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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
OAK CREEK ESTATES**

This Declaration of Covenants, Conditions, and Restrictions for Oak Creek Estates is made as of the date set forth on the signature page hereto by **Schell Brothers Nashville LLC**, a Delaware limited liability company ("Declarant"), the owner of the Development Property (defined below) and all other persons or entities, presently owning or hereafter acquiring any of the Development Property.

**RECITALS**

WHEREAS, Declarant, being the owner and legal title holder of certain real property in Hendersonville, Sumner County, Tennessee (the "Development Property"), as further described and illustrated on **Exhibit A** attached hereto, desires to subdivide, develop the Development Property into single family residential lots; and

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

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

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the Assessments and charges hereinafter created; and

WHEREAS, Declarant has caused or will cause to be incorporated under the laws of the State of Tennessee, as a non-profit corporation, Oak Creek Estates Owners Association, Inc. for the purpose of exercising the functions aforesaid; and

WHEREAS, Declarant may purchase additional property adjacent to the Development Property and add same to the Development Property as future phases of the proposed development thereon and subject any such annexed property to this Declaration; and

WHEREAS, Declarant desires to establish for its own benefit and for the benefit of all current and future Owners and Occupants of the Development Property or any portion thereof, certain rights, privileges and easements in, over and upon the Development Property, and to this end, desire to subject the Development Property to certain mutually beneficial covenants, restrictions, obligations, easements, charges and liens for the purpose of enhancing and protecting the value, desirability and attractiveness and well as the proper use, conduct and maintenance of the Development Property or any part thereof.

Ret- Robert Tank

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

## **Article I DEFINITIONS**

The terms in this Declaration and the attached exhibits and other Governing Documents shall generally be given their commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1. "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. "Applicable Law" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development Property in effect at the time a provision of this Declaration, as may be amended from time to time, is applied and pertains to the subject matter of the provision of this Declaration, and all other ordinances and any other applicable building codes, zoning restrictions and permits, or other applicable regulations.

3. "Appointment Period" shall mean and refer to the period of time commencing as of the date of the recordation of this Declaration and, except as may otherwise be prohibited by law, continuing until the earlier of: (a) the date which is the twentieth (20) anniversary from the date of the Recording of this Declaration; (b) the date of the Recording of the deed conveying the last Lot to comprise the Development Property from Declarant to a third party purchaser; or (c) any such earlier date as Declarant, in its sole discretion, elects to terminate the Appointment Period by written notice to the Association of such termination.

4. "Assessment" shall mean and refer to: (a) Common Assessments, (b) Special Assessments, (c) Supplemental Assessments, (d) Working Capital Fund Assessments, and (e) Reimbursement Assessments, all of which are further defined herein. Assessment shall include all costs and reasonable attorney's fees incurred in the enforcement of thereof and shall additionally include interest thereon.

5. "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.

6. "Association" shall mean and refer to Oak Creek Estates Owners Association, Inc., a Tennessee non-profit corporation, its successors and assigns. Each Owner of a Lot shall be a Member of the Association.

7. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association having its normal meaning under Tennessee corporate law and designated to act on behalf of the Association.

8. "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 for each Assessment Year prior to the commencement thereof as further provided herein.

9. "Builder" shall mean and refer to any Person who is in the business of constructing single family and/or multi-family residences and who acquires any Lot within the Development Property for the purpose of constructing homes thereon for sale to a third party customer of the Builder.

10. "By-Laws for Oak Creek Estates" shall mean and refer to the By-Laws of the Association attached hereto as **Exhibit B** and made a part hereof, as same may be amended from time to time.

11. "Charter" shall mean and refer to the Charter for the Association attached hereto as **Exhibit C** and made a part hereof, as same may be amended from time to time.

12. "Common Area" shall mean and refer to any and all the real and personal 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.

13. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Development Property. Such standard may be more specifically determined by the Board and the Architectural Review Committee of the Association.

14. "Declarant" shall mean and refer to **Schell Brothers Nashville LLC**, a Delaware limited liability company, its successors and assigns, provided such successors and assigns are expressly designated by Declarant in a written and recorded instrument as a successor or assign of the rights of Declarant set forth herein. Declarant may and shall have the right to assign all or a portion of its rights, powers, easements and privileges under this Declaration. In the event of a partial assignment, the assignee shall not be deemed the Declarant but may and shall have the right to exercise such rights, powers, easements and privileges of the Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis. From and after any such assignment, the assigning Declarant shall thereafter automatically be relieved from any and all obligations and liability associated with the assignee's exercise of the Declarant's rights so assigned.

15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Oak Creek Estates applicable to the Development Property and recorded in the Register's Office for Sumner County, Tennessee, as may be amended from time to time.

16. "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.

17. "Development Property" shall mean and refer to the real property described and further shown on **Exhibit A** attached hereto and made a part hereof.

18. "Governing Documents" shall collectively mean and refer to this Declaration and any applicable Supplemental Declaration, amendment, the Bylaws and Articles of Incorporation of the Association, any architectural or design standards, fine schedule, and any use restrictions and/or Rules & Regulations, each as may be adopted, amended, and/or supplemented from time to time.
19. "Improvement" shall mean and refer to any infrastructure, building, building addition, outbuilding, garage, barn, running shed, detached structure, landscaping, fence, wall, swimming pool, recreational facility, driveway, parking area, walkway, satellite dish, mailbox, utility service, exterior alterations (e.g. shutters, awnings, window boxes, planters, alternative exterior material or color), or such other improvement, alteration, or structure constructed or located upon all or any portion of the Development Property or the exterior of any structure located thereon. 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 portion of the Development Property.
20. "Lot" shall mean a portion of the Development Property, whether developed or undeveloped, intended for the development, use, and occupancy as a detached single family residence. The term include all portions of the Lot owned, including any structure thereon. A Lot shall include all easement rights appurtenant to such Lot as set forth herein or as shown on the final subdivision plat for the respective phase or section of Oak Creek Estates.
21. "Member" shall mean and refer to any Person(s) that shall be an Owner of a Lot.
22. "Mortgage" shall mean and refer to any a first priority mortgage encumbering a Lot held by a Mortgagee.
23. "Mortgagee" shall mean and refer to any bank, mortgage banker, savings and loan association or other financial institution, which is in the business of making mortgages to customers and which is the record holder of a recorded first priority Mortgage encumbering one or more Lots or property within the Development Property, which is not affiliated with the Owner and which has given written notice of its Mortgage to the Association.
24. "Occupant" shall mean and refer to any Person in possession of a Lot, regardless of whether said Person is an Owner.
25. "Owner" shall mean and refer to the Person(s) whose estates or interests, individually, or collectively, aggregate fee simple ownership of a Lot. "Owner" shall not mean the Mortgagee or beneficiary of a recorded Mortgage or deed of trust who holds a lien solely for security purposes and does not have possession of the Lot.
26. "Person" shall mean and refer to a natural person, as well as a corporation, partnership, firm, association, trust, or other legal entity capable of holding title to real property. The use of the masculine pronoun shall include neuter and feminine references, as applicable, and use of the singular shall include the plural where the context so requires.
27. "Plans" shall mean and refer to the detailed plans prepared for construction of any Improvement on or within the Development Property, which shall comply with the architectural control provisions, if any, of this Declaration.
28. "Plat" shall mean and refer to the plat(s) recorded or to be recorded in the Register's Office for the County in which the Development Property, or portion thereof, is located subdividing the

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

29. "Record" and/or "Recording" shall mean and refer to the recording of an instrument in the Register's Office for the County in the State of Tennessee in which the Development Property, or portion thereof, is located.

30. "Rules and Regulations" shall mean and refer to the rules and regulations concerning the use of the Lots and Common Areas appurtenant thereto, as may be adopted by the Board in accordance with this Declaration and/or the By-Laws from time to time.

31. "Supplemental Declaration" shall mean and refer to any amendment to the Declaration whereby Declarant submits additional property to the terms of the Declaration or otherwise amends the Declaration as provided herein.

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

33. "Vote" shall mean and refer to the vote in the affairs of the Association to which each Member is entitled, as further set forth herein.

## Article II PROPERTY SUBJECT TO DECLARATION

1. **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.

2. **Property Subject to Declaration.** Declarant, for itself and its heirs, legal and personal representatives, successors, and assigns, hereby declares that the property located in **Sumner County, Tennessee**, as is more particularly described and shown on **Exhibit A** attached hereto and made a part hereof, together with any Future Phase Property, 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 the Governing Documents, and by acceptance of same shall be deemed to have consented to and be bound by the terms, conditions, and covenants of this Declaration and the Governing Documents.

3. **Common Area Rights.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may

adopt. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the Owner's lessee.

4. **Acceptance of Development.** Except for Declarant, the acceptance of a deed to any Lot within the Development Property, or any portion thereof, such purchaser shall be deemed to have accepted and approved the entire plans for the Development Property and all Improvements constructed thereon by that date including, without limitation, the utilities, drains, roads, landscaping, fences, entrance, decorative masonry, and all other infrastructure and improvements of **Oak Creek Estates**. Declarant reserves all rights, warranties, claims or other causes of actions related to or arising out of the development and construction of the Development Property. With respect to the conveyance of any Lot by Declarant to a subsequent Owner, **all such Development Property and all Improvements constructed thereon shall be accepted by such Owner "AS IS" without any representation or warranty, express or implied, in fact or by law, with respect thereto, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials which have been or will be used in such property or repairs.**

5. Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any Person, for the purpose of removing certain portions of property within the Development Property then owned by Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes of any nature whatsoever in the plans for Oak Creek Estates community desired to be effectuated by the Declarant. To the extent that any property to be removed from the Development Property is owned by a Person other than Declarant, such Person's consent must be obtained for such removal, as evidenced by such Person's signature affixed to the Declaration amendment.

