shall be deemed to include the feminine and neuter references, and the use of the singular shall be deemed to include the plural whenever the context so requires.

17. Exoneration of Declarant. Each Owner or any other party having an interest in any portion of the Development Property expressly agree that no duty or obligation is imposed upon the Declarant to enforce or attempt to enforce any of the covenants or

restrictions contained herein, nor shall the Declarant be subject to any liability of any kind or nature whatsoever in respect to any claim that the Declarant has failed to enforce same

18. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations, this Declaration shall control. In case of conflict in the provisions of the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

19. Effective Date of Declaration. The effective date of this Declaration shall be the date of its recording in the Register's Office for Williamson County, Tennessee.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned, Declarant and owner, has caused this Declaration to be duly executed this the 19 day of February, 2013.

DECLARANT and OWNER

RH Hidden Creek, LLC

By: Romanelli and Hughes Building Company

Its: Sole Member

By: Vincent Romanelli  
Vincent Romanelli

Its: Vice President

STATE OF OHIO )

COUNTY OF Franklin )

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared Vincent Romanelli 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 Vice President of RH Hidden Creek, LLC ("Company"), an Ohio Limited Liability Company and that he, as such officer, being duly authorized to do so, executed the foregoing document for the purposes contained therein, by signing his name as such officer acting on behalf of the Company.

Witness my hand and official seal at Westerville, OH on this the 19 day of February, 2013.



KRISTINE LOUGHRY  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires 2/6/2017

Kristine Loughry  
NOTARY PUBLIC

My Commission Expires: 02 / 06 / 2017



**FINAL PLAT**  
OF  
**HIDDEN CREEK SUBDIVISION**  
**SECTION ONE**

PROPERTY LOCATED ON THE SOUTH SIDE OF PINECREST ROAD IN THE CITY OF THE WOODLAND, WILSON COUNTY, TENNESSEE  
DATE: FEBRUARY 8, 2013

**NOTES:**

1. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
2. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
3. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
4. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
5. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
6. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
7. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
8. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
9. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.
10. The plat is subject to the provisions of the Tennessee Subdivision Map Act, Chapter 129, Tennessee Code Annotated, and the rules and regulations of the Tennessee Department of Transportation.

**PLAT BOOK: PST**  
**PAGE: 23**

**DATE: 2/8/2013**

**BY: [Signature]**

**FOR RECORDING:**

**MARTY CANTRELL, R.L.S.**  
P.O. BOX 250102  
NASHVILLE, TN 37225  
PH: 615-447-3332  
FAX: 615-447-3332



**EXHIBIT B**

**[ *Intentionally Omitted* ]**

## **EXHIBIT C**

### **BY-LAWS OF HIDDEN CREEK OWNERS ASSOCIATION, INC.**

#### **ARTICLE I DEFINITIONS**

The words defined in the Declaration of Protective Covenants, Conditions, and Restrictions for Hidden Creek of Record in the Register's Office for Williamson County, Tennessee shall have the same meaning in these By-Laws.

#### **ARTICLE II NAME AND OFFICES**

1. Name. The name of the corporation shall be Hidden Creek Owners Association, Inc. (the "Corporation").

2. Registered Office and Agent. The initial registered office and agent of the Corporation is Hidden Creek Owners Association, Inc. c/o CT Corporation System, Suite 2021, 800 Gay Street, Knoxville, Knox County, TN 37929, as may be relocated by the Board from time to time.

3. Other Offices. The Corporation may also have offices at such other places both within and outside the State of Tennessee as the Board may from time to time determine or the business of the Corporation may require.

#### **ARTICLE III MEMBERS AND MEMBERSHIP PRIVILEGES**

1. Eligibility and Membership. The Members of the Corporation shall consist of the Owners of a Lot within the Development Property. If an Owner is a trust, then the Member shall be a beneficiary of such trust; and if an Owner or such a beneficiary is a corporation or partnership, the Member may be an officer, partner, or employee of such Owner or beneficiary. No Member shall be required to pay any consideration whatsoever solely for membership in the Corporation.