#### NOTICE

The restrictions and other matters set forth in this Declaration are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with the provisions of this Declaration and Governing Documents, as they may change from time to time.

### **Article III MEMBERSHIP AND VOTING RIGHTS**

1. **Owners Association.** There has been or will be formed an Association having the name "**Oak Creek Estates 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 maintenance, repair, replacement, administration, operation, and care of the Development Property, as provided in this Declaration and the Governing Documents. The Charter for the Association is attached hereto as **Exhibit C**. 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 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 Governing Documents.

2. **Board.** The affairs of the Association shall be managed by the Board, which shall consist of at least three (3) Directors. The Board shall be elected and serve in accordance with the provisions of the By-Laws. The By-Laws for the Association shall be the By-Laws attached to this Declaration as

**Exhibit B** and made a part hereof. The fiscal year of the Association shall be determined by the Board, as may be changed from time to time by the Board. 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 to serve on the Board, and Declarant shall have the right to appoint all of such Directors to serve on the Board.

a. By resolution, the Board may delegate portions of their authority to an executive committee or to other committees, tribunals, officers of the Association or to agents and employees thereof, 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 respective Lot Owner allowed one (1) Vote per Lot owned for as many candidates as are there are Directors being elected at a meeting of the Owners for such purpose at which a quorum is present. Accordingly, Owners receiving the highest number of Votes shall be Board members.

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

**NOTICE**

**If you acquire a Lot you automatically become a Member of the Association. Membership is Mandatory.**

4. **Voting.** The voting rights of the Members shall be appurtenant to their ownership of a Lot. Each Member shall be entitled to cast one (1) Vote for each Lot owned by such Member; provided, however, during the Appointment Period, the Declarant, its successors and assigns, shall have one (1) Vote for each Lot owned by the Declarant plus four (4) Votes of each Lot owned by any Person who is not the Declarant. 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 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 a Vote by such Person 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. Votes may be cast by electronic ballot.

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, as set forth herein.

8. **Binding Determination.** In the event of any dispute or disagreement between any Owners relating to the Development Property or 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 or the Governing Documents, 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 IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

1. **General Powers and Duties.** The Association has been or will be formed to further the common interests of the Owners. The Association, acting through the Board or through persons to whom the Board have delegated any authorized powers of such 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 herein, 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 or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a Vote of the membership.

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 real and personal property taxes and governmental assessments levied upon the Common Areas and such other portions of the Development Property, which is levied upon or assessed against the Association and/or the property owned by the Association. Nevertheless, the Association shall have the right to contest in good faith any such taxes or assessments; provided that they are paid or a bond in an amount at least equal to the amount of such taxes and assessments is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes or assessments.

4. **Borrowed Money.** The Association shall have the power to borrow money.

5. **Professional Management.** The Association may, but shall not be required to, hire a professional management agent or agents, at a reasonable compensation established by the Board, to

perform such duties and services as the Board shall authorize. Except for agreements entered into with the Declarant during the Appointment Period, any agreement for professional management of the Development Property and Association shall not have a term greater than three (3) years.

6. **Personal Property and Real Property for Common Use.** The Association, through action of the Board, may acquire, hold, finance, pledge, encumber, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, as applicable, shall accept any real or personal property, leasehold, or other property interests within the Development Property conveyed to it by the 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.

7. **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.

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. **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.

11. **Common Area Reconveyance.** Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Development Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed in error or needed by Declarant to make adjustments in property lines or accommodate changes in the development plan.

15. **Rules and Regulations.** The Association, acting through the Board or other appointed 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.

16. **Enforcement.** The Association, acting through the Board, shall have the power to enforce the provisions of this Declaration, any Supplemental Declaration, and the Governing Documents and shall take such action as the Board deems necessary or desirable to cause such compliance by each Owner 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 Governing Documents, 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 Governing Documents 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 Governing Documents; (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 Governing Documents, the costs of which shall be at the Owner's sole expense; (e) by suspending the right to Vote and/or the right to use and enjoy the recreational facilities; and (f) by exercising any remedy for nonpayment of Assessments as provided herein.

a. The Association shall have a lien on any Lot and any Improvement thereon to secure payment of the amounts described in this Section, 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. The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and local governments may enforce their ordinances within the Development Property.

b. The Association, acting through the Board, by contract or other agreement, shall have the right to enforce county ordinances or permit the governing jurisdiction in which the Development Property is located to enforce ordinances and local laws concerning the Development Property for the benefit of the Association and its Members.

c. The "Fine Policy" for the Association in effect as of the date of the Recording of this Declaration is attached hereto as **Exhibit E** and incorporated herein. The Fine Policy may be amended, revised, supplemented and otherwise changed in the sole discretion of the Declarant during the Appointment Period and thereafter the Board. A copy of the current effective Fine Policy is on file in the office of the Association or property manager and a copy of same may be provided upon request.

17. **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege, including, but not limited to:

- a. imposing monetary fines and suspending use and voting privileges;
- b. granting permits and licenses, utility easements and other easements, permits or licenses under, through or over the Common Areas; and
- c. sell, transfer or convey portions of the Common Area, but only upon approval of sixty-seven percent (67%) of the total eligible Votes of the Members of the Association.

18. **No Waiver.** The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule. 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 or Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

19. **Safety and Security.** Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Development Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Development Property designed to enhance the level of safety or security which each Person provides for himself or herself and his or her property. Neither the Association, the Declarant, nor their officers, agents, members or employees shall in any way be considered insurers or guarantors of safety or security within the Development Property, nor shall any of the foregoing be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. The obligation to provide security lies with each Owner individually. **No representation or warranty is made that any security system or measures, including any mechanism or system for limiting access to the Development Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.** Each Owner acknowledges, understands, and shall be responsible for informing its guests, invitees, tenants and all Occupants of a Lot that the Association, its Board and committees, and the Declarant are not insurers or guarantors of safety or security and that each Person within the Development Property assumes all risks of personal injury and loss or damage to property, including Lots and Improvements thereon and the contents upon Lots resulting from acts of third parties.

20. **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 for the Association 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 Governing Documents, 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 Governing Documents.

21. **Limitation on Liability.** The Association, the Board, 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, any Supplemental Declaration or the Governing Documents. 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 Indemnitee may be entitled.

**Article V**  
**DEVELOPMENT PROPERTY MANAGEMENT AND CARE**

1. **Maintenance by the Association.** The Association shall repair, replace, maintain and keep in good repair the Common Areas in perpetuity with such maintenance to be funded as provided herein, subject to any insurance then in effect. The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The maintenance, repairs, and replacement of the pavers installed in the public streets within the Development Property shall be the responsibility of the Association, and the costs related thereto shall be part of the Common Assessment. The Association shall have a reasonable right of entry upon all of the Development Property and any portion thereof to make emergency repairs and to do other work reasonably necessary under this Declaration for the proper performance of its duties hereunder and the proper maintenance and operation of the Development Property. The Association shall not be liable for any damage, including personal injury or property damage, caused by or stemming from the Association's failure to maintain or repair, or properly maintain or repair, any item for which it has the maintenance and or repair obligation as set forth herein. The Association shall have the power to require that all Owners 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. Except as otherwise specifically provided herein, all costs associated with the maintenance, repair and replacement of Common Areas shall be a Common Expense to be allocated among all Lots as part of the Common Assessment.

2. **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.

3. **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.

4. **Exclusive Landscaper.** The Declarant during the Appointment Period and thereafter the Board shall have the authority to engage the services of one exclusive landscaping company ("Exclusive Landscaper") for all routine landscaping maintenance needs of the Development Property, such as lawn mowing, mulching, hedging and limb/leaf removal. The cost of such services shall be charged directly to the Owner of the Lot for whom the services are provided. If the costs of such services are not billed separately and directly to the Owner of the Lot receiving the services, then the cost of such services shall be part of the Common Assessment incurred by the Association and allocated equally to the Owners benefitted by such services.

5. **Exclusive Waste Services Provider.** The Declarant during the Appointment Period and thereafter the Board shall have the authority to engage the services of an "Exclusive Waste Services Provider" for garbage, recycling, and any other waste or debris collection and disposal. The cost of such services shall be charged directly to the Owner of the Lot for whom the services are provided. If the costs of such services are not billed separately and directly to the Owner of the Lot receiving the services, then

the cost of such services shall be part of the Common Assessment incurred by the Association and allocated equally to the Owners benefitted by such services.

## **Article VI OWNER PROPERTY MANAGEMENT AND CARE**

1. **Maintenance by Owner.** Each Owner of a Lot, his/her family, guest, invitees, or other Persons using or occupying his/her Lot and Improvements thereon shall maintain same in a manner consistent with the Community-Wide Standard and all applicable provisions of the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association.

2. **Landscaping, Trees, Walking Paths, Etc.** Every Lot Owner shall be responsible for the maintenance, repair, and replacement of all lawns, landscaping, trees, shrubs, walking paths, or similar Improvements located upon said Owner's Lot and extending to the public right-of-way or private street or private alley fronting or otherwise contiguous to the Lot together with all costs related thereto. For clarity, these maintenance, repair, and replacement obligations extend to landscaped strips lying between the platted boundary of a Lot and the public right-of-way or private street or private alley fronting or otherwise contiguous to the Lot. Notwithstanding the generality of the forgoing Lot Owner obligations, Owners are responsible for watering and pruning vegetation on the Owner's Lot and the replacement (with like-kind trees and/or shrubs) of dead or dying trees, shrubs and other vegetation on such Owner's Lot.

3. **Lot Final Grading.** Lot Owners (and the Builder of a dwelling and related Improvements upon any Lot) shall be responsible for the final grading of the Lot. By the acceptance of the deed to a Lot, the Lot Owner acknowledges and agrees that said Lot is being purchased and acquired AS IS, WHERE IS with all faults, if any. Further, each Lot Owner acknowledges and agrees that after the conveyance of the Lot to said Owner, neither the Declarant nor any of its contractors, agents, successors or assigns shall have any obligation or responsibility with respect to the grade of the Lot and/or the drainage and stormwater conditions affecting such Lot.

4. **Remedies for Failure to Maintain.** If the Board determines that any Owner has failed or refused to properly maintain and keep in good repair and free of debris and rubbish, the Owner's Lot, and otherwise generally perform his or her maintenance responsibility, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and diligently pursue such maintenance or repair to completion. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association, then the Association may perform such maintenance, repair, or replacement and assess all costs and expenses incurred by the Association against the Lot and the Owner thereof, which assessment shall be a lien against said Lot and Owner. If, during the course of performing the maintenance of an Owner's Lot, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at Owner's expense without prior notice to the Owner. The Board may alternatively enforce this Article through monetary fines against the Lot and Owner and each day the maintenance, repair, or replacement is not completed shall constitute a separate violation for which fines may be assessed on a daily basis.

## **Article VII INSURANCE**

1. **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 are 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.

2. **All Risk Insurance.** The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained, including coverage for vandalism and malicious mischief. Insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction of said improvements in the event of damage or destruction from any insured hazard.

3. **Liability Insurance.** The Board shall also obtain a public liability policy covering the Common Areas, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents related to the Common Areas. The public liability policy shall have at least a One Million Dollar (\$1,000,000) occurrence, a Two Million Dollar (\$2,000,000) aggregate limit per policy. If reasonably available, a Two Million Dollar (\$2,000,000) umbrella limit shall be purchased.

4. **Builder's Insurance.** In addition to the other insurance requirements set forth herein, each Builder (other than the Declarant) shall carry liability insurance with coverage limits reasonably satisfactory to Declarant for all damage or injury, including bodily injury, death and property damage, arising from the Builder's activities within the Development Property. Prior to conducting any such activities, each Builder shall deliver to Declarant a certificate of insurance (a) evidencing that the aforementioned insurance coverage has been obtained and (b) naming the Declarant and the Association as additional insureds.

5. **Lots.** Each Lot Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and Improvements thereon, meeting the same requirements as set forth above for insurance on the Common Areas. In addition, each Lot Owner shall carry liability insurance covering the Owner's Lot and Improvements built thereon, for all damage or injury, including bodily injury, death, and property damage, arising from any condition or occurrence on the Owner's Lot or in any Improvements built thereon. The Board shall upon request make available for review by Owners a copy of the Association's insurance policies to allow Owners to assess their personal insurance needs.

6. **Worker's Compensation.** In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance (if and to the extent required by law), directors' and officers' liability coverage, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving

without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation or non-renewal.

7. **Coverage Sufficiency and Deductibles.** The Association shall periodically review the sufficiency of insurance coverage. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon written request, to any Member. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate.

8. **Premiums.** The premiums for insurance procured by the Association pursuant to this Declaration for the benefit of all Owners shall be a Common Assessment.

9. **Attorney-In-Fact.** Each Owner hereby irrevocably appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining insurance as required in this Section, 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.

10. **General.** All insurance coverage obtained by the Board shall be written in the name of the Association as trustee for the respective benefited parties, as further identified below. Such insurance shall be governed by the following provisions:

a. All policies shall be written with a company authorized to do business in Tennessee which holds a Best's rating of A- or better and is assigned a financial size category of VIII or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

b. All policies shall be for the benefit of the Association and its Members and their Mortgagees, as their interests may appear.

c. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in that Association's Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

d. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

e. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

i. a waiver of subrogation by the insurer as to any claims against the Association's Board, its managers, the Owners, and their respective tenants, servants, agents, and guests;

ii. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

iii. that the Association will be given at least thirty (30) days' prior written notice of any cancellation or non-renewal.

**Article VIII**  
**CASUALTY, DAMAGE AND RECONSTRUCTION**

1. Promptly after damage or destruction by fire or other casualty to all or any part of the Development Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with filing and adjusting all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portion of the Development Property. Repair or reconstruction, as used in this Section, means repairing or restoring the Development Property to substantially the same condition in which it existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

2. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least sixty-seven (67%) percent of the total Vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed.

3. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the affected portion of the Development Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

4. Notwithstanding any provision in the Governing Documents to the contrary, if the damage or destruction to the Common Areas is to be repaired or reconstructed, and such insurance proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a Vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Common Assessments. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

5. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made to any portion of the Common Area, any proceeds remaining, after making such settlement as is necessary with the Mortgagee, shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made to any Lot, any proceeds remaining, after making such settlement as is necessary with the Mortgagee, shall be paid to the respective Owner(s).

6. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from Assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair as set forth in this Article to be disbursed by the Association in appropriate progress payments to such

contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction designated by the Board.

7. 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 Improvements, 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 Improvement Review Committee.

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 Improvement Review Committee. In no event, shall any damaged structure be left unrepaired and unrestored in excess of one hundred twenty (120) 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.

8. 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, or the Governing Documents. The Board shall have the power, as elsewhere provided herein 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 or the Governing Documents, or for any increased insurance premiums directly attributable to any such damage or any such violation.

9. 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 IX 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, by and through the Board, 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.

## **Article X EASEMENTS**

1. **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.

2. **Public and Private Utilities.** There is hereby reserved unto Declarant and any Builder, so long as the Declarant and such Builder(s) owns any property described on **Exhibit A** or any additional property subsequently annexed to the Development Property, the Association, and the designees or grantees of each, blanket easements upon, across, over, and under all, or a portion, of the Common Areas, and Lots for ingress, egress, installation, replacing, altering, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, HVAC systems, gas, and electricity. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Development Property except as may be approved by the Board or as provided by Declarant during the Appointment Period. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Should any entity furnishing a service covered by the general easements herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement on said Development Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Development Property.

3. **Federal, State, Local Entity and Service Providers.** An easement is hereby established for the benefit of any applicable federal, state, or local entity and utility service providers over all portions of the Development Property for the setting, removing, and reading of water or gas meters; for maintaining and replacing water, sewage, and drainage facilities; for police protection, fire-fighting, and garbage collection, cable/satellite television installation and repair; and rendering of such other services as are appropriate and necessary for the use and enjoyment of the Development Property.

4. **Declarant / Builder.** Until completion of Declarant's intended development of the Development Property, an easement is reserved to the Declarant to enter the Common Areas and to maintain thereon such facilities and perform such operations as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the intended development of the Development Property by the Declarant. Until completion of Declarant's intended development of the Development Property, an easement is reserved to the Declarant for signage and ingress and egress generally across the Development Property, including any Lot, at reasonable places, for the purpose of completing Declarant's intended development, provided that said easement shall be reasonable and shall not

interfere with the construction of Improvements on a Lot, nor the use and enjoyment of a Lot by an Owner. Declarant, any Builder, and the Association also reserve any and all easements reasonably required to allow completion, repair, and maintenance of any and all utility areas or Improvements. Declarant hereby grants and conveys to any Builder an easement for ingress and egress generally across the Development Property reasonably required to allow completion, repair, and maintenance of any and all utility areas or Improvements upon any Lots owned by a Builder. In addition, Declarant hereby grants and conveys to any Builder a temporary construction easement, five feet (5') in width along the side yard boundary lines of any Lot for the purpose of facilitating home construction on an adjacent Lot owned by such Builder (the "Builder Construction Easement"), which temporary construction easement shall automatically terminate upon the issuance of a certificate of occupancy for the Lot. As evidenced by the use of the Builder Construction Easement, each Builder agrees to indemnify, defend, and hold harmless the Declarant, the Association, and the Owner upon whose Lot the Builder Construction Easement is located from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) that may result from Builder's use of the Builder Construction Easement.

5. **Construction and Sale Easement.** Notwithstanding any provision contained in this Declaration or the Governing Documents, until the termination of the Appointment Period and thereafter so long as Declarant owns any property in the Development Property for development or sale, Declarant reserves an easement across the Development Property for Declarant and any builder or developer approved by Declarant to maintain and carry on development activities, upon such portion of the Development Property as Declarant may deem desirable or necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the development, construction and sales activities related to property within or near the Development Property. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, or in any portion of the Development Property as well as any Lot therein; (ii) the right to tie into any portion of the Development Property with driveways, parking areas and walkways; (iii); the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on Common Area; (v) the right to carry on sales and promotional activities in the Development Property; (vi) the right to place direction and marketing signs on any portion of the Development Property, including any Lot or Common Area; (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities; and (viii) Declarant may use residences, offices, or other building owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Development Property as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense.