2. Succession. The membership of each Owner shall terminate when he ceases to be an Owner, and upon sale, transfer, or other disposition of his ownership interest in the Development Property, his membership in the Corporation shall automatically be transferred to the new Owner succeeding to such ownership interest.

## **ARTICLE IV MEETINGS OF MEMBERS**

1. Annual Meetings. The first regular annual meeting of the Members may be held, subject to the terms hereof on any day, at the option of the Board; provided, however, that the first meeting may (if necessary to comply with Federal Regulations) be held no later than the earlier of the following events: (a) Four (4) months after all the Lots within the Development Property have been sold by the Declarant or (b) Three (3) years following conveyance of the first Lot within the Development Property by the Declarant. Each subsequent regular annual meeting of the Members shall be held within twenty-five (25) days of the anniversary of the first regular annual meeting each year thereafter at such time as set by the Board.

2. Special Meeting. Following the Appointment Period, special meetings of the Members, for any purpose or purposes, may be called by the President, a majority of the Board, or by Members having not less than sixty-seven percent (67%) of the total Vote entitled to be cast at such meeting, except as otherwise required by Tennessee statute, the Declaration, or these By-Laws. Business transacted at all special meetings shall be confined to the business stated in the notice of such meeting.

3. Place and Time of Meetings. Meetings of the Members of the Corporation may be held at a place and at such time to be determined by the Board within Williamson County, Tennessee as specified in the written notice of such meeting.

4. Notice. By or at the direction of the Declarant, the president, the secretary, or the officer or Person authorized to call the meeting, written notice shall be sent to every Member of the Association entitled to Vote at such meeting by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, or facsimile or electronic transmission to the address or other contact information provided to the Board by the Owner or in the event no separate address or other contact information has been provided, then by prepaid U.S. Mail or hand delivery to the Owner's Lot not less than ten (10) nor more than sixty (60) days prior to the date of such meeting. Said notice shall state the place, day, and hour of the meeting and in the case of a special meeting, the purpose(s) for which the meeting is called.

5. Quorum. The presence in person or by proxy of at least thirty-five percent (35%) of the Votes entitled to be cast at a meeting of the Members shall constitute a quorum at all meetings of the Members for the transaction of business. If, however, the Members entitled to Vote in person or represented by proxy present at a meeting fail to satisfy a quorum, the Members present shall have the power to adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. Further, if a quorum is not present, a subsequent meeting may be called, and the required quorum shall be reduced by half at such meeting. Such procedure may be repeated until a quorum is established, although in no event may the required quorum be less than ten percent (10%) of the Votes entitled to be cast at a meeting of the Members.

6. Majority Vote; Withdrawal of Quorum. When a quorum is present at any meeting, the majority Vote of Members present, in person or by proxy, and entitled to Vote shall decide any question brought before such meeting, unless the question is one upon which by express provision of an applicable Tennessee statute, the Declaration, or these By-Laws, a different Vote is required, in which case such express provision shall govern and control the decision of such question. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding withdrawal of enough Members to leave less than a quorum.

7. Method of Voting; Proxies. Each Member shall be entitled to cast one (1) Vote each Lot owned by such Member as further provided in the Declaration. The Vote of each Member may only be cast by such Member or by a proxy duly executed and given by such Member to his authorized representative as set forth on such proxy. No proxy shall be valid for more than one meeting and shall bear the signature of the Member making the proxy, the date of the meeting to which the proxy relates, and the name of the authorized representative to Vote on behalf of the Member. Such proxy may not be revoked except by actual notice to the Person presiding over the meeting for which the proxy relates; and such proxy is void, if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the secretary of the Association prior to or at the time of the meeting. If title to any property ownership interest in a Lot of the Development Property entitling the Member to Voting rights as provided in the Declaration is in the name of two or more Persons as co-owners, all such Persons shall be Members of the Corporation, referred to herein as a "Joint Member." Any such Joint Member is entitled to one unanimous Vote per entitled Member as provided in the Declaration at any meeting of the Members of the Corporation, and such Vote shall be binding upon the Joint Member until written notice to the contrary has been received by the Board identifying the authorized manner in which the Joint Member's unanimous Vote is to be cast (in person or by proxy). In the event of disagreement among such Joint Member to cast a Vote, such Joint Member shall not be recognized, and such Vote shall not be counted.