6. **Association.** There is hereby reserved unto the Association, the Board, Managing Agent, or their respective agents or employees a blanket, perpetual, and non-exclusive easement of unobstructed ingress and egress in, upon, over, across, and through the Common Areas 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 or any Governing Documents; 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.

7. **Declarant Inspection and Right to Correct.** Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, improvement, or condition which may exist on any portion of the Development Property and a perpetual, nonexclusive easement of access throughout the Development Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

8. **Fence Easement.** Declarant during the Appointment Period and thereafter the Board reserves an easement across any Lot which borders upon or contains a portion of any pond, lake, dam, water facility, detention pond or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance or plan approval requirement.

#### **Article XI 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 the Development Property. Declarant's rights and reservations set forth herein 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 hereto, 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 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. **Declarant's Rights and Assignment.** Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Governing Documents may be transferred or assigned in whole or in part to any other Person, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Register's Office of **Sumner County, Tennessee.**

3. **Construction and Sales Activities.** Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and the initial sale of Lots shall continue, it shall be expressly permissible for Declarant to permit any Builder to maintain and carry on upon portions of the Development Property, including any Lot, such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of improvements upon such Lots, including, but not limited to, business offices, signs, model homes, and sales offices or trailers, and the Declarant and such Builder(s) shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right of Declarant to use

designated portions of the Common Areas, and Lots owned by the Declarant and the right of any Builder to use Lots owned by Builder, as models and sales offices or trailers, respectively.

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

5. **Development Completion.** No provision of this Declaration shall be construed to limit the right of Declarant to or require Declarant to obtain approval: (a) to complete Improvements indicated on Plats, Site Plans and/or Plans filed with this Declaration, as may be amended from time to time; (b) to create, add, withdraw, modify, alter, or redefine Lots, Common Areas comprising the Development Property or to subdivide Lots; (c) to make the Development Property part of a larger planned community or to subject same to a master association; (d) to 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 (e) to 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. Nothing in this Paragraph shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

6. **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 which are for the betterment and enhancement thereof and for the benefit of the Association and the Owners. Declarant will convey or transfer such Improvements to the Association, which shall be obligated to accept title to, care for, and maintain the same as elsewhere provided herein.

a. Declarant intends construct certain amenities for the benefit of the Owners and Occupants upon a certain Common Area lot(s) within the Development Property (the "Amenities"), as may be modified or revised in the sole discretion of the Declarant.

b. The acquisition and construction costs for the Amenities shall be a Common Assessment, and it is intended to have such costs advanced to the Association by the Declarant and to be evidenced by one or more promissory notes (collectively, the "Amenity Note") from the Association in favor of Declarant and secured by a deed of trust encumbering the Common Area lot upon which the Amenities are to be built (the "Amenity DOT"), or Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Development Property. Any Amenity Note shall be disclosed as a line item in the Budget for the Association. The amount, commencement date, maturity date, interest rate and other terms of any Amenity Note shall be set for in such Amenity Note(s).

7. **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.

8. **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, 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.

9. **Cell Towers.** Declarant shall have and hereby reserves the right to lease, license, convey, or otherwise establish and easement for the construction, installation, and use of a cellular tower and equipment appurtenant thereto upon a Lot(s) or other portion of the Development Property. Cellular towers, cellular tower sites and the operation and maintenance thereof can and will emit unpleasant noises and/or other emissions which could potentially result in, among other things, inconveniences, interruptions in use or enjoyment of property or common areas, and/or health issues. By the acceptance of their deed or other conveyance or mortgage, leasehold, license or other interest, each Owner and any Occupant or tenant of such Owner automatically acknowledges, stipulates and agrees (a) that such Owner and/or such Owner's invitees, guests, tenants or other occupants do not object to the presence of the cellular tower or cellular tower site, (b) that the cellular tower, cellular tower site and the use, operation, and/or maintenance thereof shall not be deemed nuisances or noxious or offensive activities, hereunder or at law generally, (c) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) the cellular tower and/or cellular tower site (even if not being actively used at the time of entry), (d) the Declarant, the Association, and the owner and/or operator of the cellular tower and/or cellular tower site shall not be liable for any losses, damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the cellular tower and/or cellular tower site, except resulting directly from the gross negligence or willful misconduct of the respective owner thereof, and (e) any purchase or use of any portion of the Development Property has been and will be made with full knowledge of the foregoing.

10. **Notice and Opportunity to Cure.** No Person shall (a) institute legal or equitable proceedings involving the alleged defective design or construction of any Improvement upon or within the Development Property or (b) retain an expert for the purpose of inspecting the design or construction of any such Improvement in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction, unless Declarant and the respective Builder have been first notified in writing and given an opportunity to meet with the Owner of the Lot to discuss the Owner's concerns and conduct their own inspection(s). If Declarant or the respective Builder determine that curative action is necessary or appropriate, then Declarant or the respective Builder shall have sixty (60) days to complete such curative efforts, and for curative action that cannot be reasonable completed in such 60-day period, then for so long as Declarant or the respective Builder commenced the curative action within said 60-day period and continue such efforts in good faith following commencement, then Declarant or the respective Builder shall be deemed to be compliance with their respective right to cure under Tennessee law. Further, Declarant and the respective Builder(s) reserve the right for themselves and others designated to inspect, monitor, test, redesign and correct any Improvement or condition which may exist on any portion of the Development Property, including the Lots and Common Areas, and a perpetual easement of access through the Development Property for such purposes.

1. **Instrument Recording Prohibition.** During the Appointment Period, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Development Property without Declarant's review and written consent thereto, and any

attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

## Article XII 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) Special Assessments, (c) Reimbursement Assessments, and (d) 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 transfer or conveyance of an improved Lot for which a certificate of occupancy for residential use has been issued. The Assessments for the then current Assessment Year shall be prorated on the basis of the number of months remaining in such Assessment Year.

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

b. 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.

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. For example, the Amenity Note (identified above) and the Subsidy (identified below) are part of the Common Assessment and are to be disclosed as line items in the Budget for 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. The Declarant shall have no obligation to fund reserves.

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 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.

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.

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 fifteen (15) 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 ten percent (10%) per annum until paid, but in no event shall the interest charged be in excess of the Delinquency Interest Rate.

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.** 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. **Working Capital Fund Assessment.** Each Owner of a Lot shall pay a "Working Capital Fund Assessment" in such amount as set by the Board at the closing of the sale of a dwelling upon each Lot. As of the date of the Recording of this Declaration, the Working Capital Fund Assessment is Six Hundred Fifty and No/100 Dollars (\$650.00). The Working Capital Fund Assessment shall not apply to the conveyance of a Lot to a Builder, but 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 amount of the Working Capital

Fund Assessment may be increased in the discretion of the Board. 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 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.

9. **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.

10. **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.

11. **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 Governing Documents, 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.

12. **Declarant Responsibility.** Until the termination of the Appointment Period, the Declarant shall not be liable for payment of Assessments on its unsold Lots, Units, Unit Pads, or Sites. Further, no Future Phase Property nor any other property, owned by the Declarant, which has not been subjected to this Declaration shall be subject to any Assessment hereunder. However, Declarant may, but shall not be obligated to, elect to contribute to the Association the difference between the amount of Assessments levied on all other Lots subject to assessment and the amount of the Association's actual expenditures during the fiscal year (a "Subsidy"). Any Subsidy may be treated, in Declarant's discretion, as either: (i) voluntary contribution; (ii) an advance against future Assessments (if any); or (iii) a loan by Declarant to the Association, however, it is the intention of the Declarant to treat such Subsidy as a loan.

a. A Subsidy for any given year or years will be evidenced by one or more promissory notes (collectively, the "Subsidy Note") from the Association in favor of Declarant and secured by a deed of trust encumbering the Common Areas comprising the Development Property (the "Subsidy DOT"), or Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Development Property. Any Subsidy Note shall be disclosed as a line item in the Budget for the Association. The amount, commencement date, maturity date, interest rate and other terms of the Amenity Note will be as set forth in such Subsidy Note(s).

b. 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 Assessments by Owners other than Declarant, and nothing contained in this Section shall be deemed to relieve or release any Owner from the obligation of that Owner to pay Assessments. The decision 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.

13. **Enforcement: Liens and Personal Obligation.** For and in consideration of the privileges, protections, mutual enjoyment and use of the Common Areas and the assumption of the obligations of Owners set forth in this Declaration, the receipt of which is hereby acknowledged, and to secure the payment of Assessments, fines, interest, late charges, attorneys' fees and any other cost of collection as provided herein (collectively, the "Secured Charges"), a lien (an "Assessment Lien"), subject to any limitations of Tennessee law, is expressly retained in favor of the Association on each and every Owner's Lot and interests appurtenant thereto.

a. For the purpose of better and more effectually securing the Secured Charges, rendering unnecessary court proceedings for the enforcement of said lien in the event of the proceedings for the enforcement of said lien in the event of the nonpayment of the Secured Charges, and for the consideration of One Dollar (\$1.00) paid in cash, receipt of which is acknowledged, the Owners, their respective heirs, successors, administrators, and assigns (collectively, "Trustors" and individually as "Trustor") upon the conveyance of such Lot to such Trustor, hereby transfer and convey unto **T. Chad White, Trustee**, his successors and assigns, their respective Lot(s) with the appurtenances, estates, titles and interests thereto belonging, upon the uses and trusts set forth in this Section.

b. Each Trustor agrees (i) to pay the Secured Charges attributable to such Trustor's Lot when due, as provided in this Declaration; (ii) to pay, discharge, or remove, any and all liens (except for liens of ad valorem taxes, a lien for all sums unpaid under a first Mortgage or on a secondary purchase money Mortgage) which may be hereafter placed against its Lot and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof; (iii) to comply with all of the terms and conditions of the Governing Documents; and (iv) to pay upon demand of Trustee or the Association, all the costs and expenses, together with reasonable attorneys' fees, of any court appearance or other proceedings required by Trustee, his successors or the Association, to enforce any provision of this Declaration and Governing Documents of the Association. If any Trustor fails to do any of these things, then Trustee or the Association may do any or all of those things, and the amounts so paid shall bear interest at the highest rate allowed under applicable law in effect from time to time from the date of payment and shall become a part of the Secured Charges secured hereby.

c. If the Secured Charges with respect to any Lot are not paid promptly when due, then the Trustee, or his successor in trust, is hereby authorized and empowered, upon giving twenty (20) days' notice by three (3) publications in any newspaper, daily or weekly, published in **Sumner County**, Tennessee, to sell said Lot at the front door of the Court House in said County to the highest bidder for cash, at public outcry, free from the equity of redemption, the statutory right of redemption, homestead, dower and all exemptions of every kind, all of which are hereby expressly waived; and the Trustee, or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Association may bid at any sale under this trust conveyance. The Association may, at any time after default in the payment of any of the Secured Charges, enter and take possession of the Lot. It is further agreed that, in the event the Association fails, before instructing Trustee to sell said Lot, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the Trustee of a deed for said property. In case of sale hereunder, the proceeds shall be applied by the Trustee as follows:

i. First, to the payment of all costs, charges and expenses of executing this conveyance and enforcing the lien herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien;

ii. Second, to the payment of all taxes which are due but unpaid with respect to such Lot;

iii. Third, to the payment of all unpaid Secured Charges with respect to such Lot; and

iv. Fourth, the residue, if any, will be paid to the Owner of such Lot, its order, representatives or assigns.

d. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (i) no right to Vote shall be exercised on its behalf; (ii) no Assessment shall be assessed or levied on it; and (iii) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure.

e. Any sale or transfer described herein shall not relieve such Lot from liability for any Assessments accruing after such sale or transfer.

f. Suit to recover a money judgment for unpaid Secured Charges shall be maintainable without foreclosing or waiving the lien securing the same.

g. In the case of the death, absence, inability, or refusal to act of the Trustee, or if the Board so decides in its sole discretion, at any time when action under the foregoing power and trusts may be required or for any other reason, the Association are hereby authorized and empowered to name and appoint a successor to the Trustee by an instrument in writing to be recorded in the Register's Office for **Sumner County**, Tennessee, and the title and rights herein conveyed to the above named Trustee shall be vested in said successor.

h. The Secured Charges 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.

14. **Priority of Assessment Lien.** The Assessment Lien 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, 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, not to exceed \$300.00 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 the Managing Agent, a record of all Owners, their Lot(s), and the Assessments, fines, and/or other duly levied charges applicable thereto that shall be open to inspection by any Owner.

### **Article XIII IMPROVEMENTS AND ARCHITECTURAL STANDARDS**

1. **General.** No structure shall be placed, erected or installed upon any Lot and no Improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials) shall take place except in compliance with this Article and approval by the appropriate entity. Notwithstanding this, the Board may, by resolution, exempt certain activities from the application and approval requirements of this Article provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint, or redecorate the interior of structures on his Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions upon a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint

the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of Declarant or the Association.

2. **Designation of Committee.** The Association may have an Architectural Review Committee ("ARC"), which shall consist of three (3) members. During the Appointment Period, the Declarant shall appoint the members of the ARC, who shall be subject to removal at any time by Declarant. Declarant in its sole discretion, may alone constitute the ARC and until the ARC is so appointed, all references herein to the ARC shall mean the Declarant. After the termination of the Appointment Period, the members of the ARC shall be appointed and shall be subject to removal at any time by the Board. After the termination of the Appointment Period, the Board alone may constitute the ARC and until the ARC is so appointed, all references herein to the ARC following the termination of the Appointment Period shall mean the Board. The ARC shall designate an individual as its secretary, and all communications with the ARC shall be conducted through the secretary. ARC members do not need to be Owners within the Development Property and may be design or construction professionals, such as a builder, architect, or engineer.

3. **Function of ARC.** 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 ARC have been submitted to and approved in writing by the ARC. The ARC shall determine in its sole discretion whether or not the proposed Improvement, and all features thereof, is consistent with the overall development scheme for **Oak Creek Estates** and otherwise compatible with other Improvements constructed within the Development Property and consistent with the Community-Wide Standard. The ARC 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 ARC, together with the applicable fee(s), if any, to be charged by the ARC 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 ARC 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 herein and in the Design Guidelines, if any. The ARC shall be the sole arbiter of submitted Plans and may withhold its approval for any reason, including purely aesthetic reasons. The ARC 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.

4. **Design Guidelines.** The ARC 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. Copies of the current Design Guidelines, if any, may be purchased at a reasonable cost. Some Design Guidelines in effect as of the date of the Recording of this Declaration are attached hereto as **Exhibit D** and incorporated herein. The Design Guidelines may be may be amended, revised, supplemented, and otherwise changed in the sole discretion of the Declarant during the Appointment Period and thereafter the Board. A copy of the Design Guidelines in effect at any given time are on file in the office of the Association or property manager, and a copy of same may be provided upon request.

5. **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 ARC. The scaled Plans to be submitted for ARC review shall include at a minimum the following: (a) plot plan, survey or copy of the recorded plat showing the dimensions of the Lot or Site, 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 ARC. The Property Manager shall be entitled to charge a reasonable fee in connection with the submittal and review of Plans and related materials.

6. **Approval of Plans.** The ARC will certify its approval or disapproval of the Plans within forty-five (45) days of the ARC's acknowledged receipt of the Plans, specifications, review fee, and/or other requested information and/or materials. In its sole and uncontrolled discretion, the ARC 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 ARC. The ARC'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 thirty (30) days after the Plans, specifications, review fee, and all requested additional information have been submitted and acknowledged as received by the ARC, then the request for approval shall be deemed DENIED.

7. **Variance.** The ARC may authorize variances from compliance with any of the provisions of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

8. **No Waiver of Future Approvals.** The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatsoever subsequently or additionally submitted for approval or consent.

9. **Approval of Contractors.** In order to minimize confusion and the complications which may result from the construction of a number of Improvements upon different Lots within the Development Property at the same time and in order to insure performance of high quality of construction, no construction shall be commenced upon any Lot until the Declarant during the Appointment Period and thereafter the Board has given written approval of the Owner's contractor(s); provided, however, no liability shall accrue to the Declarant or the Board on account of such approval. Such contractors shall be licensed under the laws of the State of Tennessee and shall be sufficiently insured for the construction to be undertaken by such contractor.

10. **Construction Compliance.** If the ARC approves Improvement Plans, the Board shall have the right to require that the Owner 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 ARC ("Construction Deposit") in order to insure compliance with the Plans by the Owner, his representatives

and/or agents. If a Construction Deposit is required, then 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 the 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.

11. **Construction of Improvements.** Once the ARC 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 ARC'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 for the purpose of inspection and confirmation that the construction is in substantial accordance with the Plans as approved by the ARC and in compliance with this Declaration, any Supplemental Declaration or other Governing Documents. If the construction is found not to be in substantial accordance with the Plans as approved by the ARC 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 such written notice, then the Declarant during the Appointment Period and thereafter the Board shall be authorized: (a) to stop construction and all activities related thereto concerning any Improvement until same is made compliant; (b) to assess reasonable fines related to the non-compliance; and (c) to make the necessary corrections or to take necessary action to make the Improvements compliant at the Owner's expense.

12. **Limited Effect of Plan Approval.** The approval by the ARC 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 ARC 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 the Development Property. 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 ARC, 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 ARC, or to the Association in the event that any such construction shall subsequently prove to be defective or not in compliance with such requirements.

13. **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 XIV IMPROVEMENT RESTRICTIONS**

1. **General.** The construction or installation of Improvements upon Development Property shall comply with Notes on any Plat or Site Plan, as may be amended from time to time; shall comply with all requirements set forth on the overall development plan for the Development Property, if any and 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 and Re-subdivision.** 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. 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 Board. 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.

3. **Driveways and Sidewalks.** The ARC shall approve the location, construction, design, and types of materials for all driveways and sidewalks. Except as otherwise approved by the ARC, 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. In the event the dwelling is not constructed on the Lot, the Owner shall install the sidewalk by the earlier of twelve (12) months following the conveyance of the Lot or thirty (30) days after the installation of the final topping of asphalt on the street fronting such Lot. In the event the Owner fails to timely install the sidewalk as provided in this Section, the Association may cause the sidewalk to be installed, 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.

4. **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 during the Appointment Period and thereafter the Board. Any such Owner or Builder shall reimburse Declarant or the Association for the cost of any such repairs, if Declarant or the Board repairs the damages.