8. Assessment Default: No Owner who is in default in the payment of any Assessment or other duly levied charge shall be entitled to exercise his right to Vote until he has cured such default. An Owner may protest the amount of any Assessment or other duly levied charge, but it still must be paid during the pendency of his protest to the Association or its agent.

9. Action Taken Without A Meeting. The Members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of the number of members which would otherwise be required to approve such action. For instance, if an action required the approval of Members holding a majority of the total Voting rights of the members, then a writing signed by Members holding a majority of the total Voting rights of the Members would be effective as if such approval was given at a meeting duly called for such purpose. Any action so approved shall have the same effect as though taken at a properly called meeting of the Members.

## **ARTICLE V BOARD OF DIRECTORS**

1. Board Authority and Number. The affairs of the Association shall be managed by a Board of Directors. During the Appointment Period, the members of the Board, who need not be Members of the Association, shall be appointed by the Declarant and shall serve at the pleasure of the Declarant. After the Appointment Period, the Board shall consist of not less than three (3) nor more than five (5) directors each of whom must individually be a member of the Association or be the Declarant, its assignee or officer, agent, or representative thereof.

2. Election. After the Appointment Period, the election of the members of the Board to be elected for a particular year shall occur at the annual meeting of the Members. The election of the Board by the Owners shall be based on the number of Persons receiving the highest number of Votes for as many candidates as there are Directors being elected at a meeting of the Owners at which a quorum is present. Cumulative Voting is not permitted.

3. Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nomination may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman who shall be a member of the Board and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4. Term of Office. Directors shall be elected for terms of two (2) years or until their successor is elected. In addition, the initial Directors elected by the Members after the Appointment Period shall be grouped into two (2) separate classes so that approximately one-half of the existing total number of Directors are up for re-election each year. Thus, as to such initial Directors elected by the Members, certain Directors will serve for a one (1) year term and certain Directors shall serve for a two (2) year term as may be determined by the initial Directors elected by the Owners.

5. Vacancies. If any vacancy occurs in the Board, caused by death, removal from office, retirement, resignation or disqualification, a successor(s) shall be elected by majority vote of the remaining Directors for the unexpired term of his predecessor in office. Any Director who ceases to be a Member of the Association during such Director's term in office shall cease being a Director effective with such change, and such Director's successor shall be selected by the remaining Members of the Board.

6. Director Removal by Board Members. Any Director may be removed from office with or without cause by the majority vote of the Directors, who shall elect a successor Director for the unexpired term of his predecessor in office by majority vote.

7. Director Removal by Members. Notwithstanding any provision to the contrary in the Declaration or these By-Laws, any member of the Board other than a member appointed by the Declarant may be removed with or without cause by majority Vote of all the Members of the Association.

8. Place of Meetings. The Directors of the Corporation shall hold their meetings, both regular and special, Williamson County, Tennessee or such other location as may be selected by unanimous consent of the Directors then elected and serving. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the president or a majority of the Directors upon three (3) days written notice to each Director, either personally, by mail, by facsimile, or by other electronic transmittal. Except as may be otherwise expressly provided by Tennessee statute, the Declaration, or these By-Laws, neither the business to be transacted nor the purpose of any special meeting need be specified in a notice or waiver of notice.

9. Quorum. At all meetings of the Board, the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. The act of a majority of the Directors present at any such meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Directors, the Directors present may adjourn the meeting by announcement at the meeting without notice until a quorum shall be present.

10. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

11. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

12. Agents and Delegation of Powers. Except as otherwise prohibited by statute, the Declaration, or these By-Laws, the Board may delegate any of its powers to other Persons or Management Agent. Any such delegated powers shall be identified in writing maintained in the records of the Association.

## **ARTICLE VI BOARD POWERS AND DUTIES**

1. Powers. The Board shall have the following powers subject to the provisions of the Declaration of the Association:

a. Enforce the Declaration; and adopt, enforce, and amend Rules and Regulations governing the use of the Development Property and facilities and the personal conduct of Owners and their guests thereon; and establish penalties for the infraction thereof.

b. Elect and remove the officers of the Association and declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board.

c. Suspend the Voting rights of a Member during any period in which such Member shall be in default in the payment of any Assessment or other duly levied charge by the Association.

d. Make contracts and incur liabilities and borrow money for the purpose of repair or restoration of Common Areas that are the responsibility of the Association to repair or restore.

e. Regulate the use, maintenance, repair, replacement, or modification of Common Areas and formulate policies for administration, management, and operation of the Development Property and the Common Areas.

f. Cause additional Improvements to be made as a part of the Common Areas.

g. Grant easements, leases, licenses, and concessions through or over the Common Areas.

h. Appoint a Nominating Committee and any other desired committee of the Board and delegate to such committees the Board's authority to carry out certain duties of the Board or other such directives of the Board.

i. Assign the Association's right to future income, including the right to receive Assessments.

j. Exercise any other powers conferred by the Declaration and these By-Laws and exercise any other powers necessary and proper for the governance and operation of the Association and the administration of the affairs of the Association and Development Property.

k. Exercise all other powers that may be exercised in this State by legal entities of the same type as this Association.

2. Duties. The Board shall have the following Duties subject to the provisions of the Declaration of the Association:

a. Adopt and amend budgets for revenues, expenditures, and reserves; send notice of Assessments and any other duly levied charges to Owners; collect Assessments and any other duly levied charges from Owners; and impose charges for late payment of Assessments or other duly levied charges.

b. Determine the fiscal year of the Association and change said fiscal year from time to time as the Board deems necessary or appropriate.

c. Hire and discharge managing agents and independent contractors, other employees, and agents; and supervise all officers, agents, and employees of the Association to see that their duties are properly performed.

d. Comply with the instructions expressed in resolutions duly adopted at any regular or special meeting of Owners at such meeting.

e. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property.

f. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Areas and for services provided to Owners.

g. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or the production of Association information and/or documents.

h. Impose reasonable charges for services rendered in connection with the transfer of a Lot.

i. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or any two (2) or more Owners on matters affecting the Development Property.

j. Foreclose the lien against any property for which Assessments or other duly levied charges are not paid or to bring an action at law against the Owner personally obligated to pay such amounts.

k. Provide for the indemnification of the Association's Officers and members of the Board and maintain liability insurance on such Directors and Officers.

l. Secure insurance policies as required or allowed by the Declaration, and in this regard, review the amounts of coverage afforded under such policies.

3. Non-Delegation. Nothing in these By-Laws shall be considered to grant to the Association, the Board or the officers of the Association any powers or duties which, by law, have been delegated to the Owners.

## **ARTICLE VII OFFICERS**

1. Enumeration of Offices. The officers of the Association shall be a president, a secretary, and such other officers as the Board may from time to time create.

2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members. The officers shall be elected by the Directors from among the members of the Board.



3. Term. The officers of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5. Resignation and Removal. Any officer may be removed from office with or without cause by the affirmative vote of a majority of the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified in the notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

7. Multiple Offices. The offices of secretary and treasurer may be held by the same Person. No Person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to this Article.

8. Compensation. The salaries of all officers of the Corporation, if any, shall be fixed by the Board but shall never be greater than an amount equal to the one half (1/2) of the Common Assessment due per Owner for that Assessment Year. A person holding multiple offices may only collect a salary for one (1) office.