5. **Mailboxes.** The ARC 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 ARC shall select the replacement mailbox to be used. In the alternative, mailboxes may be installed in a centralized location designated by the Declarant and thereafter the Board.

6. **Swimming Pools.** 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 ARC; (e) the ARC 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.

7. **Hot Tubs.** Hot tubs, Jacuzzis, or spas for the use of Owners and their guests may be constructed on Lots so long as: (a) they are of a permanent nature and are below ground level or are incorporated into other improvements such as decking, gazebo, or otherwise and approved by the ARC; (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 spas are completely fenced in a manner approved by the ARC; (e) the ARC 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.

8. **Fencing, Walls, and Landscaping.** Location, style, type, and materials of fencing, walls, and/or hedges must be approved by the ARC. Further guidelines, restrictions, and illustrations concerning fencing, walls, and landscaping is attached hereto as **Exhibit D**.

9. **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 and consistent with the Community-Wide Standard. Flowers, hedges, shrubs, trees, and other vegetation may be planted in the rear yard without ARC approval; however, Owners shall replace in a diligent manner any vegetation on their Lot that should die. White rock, stone, pebbles shall not be permitted as ground cover in landscaping beds or otherwise upon Lots.

10. **View Impairment.** Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Development Property will be preserved without impairment. Neither the Declarant, the ARC, nor the Association shall have any obligation to relocate, prune, or thin trees or perform other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

11. **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 ARC, 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 downspout, or ground water shall be introduced into the sanitary sewage system.

12. **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 XV 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: (a) keeping his personal business or professional records or accounts; or (b) 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 same.

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 ARC.

4. **Lease.** For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service or gratuity. The principal dwelling on a Lot may be leased only in its entirety (e.g., separate rooms within the same dwelling may not be separately leased); provided, a detached "in-law suite" or "guest house" may be independently leased.

a. Subject to any Federal, State, or local laws, all dwellings within the Development Property may be leased to residential tenants. All leases shall be in writing, and no lease shall be for an initial term of less than twelve (12) months. Within five (5) business days of the full execution of any lease or amendment thereto or extension or renewal thereof, the Owner must deliver a copy of the same to the Board or the Managing Agent. The Association shall not prohibit leasing or the transfer of any Lot nor shall it require the Association's or the Board's consent prior to leasing or transferring a Lot.

b. The tenant under each such lease shall be bound by and subject to all of the terms, conditions, restrictions, rights, and obligations of this Declaration, as may be amended from time to time, and the Governing Documents. Failure to comply with this Declaration and the Governing Documents shall be a default under each such lease.

c. The leasing restrictions set forth in this Section shall not be deemed to prohibit a 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.

d. Neither the Declarant, the Association, nor the Members shall be permitted to remove, modify, revoke, amend, or supplement any provision set forth in this Section related to the leasing of any Lot, including, without limitation, the right of an Owner to lease a Lot or any restrictions applicable thereto, in each case, without the express prior written consent of any Owner who has notified the Association or the Managing Agent that such

Owner is generally engaged in the business of leasing Lots or any Owner who has a Lot that is subject to a lease that has been provided to the Board or the Managing Agent.

5. **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; (b) Declarant shall have the right to remove any unapproved sign or advertising device that is placed on any Lot or residential Unit and its appurtenant private elements, if any, 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; (c) no sign of any kind of a permanent nature shall be erected, exhibited, maintained, or placed upon any Lot or residential Unit and its appurtenant private elements, if any; (d) all signs shall comply with regulations that may be adopted by the Board from time to time; and (e) all Owners grant to Declarant and thereafter to the Board 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.

6. **Permitted Signs.** A Lot Owner who erects a sign listed below and in such manner (each a "Permitted Sign") does not need to obtain prior Architectural Review Committee approval. The following restrictions apply to Permitted Signs:

a. **For Sale and For Lease Signs.** One (1) "For Sale" or "For Rent" (or combination thereof) is permitted pursuant to the Design Guidelines.

b. **Open House.** One (1) "Open House" sign no greater than 18" x 24" may be erected on an Owner's Lot and only on that Owner's Lot on the day of the open house and must be removed by the next day. No directional signs are permitted in the community. The Open House limitations set forth in this Section do not apply to the Declarant or any affiliate or Declarant, or a Builder acting with Declarant's specific consent.

c. **Event or Celebration.** Signs such as Welcome Home, Graduation Announcement, Birthdays, Baby Announcement, and the like are allowed on a temporary basis not to exceed two (2) weeks.

d. **Political.** Political Signs are allowed on a temporary basis. A "Political Sign" is described as one that refers to a political candidate or measure for an upcoming election. The sign must either support or oppose a candidate for public office or it supports or opposes a ballot measure. No other signage will be considered to be a Political Sign. The Association shall not remove, alter, deface or cover any Political Sign, if the following conditions are met:

i. No more than one (1) sign is displayed per candidate or ballot measure on a Lot.

ii. Signs are only permitted during the period commencing sixty (60) days before a primary election and ending ten (10) days after the general election, except that for a sign for a candidate in a primary election who does not advance to the general election, the period ends ten (10) days after the primary election.

iii. Signs may not exceed 18" x 24".

e. **Business.** Lot Owners and other residents are prohibited from erecting business signage anywhere within the Development Property, including any Lot or Common Area.

Examples are free-standing signage that advertises a pool company, landscape company, etc. No more than two (2) small security signs are allowed to assist with notifying others of such alarm or cameras and each shall not exceed 12" x 18". This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or any affiliate of Declarant, or by a Builder acting with Declarant's specific consent. The Association, with the Board's approval, shall have the right to erect signs on the Common Areas.

A Permitted Sign must be placed on the Lot belonging to the Owner or Occupant. Common Areas are not permitted locations for signs unless for an Association related event, and which has been pre-approved by the Board of Directors of the Association. Signs cannot be placed in a location that is hazardous to public safety, obstructs clear vision in the area, or interferes with the requirements of the Americans with Disabilities Act (42 United States Code sections 12101 through 12213 and 47 United States Code sections 225 and 611), as determined by the Board of Directors or, if applicable, the Architectural Review Committee. No homemade sign may be erected at any time.

7. **Flags and Flagpoles.** Any Owner may erect a freestanding flagpole no more than twenty (20) feet high on any portion of the Lot, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, applicable county or municipal ordinances. Furthermore, and notwithstanding any provision in the Declaration to the contrary, all Owners and Occupants shall be permitted to display the flag of the United States of America, the flag of the State of Tennessee, an official or replica flag of any branch of the United States armed forces, and/or an MIA-POW flag in accordance with U.S. Public Law 101-355. The display of such flags however, shall be subject to all provisions of this Section of the Declaration and 4 U.S.C. §§ 5-10. No flag poles or flag mounting structure or device may be located upon a Lot without written approval from the ARC as to location and size.

8. **Antennae.** 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 ARC 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.

9. **Yards and Yard Art.** Lawns shall be maintained in a neat and orderly fashion so that the grass does not become overgrown. Yard art and water features shall not be permitted in the front yard or otherwise visible from any street.

10. **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. Built-in or permanent eave lighting (e.g. string lights) shall be prohibited.

11. **Holiday Decorations.** Owners may display holiday decorations on their Lots if the decorations are of the kinds normally displayed in similar neighborhoods for such holiday, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Permitted decorations may be displayed no earlier than ten (10) days prior to the date of the holiday and must be removed within five

(5) days after the date of the holiday. Christmas decorations and lights may be displayed no earlier than November 15 and no later than February 1.

12. **Screening.** 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 ARC.

13. **Exterior Air Conditioners.** Individual air conditioning units mounted through windows or walls are prohibited. Plants or opaque fencing shall screen exterior air conditioning units or heat pumps. The screening must encompass the entire height of the air conditioning unit or heat pump so as to obscure view from the street. The ARC shall approve location and screening of air conditioning units and heat pumps.

14. **Outside Recreation Equipment.** All playground and recreational equipment (e.g. swings, slides, seesaws, trampolines, playhouses, basketball hoops / backboards, and/or climbing apparatuses) shall be approved by the ARC prior to installation and must be used, erected, placed, or maintained to the rear of the Lot. The Board shall have the authority to govern the location, any required screening, materials, and types of various recreational equipment. Any allowable playground equipment must be properly and securely anchored and screened as much as possible from the street view and from the view of adjoining Owners. Lots containing such playground equipment must be fenced.

15. **Use of Off-Road Vehicles.** The use of off-road motorcycles, all-terrain vehicles, mini-bikes or other similar recreational off-road vehicles shall not be permitted within the Development Property unless such use complies with local, state and federal laws, rules, and regulations. Except for authorized maintenance vehicles, motorized vehicles are not allowed on any trail or sidewalk within the Development Property, other than golf carts on designated golf cart paths/trails.

16. **Outdoor Furniture; Lawn Ornaments.** Outdoor furniture and accessories (including but not limited to umbrellas) used on porches, decks or patios shall be high-quality furniture made of metal, wood or other high-quality material; and must be pre-approved by the ARC before installing. The ARC may require removal of furniture and accessories on front and side decks, terraces or porches if such appears to be incongruous with the Community-Wide Standard. Outdoor furniture on front lawns is strictly prohibited. Exterior decorative objects including, but not limited to, sculptures, fountains, lawn art, trellises and the like, shall not be placed or installed on the Lot without prior approval by the ARC.

17. **Solar Equipment.** No solar heating equipment or device is permitted outside the dwelling or other structures on the Lot except such devices whose installation and use is protected by federal or Tennessee law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval to the ARC prior to installation and approval will be granted only if:

a. First, such equipment or device is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from the street or an adjacent Lot; and

b. Second, the equipment or device complies, to the maximum extent feasible, with the Design Guidelines within the confines of the applicable governmental regulations.

18. **Storage of Goods.** Storage (except in approved structures or containers by the ARC) of furniture, fixtures, appliances, machinery, equipment or other goods and chattels on the Common Area

(except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited.

19. **Storage Sheds.** Storage containers and similar structures are prohibited. Storage sheds are permitted upon a Lot for so long as same is located in the rear yard, the rear yard is enclosed with privacy fencing, and the highest point of the roof of the storage structure is not higher than three feet (3') above the top of the privacy fence.

20. **Unightly or Unkempt Conditions.** All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot in a manner which is unsanitary, unsightly, offensive or detrimental to any other portion of the Development Property, as the ARC may determine.

21. **Woodpiles.** Woodpiles or other material shall be properly screened and stored in such a manner so as not to attract rodents, snakes and other animals and or create a fire hazard, as the ARC determines. No activities shall be conducted upon or adjacent to any Lot or within any structure on a Lot which are or might be unsafe or hazardous to any Person or property. Open fires are prohibited within the Development Property; provided, however, outdoor fireplaces, fire pits, or barbecue unit are permissible for so long as same are consistently attended while in use.

22. **Invasive or Exotic Species.** No Person shall use on the Lots or Common Area such plant species as are listed in or referenced by the Design Guidelines as prohibited within the Development Property. Notwithstanding the foregoing, the Design Guidelines may set forth additional prohibitions on the use of plant species. The use in landscaping of any plant species shall be subject to approval in accordance with the ARC and the Design Guidelines. In addition, the import into the Development Property of any plant species used in landscaping, other than those transplanted from within the Development Property, shall be subject to approval in accordance with this Declaration and the Design Guidelines.

23. **Non-Residential and Detached Structures.** Trailers, campers, tents, shacks, barns, sheds, and carports are strictly prohibited. Any detached structure approved by the ARC must be located in the rear yard.

24. **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 or Site Plan. A perpetual easement is reserved to Declarant or any successor, assignee, or appointee of Declarant and/or the Board across any Lot to repair or maintain such areas.

25. **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.

26. **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.

27. **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. Commercial trucks in excess of one ton and trailers may be parked on driveways or in streets during daylight hours for any period of time reasonably necessary to provide service or to make a delivery to the Lot.

28. **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.

29. **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 or designated parking spaces for that Lot. In the event the Development Property is served by any alley driveways, parking on such alley driveways shall be strictly prohibited, and violations of this prohibition shall be subject to towing as set forth in this Section below as well as subject to any fines for parking violations in force at the time of such violation. 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. 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 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.

30. **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.

31. **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 ARC and local governing authorities.

32. **Wildlife.** Capturing, killing or trapping wildlife is prohibited within the Development Property, except in circumstances imposing an imminent threat to the safety of Persons or pets, or as permitted by the ARC and the Governing Authorities.

33. **Firearms.** The use and discharge of firearms within the Development Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

34. **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.

35. **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 or withheld in the sole discretion of the Board.

36. **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.

37. **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.

38. **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.

39. **Occupants Bound.** All provisions of this Declaration and the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, and invitees of any Owner. Every Owner shall cause all occupants of his or her residence to comply with This Declaration and the Governing Documents, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a residence are fully liable and may be sanctioned for any violation of the Documents.

40. **Amenities.** Any amenities (e.g. parks, playground equipment, and/or walking trails) and Common Areas provided by the Association or erected within the Development Property, if any, shall be used at the risk of the user, and the Association shall not be held liable to any person for any claim, damage, or injury occurring thereon or related to use thereof. The Board may promulgate additional rules and regulations governing the use of such amenities and areas.

41. **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 XVI**  
**MORTGAGEE PROVISIONS**

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), who have requested such notice, 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.

3. **Records Examination.** Mortgagees shall have the right to examine the books, records, and financial statements of the Association, as well as this Declaration and the Governing Documents 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 maintained by the Association.

5. **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.

6. **Mortgagor Default.** Mortgagees, upon written request, shall be notified by the Board 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.

7. **Owner Notice to Board.** Upon request, each Owner shall be obligated to furnish to the Board the name and address of the holder of any Mortgage encumbering such Owner's Lot.

8. **Mortgagee Notice to Board.** Mortgagees shall request notice of the matters set forth herein by making written request to the Board upon becoming a Mortgagee hereunder and requesting that the name and address of such Mortgagee and the Lot so encumbered be identified by the Board in the records for the Association. 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.

9. **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, or the Governing 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.

## **Article XVII 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 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 or the self-management of the Association shall require the affirmative Vote of not less than seventy-five percent (75%) of 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. Notwithstanding anything to the contrary herein, no amendment relating to leasing of Lots shall be enforceable against Owners who did not consent in writing to such amendment. 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 **Sumner 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 termination of the Appointment Period. Declarant shall be in no way obligated to amend this Declaration or any Exhibit hereto pursuant to this Section.

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 XVIII ANNEXATION AND WITHDRAWAL OF PROPERTY**

1. **Annexation by Declarant.** From time to time during the Appointment Period, Declarant may unilaterally add to the Development Property additional real property adjacent to the Development Property and subject same to the Development Property as Future Phase Property. Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant to annex or develop any additional property in any manner whatsoever.

2. **Manner of Annexation – Appointment Period.** Until the termination of the Appointment Period, all future phases and/or Sections of the Oak Creek Estates subdivision shall be automatically annexed to the Development Property and made subject to this Declaration upon the Recording of a plat for such future phases and/or Sections of the Oak Creek Estates subdivision. Notwithstanding the forgoing, Declarant may record future amendments to this Declaration related to the annexation of future phases and/or sections and subjection of same to the Declaration, however such amendments are not

required to effectuate the annexation and subjection of future phase property to the Declaration during the Appointment Period.

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

4. **Annexation by Members – Post Appointment Period.** Following the termination of the Appointment Period, the Members may annex additional real property adjacent to the Development Property and subject same to the Development Property as future phase property, upon the affirmative Vote of Members representing not less than two-thirds (2/3) of the total collective Votes in the Association present in person or by proxy at a meeting duly called for such purpose.

#### **Article XIX 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 tenth (10<sup>th</sup>) anniversary of the date of the recording of this Declaration, whereupon this Declaration shall be automatically renewed for successive terms of five (5) years unless Owners holding at least two-thirds of the Vote of all Owners entitled to cast a Vote elect to terminate the Declaration by Vote taken at least six (6) months prior to the end of the current term and unless such termination is approved by the applicable governing authority with jurisdiction over the Development Property. 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. **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, 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 Board 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.

3. **Notice to Declarant or Association.** The address of the Declarant or Association for the purposes of furnishing notice(s) as provided in this Declaration or the Governing Documents shall be the principal office of the Declarant or Association 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 by Declarant or Association 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.

4. **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.

5. **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a Vote of not less than seventy-five (75%) percent of the Vote of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments, fines, or any other amount or charge collectable by the Association, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant during the Appointment Period or is approved by the percentage Votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

6. **Jury Waiver.** EACH OWNER AGREES TO WAIVE A TRIAL BY JURY IN ANY DISPUTE ARISING RELATED TO OR ARISING OUT OF THIS DECLARATION, THE GOVERNING DOCUMENTS AND THE MANAGEMENT OF AND/OR GOVERNANCE OVER THE ASSOCIATION.

7. **No Partition.** Except as is permitted in the Declaration or amendments thereto, there shall be no partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Development Property or any part thereof seek any judicial partition unless the Development Property has been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

8. **Books and Records.** Except for confidential, non-public information of the Association or that affect 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 are 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.

9. **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 Board in determining if such loan is a valid first Mortgage or secondary purchase money Mortgage.

10. **Limitation on Liability.** The Association, Board, ARC, any other committee established by the Board, 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). 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 Section shall not be exclusive of any other rights to which an Indemnitee may be entitled.

11. **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 President of the United States in office as of the date of the Recording of this Declaration.

12. **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 and the Governing Documents.

13. **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 Future Phase Property.

14. **Oak Creek Estates.** No Person, other than Land Owner, Declarant, and Builder(s), shall use the words "Oak Creek Estates" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant and thereafter the Board. However, Owners may use the term, "Oak Creek Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within the Development Property.

15. **Disclosures.** Each Owner acknowledges the following:

a. The Development Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

b. The views from an Owner's Lot may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

c. No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

d. No representations are made regarding the schools that currently or may in the future serve the Development Property.

e. Since in every neighborhood, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Development Property that an Owner may find objectionable and that it shall be the sole responsibility of the Owner to become acquainted with neighborhood conditions that could affect such Owner's Lot.