9. President. The president shall be the chief executive officer of the Corporation. The president shall preside at all meetings of the Members and the Board. The president shall have general and active management of the affairs of the Corporation, shall see that all orders and resolutions of the Board are carried into effect and shall perform such other duties as the Board shall prescribe. The president may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

10. Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

11. Secretary. The secretary shall attend all sessions of the Board and all meetings of the Members and shall record all votes and the minutes of all proceedings. The secretary shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Board and shall perform such other duties as may be prescribed by the Board or president. If the secretary is not able to perform any duty as herein or otherwise provided, it is the sole responsibility of the secretary to delegate such duties until such time that the secretary resumes these duties. The secretary may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

12. Treasurer. The treasurer shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements of the Association and shall deposit all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The treasurer shall disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements. At the regular meetings of the Board or whenever they may require it, the treasurer shall render to the president and Board an account of all transactions of the treasurer and of the financial condition of the Association. The treasurer shall perform such other duties as the Board may prescribe.

## **ARTICLE VIII MISCELLANEOUS PROVISIONS**

1. Reserves. The Board shall provide for such reserves as the Directors, in their discretion, determine proper to provide for contingencies, to repair or maintain any portion of the Development Property, or for such other purpose as the Directors determine beneficial to the Association.

2. Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other Person(s) as the Board may designate.

3. Books and Records. Except for confidential, non-public information of the Association or that affecting the privacy rights of third parties or otherwise subject to confidentiality or non-disclosure protections or objections under any basis, the books and records of the Association is subject to inspection at the principal office of the Association by any Owner during reasonable business hours and upon ten (10) days prior written notice. Copies of such records may be purchased at a reasonable cost

4. Amendment. Except as otherwise provided herein, the provisions of these By-Laws may be changed, modified, or amended upon the affirmative Vote of not less than Fifty Percent (50%) of the Members present at a duly called meeting of the Association or the affirmative written consent of such percentage of the Members at which a quorum is present unless a higher percentage Vote is required elsewhere in these By-Laws, the Declaration, or by Tennessee statute. However, any such change, modification, or amendment that would change or delete any right, remedy, benefit, or privilege afforded to the Declarant under these By-Laws shall require the consent of the Declarant in order to be effective.

5. Indemnification. The Corporation shall indemnify any current or former Director, officer, or employee of the Corporation against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments, in connection with any action, suit or proceeding, whether civil or criminal in nature, in which he is made a party by reason of being or having been such a Director, officer or employee (whether or not a Director, officer or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to matters in which he shall have been adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of

his duty. The Corporation may also reimburse to any Directors, officer, or employee the reasonable costs of settlement of any such action, suit, or proceedings; if it shall be found by a majority of the Directors not involved in the matter of controversy, whether or not a quorum, that it was in the interest of the Corporation that such settlement be made and that such Director, officer, or employee was not guilty of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, or employee may be entitled by law or under by-law, agreement, Vote of Members, or otherwise.

6. Inconsistencies. In the event, these By-Laws shall be inconsistent with the Declaration, then the Declaration shall be controlling.

7. Headings. The headings used in these By-Laws have been inserted for administrative convenience only and do not constitute matters to be construed in interpretation.

*[Remainder of Page Intentionally Left Blank]*

### CERTIFICATION

The undersigned hereby certifies that the foregoing By-Laws were duly executed and adopted by the Hidden Creek Owners Association, Inc. on this the 19 day of February, 2013.

HIDDEN CREEK  
OWNERS ASSOCIATION, INC.

By:

  
(Print  
(Name: Vincent Romanelli)

Its:

President

**EXHIBIT D**

**FILED**

**ARTICLES OF INCORPORATION  
OF  
HIDDEN CREEK OWNERS ASSOCIATION, INC.**

In compliance with the requirements of the Tennessee Nonprofit Corporation Act (the "Act"), the undersigned, having the capacity to contract and acting as the incorporator of a non-profit property owners association under the Act, adopts the following Charter for such association:

**ARTICLE I  
NAME**

The name of the corporation is Hidden Creek Owners Association, Inc., hereunder called the "Corporation".

**ARTICLE II  
MUTUAL BENEFIT CORPORATION**

The Corporation is a mutual benefit corporation.

**ARTICLE III  
INITIAL REGISTERED OFFICE**

The street address, county, and zip code of the Corporation's initial registered office and its registered agent is Hidden Creek Owners Association, Inc. c/o CT Corporation System, Suite 2021, 800 Gay Street, Knoxville, Knox County, TN 37929, as may be relocated from time to time.

**ARTICLE IV  
INCORPORATOR**

The name, address, and zip code of each incorporator is Vincent Ronanelli, Hidden Creek Owners Association, Inc. c/o CT Corporation System, Suite 2021, 800 Gay Street, Knoxville, Knox County, TN 37929.

**ARTICLE V  
PRINCIPAL OFFICE**

The street address and zip code of the principal office of the Corporation is Hidden Creek Owners Association, Inc. c/o CT Corporation System, Suite 2021, 800 Gay Street, Knoxville, Knox County, TN 37929.

Received by Tennessee Secretary of State The Honorable, 09/19/2012, 16:18:43, 7057.2134

Received by Tennessee Secretary of State Tre Hargett, 09/19/2012, 15:18:44, 7097.2135

**ARTICLE VI  
NON-PROFIT CORPORATION**

The Corporation is non-profit.

**ARTICLE VII  
PURPOSE AND POWERS**

This Corporation does not contemplate pecuniary gain or profit to the members thereof. The purpose for which the Corporation is organized is to maintain the common facilities of the Hidden Creek subdivision in Williamson County, Tennessee and perform all duties and functions of the Hidden Creek Owners Association, as described in the Declaration of Protective Covenants, Conditions, and Restrictions for Hidden Creek recorded in the Register's Office for Williamson County, Tennessee, hereinafter called the "Declaration" and any additions and amendments thereto as may hereafter be brought within the jurisdiction of the Corporation, and for this purpose to:

1. Exercise all of the powers, rights, and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Declaration, as the same may be amended from time to time as therein provided;
2. Fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes, or governmental charges levied or imposed against the property of the Corporation;
3. Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Corporation;
4. Borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
5. Have and to exercise any and all powers, rights, and privileges which a corporation organized under the Act by law may now or hereafter have or exercise; and
6. Except for those amendments which the Tennessee Non-Profit Corporation Act expressly permits to be made by the Directors of the Corporation, any amendment to these Articles of Incorporation of the Corporation to be adopted must be approved by the affirmative Vote of not less than fifty percent (50%) of the members present at a duly called meeting of the Corporation or the affirmative written consent of such percentage of the members at which a quorum is present unless a higher percentage vote is required elsewhere in the Declaration or by the Act.

Received by Tennessee Secretary of State The Honorable, 09/19/2012, 16:18:45, 7097-2135

## **ARTICLE VIII MEMBERSHIP**

The Corporation will have members. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to assessment by the Corporation, shall be a member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Corporation.

## **ARTICLE IX BOARD OF DIRECTORS**

The affairs of this Corporation shall be managed by a Board of Directors. The number of directors and the method of electing the same shall be provided in the By-Laws of the Corporation.

As provided in Tennessee Code Annotated Section 48-58-501 *et seq.*, all directors and officers of the Corporation shall be immune from suit and no present or former director or officer of the Corporation shall have any personal liability to the Corporation or its members for monetary damages arising from the conduct of the affairs of the Corporation, except when such conduct amounts to wilful, wanton, or gross negligence. The Corporation shall indemnify all current and former directors and officers of the Corporation to the maximum extent allowed by law, including, without limitation, advancing expenses pursuant to Tennessee Code Annotated Section 48-58-504, for any and all claims brought against such persons in connection with their actions or inactions in their official capacity as directors and officers of the Corporation.

## **ARTICLE X DISSOLUTION**

The Corporation may be dissolved with the assent given in writing and signed by not less than sixty-seven (67%) of all the members of the Corporation. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be distributed to the members.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, for the purpose of forming this Corporation under the laws of the State of Tennessee, the undersigned, constituting the incorporator of this Corporation, has executed these Articles of Incorporation this the 19<sup>th</sup> day of September, 2012.

HIDDEN CREEK  
OWNERS ASSOCIATION, INC.

By: Vincent T. Bannock  
(Print  
(Name: Vincent T. Bannock)

Its: Incorporator

BK: 6699 PG: 852-856  
12040607

5 PGS: AL - CHARTER	
JENNIFER BATCH: 288891 08/20/2012 - 09:46 AM	
BATCH	288891
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	5.00
ARCHIVE FEE	0.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	7.00

STATE OF TENNESSEE, WILLIAMSON COUNTY  
**SADIE WADE**  
REGISTER OF DEEDS





**STATE OF TENNESSEE**  
**Tre Hargett, Secretary of State**  
Division of Business Services  
William R. Snodgrass Tower  
312 Rosa L. Parks AVE, 8th FL  
Nashville, TN 37243-1102

Hidden Creek Owners Association, Inc.  
C/O CT CORPORATION SYSTEM  
STE 2021  
800 S GAY ST  
KNOXVILLE, TN 37929-9710

September 19, 2012

**Filing Acknowledgment**

**Pick Up**

Please review the filing information below and notify our office immediately of any discrepancies.

<b>SOS Control # :</b>	<b>696071</b>	<b>Formation Locale:</b>	<b>TENNESSEE</b>
<b>Filing Type:</b>	<b>Corporation Non-Profit - Domestic</b>	<b>Date Formed:</b>	<b>09/19/2012</b>
<b>Filing Date:</b>	<b>09/19/2012 4:18 PM</b>	<b>Fiscal Year Close:</b>	<b>12</b>
<b>Status:</b>	<b>Active</b>	<b>Annual Report Due:</b>	<b>04/01/2013</b>
<b>Duration Term:</b>	<b>Perpetual</b>	<b>Image # :</b>	<b>7097-2134</b>
<b>Public/Mutual Benefit:</b>	<b>Mutual</b>		
<b>Business County:</b>	<b>KNOX COUNTY</b>		

**Document Receipt**

<b>Receipt # :</b>	<b>824724</b>	<b>Filing Fee:</b>	<b>\$100.00</b>
<b>Payment-Check/MO -</b>	<b>TUNE, ENTREKIN &amp; WHITE, P.C., NASHVILLE, TN</b>		<b>\$100.00</b>

<b>Registered Agent Address:</b>	<b>Principal Address:</b>
<b>HIDDEN CREEK OWNERS ASSOCIATION, INC.</b>	<b>C/O CT CORPORATION SYSTEM</b>
<b>C/O CT CORPORATION SYSTEM</b>	<b>STE 2021</b>
<b>STE 2021</b>	<b>800 S GAY ST</b>
<b>800 S GAY ST</b>	<b>KNOXVILLE, TN 37929-9710</b>
<b>KNOXVILLE, TN 37929-9710</b>	

Congratulations on the successful filing of your Charter for Hidden Creek Owners Association, Inc. in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee. Visit the TN Department of Revenue website ([apps.tn.gov/bizreg](http://apps.tn.gov/bizreg)) to determine your online tax registration requirements.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett  
Secretary of State

Processed By: Cynthia Dunn

Phone (615) 741-2286 \* Fax (615) 741-7310 \* Website: <http://tnbear.tn.gov/>

**BK: 5854 PG: 648-704**  
**13010540**

57 PGS : AL - RESTRICTIONS	
JENNY BATCH: 290637	03/05/2013 - 03:35 PM
BATCH	290637
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	285.00
ARCHIVE FEE	0.00
OP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	287.00

STATE OF TENNESSEE, WILLIAMSON COUNTY  
**SADIE WADE**  
GRANTED BY REC'D