16. **Construction Activity.** All Owners acknowledge and understand that Declarant and Builders will be constructing/renovating portions of the Development Property and engaging in other construction activities related to the construction of Common Areas and Improvements. Such construction activities may, from time to time, produce certain conditions on the Development Property, including, without limitation: noise or sound that is objectionable because of its volume, duration, frequency or shrillness; smoke; noxious, toxic, or corrosive fumes or gases; obnoxious odors; dust, dirt or flying ash; unusual fire or explosion hazards; temporary interruption of utilities; and/or other conditions that may threaten the security or safety of persons on the Development Property. Notwithstanding the foregoing, all Owners agree that such conditions on the Development Property resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant or Builder(s) and their agents to be deemed in violation of any provision of the Declaration.

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

18. **Interpretation.** The Board shall have the right, power, and authority to determine all questions arising under or in connection with this Declaration and the Governing Documents 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.

19. **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.

20. **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.

21. **Severability.** If any provision of this Declaration, the Governing Documents 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 Governing Documents 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 Governing Documents shall be construed as if such invalid part was never included therein.

22. **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 Governing Documents 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.

23. **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.

24. **Conflicts in Legal Documents.** In case of conflicts between the provisions in this Declaration and the Governing Documents this Declaration shall control.

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

*[ Signature on Next Page ]*

IN WITNESS WHEREOF, the undersigned, being the owner of the Development Property to be subject hereto, has caused this Declaration to be duly executed as of the date set forth below.

**DECLARANT:**

**Schell Brothers Nashville LLC,  
a Delaware limited liability company**

By: Jim Reece

Print  
Name: Jim Reece

Its: Dir. of Operations

STATE OF TENNESSEE        )  
COUNTY OF Sumner        )

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Jim Reece, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Authorized Signatory ("Officer") of **Schell Brothers Nashville LLC**, a Delaware limited liability company, the within named bargainer and that he/she as such Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing him/herself as such Officer.

Witness my hand and seal the 21 day of October, 2024.

Christina Curtis  
Notary Public

My Commission Expires: 9/27/2026



Exhibit A

**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY**

Land in Sumner County, Tennessee, further described as follows:

BEING A PARCEL OF LAND IN THE FIFTH CIVIL DISTRICT OF SUMNER COUNTY, TENNESSEE AND BEING KNOWN AS PARCEL 45.00 ON SUMNER COUNTY TAX MAP 145 AND BEING THE PROPERTY OF CLAYTON PROPERTIES GROUP INC. OF RECORD IN BOOK 4296 , PAGE 743 IN THE REGISTER'S OF DEEDS OFFICE FOR SUMNER COUNTY, AND BEING MORE PARTICULARLY DESCRIBED ACCORDING TO A SURVEY DATED 9-24-2021 BY WOLD/HFR, MICHAEL R. WILLIAMS TENNESSEE REGISTERED LAND SURVEYOR NO. 1906 AS FOLLOWS:

PARCEL 45:

BEGINNING AT AN EXISTING CONCRETE HIGHWAY RIGHT-OF-WAY MONUMENT IN THE NORTH RIGHT-OF-WAY OF VIETNAM VETERANS MEMORIAL BOULEVARD (U.S. HWY. 31-E BY-PASS), TENNESSEE DEPARTMENT OF TRANSPORTATION BUREAU OF HIGHWAYS PROJECT 83076-2203-04 (R.O.W.), AT ITS INTERSECTION WITH THE EAST RIGHT-OF-WAY OF STOP THIRTY ROAD (AS RELOCATED), THE SOUTHWESTERN CORNER OF THE PROPERTY BEING DESCRIBED, AND BEING 125 FEET RIGHT OF STOP THIRTY ROAD CENTERLINE STATION 43+52 ON SAID PROJECT;

THENCE, WITH SAID EASTERLY RIGHT-OF-WAY OF STOP THIRTY ROAD AS FOLLOWS:

N 28 DEG. 38' 15" W, 508.00 FEET TO A CONCRETE HIGHWAY RIGHT-OF-WAY MONUMENT,

N 20 DEG. 24' 07" W, 112.92 FEET TO A CONCRETE HIGHWAY RIGHT-OF-WAY MONUMENT,

ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 595.67 FEET, A DELTA ANGLE OF 35 DEG. 11' 03", A CHORD BEARING AND DISTANCE OF N 37 DEG. 51' 39" W, 360.07 FEET ALONG AN ARC LENGTH OF 365.79 FEET TO AN IRON PIN SET BESIDE A BROKEN CONCRETE HIGHWAY RIGHT-OF-WAY MONUMENT AT INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY OF JONES LANE;

THENCE, WITH SAID RIGHT-OF-WAY OF JONES LANE AS FOLLOWS:

N 06 DEG. 54' 55" E, 232.83 FEET TO AN IRON PIN NEW,

N 04 DEG. 36' 58" E, 165.49 FEET TO AN IRON PIN NEW,

ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A DELTA ANGLE OF 93 DEG. 49' 15", A CHORD BEARING AND DISTANCE OF N 51 DEG. 13' 58" E, 116.85 FEET ALONG AN ARC LENGTH OF 131.00 FEET TO AN IRON PIN NEW, S 81 DEG. 51' 24" E, 508.71 FEET TO AN IRON PIN NEW,

ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 94.71 FEET, A DELTA ANGLE OF 33 DEG. 26' 53", A CHORD BEARING AND DISTANCE OF N 81 DEG. 24' 48" E,

54.51 FEET ALONG AN ARC LENGTH OF 55.29 FEET TO AN IRON PIN OLD FOUND AT THE SOUTHWEST CORNER OF THE DENNIS AND MARY LYNCH PROPERTY OF RECORD IN BOOK 2544, PAGE 522 SAID REGISTER'S OFFICE;

THENCE, WITH LYNCH'S SOUTHERLY LINE, S 82 DEG. 50' 32" E, 1,162.88 FEET TO AN EXISTING IRON PIN FOUND IN CREEK, THE NORTHEAST CORNER OF THE PROPERTY BEING DESCRIBED, THIS ALSO BEING THE SOUTHEAST CORNER OF SAID LYNCH PROPERTY, AND LYING ALONG THE WEST LINE OF LARRY J. GALLOWAY PROPERTY OF RECORD IN BOOK 1428, PAGE 720 SAID REGISTER'S OFFICE;

THENCE, WITH GALLOWAY'S WEST LINE, AND PASSING A REFERENCE IRON PIN OLD ON TOP OF CREEK BANK AT 15.41 FEET, S 06 DEG. 43' 02" W, 887.16 FEET TO A 12" OAK TREE AT FENCE INTERSECTION IN THE NORTH LINE OF MILLARD BRIDGES PROPERTY, OF RECORD IN BOOK 310, PAGE 406 SAID REGISTER'S OFFICE;

THENCE, WITH BRIDGES' NORTH AND WEST LINE AS FOLLOWS:  
N 82 DEG. 27' 54" W, 798.29 FEET TO AN IRON STAKE "T" POST AT FENCE CORNER,  
S 08 DEG. 36' 45" W, 390.27 FEET TO A CONCRETE HIGHWAY RIGHT-OF-WAY MONUMENT ON NORTHERLY RIGHT-OF-WAY OF VIETNAM VETERANS MEMORIAL BOULEVARD AS REFERENCED HEREON;

THENCE, WITH SAID RIGHT-OF-WAY, N 80 DEG. 19' 29" W, 391.88 FEET TO THE POINT OF BEGINNING AND CONTAINING 39.15 ACRES, MORE OR LESS.

PARCEL 44.07

LAND IN SUMNER COUNTY, TENNESSEE BEING LOT #1 ON THE FINAL PLAT OF LAND SWAP FOR PORTIONS OF MAP 145, PARCELS 44, 45 & 48, RECORDED IN PLAT BOOK 28, PAGE 86, REGISTER'S OFFICE, SUMNER COUNTY, TENNESSEE TO WHICH PLAN REFERENCE IS HEREBY MADE FOR A MORE COMPLETE LEGAL DESCRIPTION.

Being the same property conveyed to Schell Brothers Tennessee LLC, a Delaware limited liability company, from Clayton Properties Group, Inc., a Tennessee for-profit corporation, by Special Warranty Deed of record in the Register's Office for Sumner County, Tennessee in Record Book 5820, Pages 816-819.

The above-described property is illustrated on the next page.



**Exhibit B**

**BY-LAWS OF OAK CREEK ESTATES  
OWNERS ASSOCIATION, INC.**

**Article I  
DEFINITIONS**

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

**Article II  
NAME AND OFFICES**

1. **Name.** The name of the Association for all Lot Owners within the Development Property shall be Oak Creek Estates Owners Association, Inc.
2. **Registered Office and Agent.** The initial registered office of the Association is Oak Creek Estates Owners Association, Inc. c/o Schell Brothers Nashville, Attn: Jim Reece, jim.reece@schellbrothers.com as may be relocated by the Board from time to time. The name of the initial registered agent of the Association is Jim Reece, who may be located at the registered office.
3. **Other Offices.** The Association 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 Association may require.

**Article III  
MEMBERS AND MEMBERSHIP PRIVILEGES**

1. **Eligibility and Membership.** The Members of the Association shall consist of the Owners of the Lots 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 Association.
2. **Succession.** The membership of each Owner shall terminate when he ceases to be an Owner, and upon the sale, transfer, or other disposition of his ownership interest in the Development Property, his membership in the Association 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 four (4) months after all the Lots

within the Development Property have been sold 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 seventy-five percent (75%) 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. During the Appointment Period, special meetings of the Members, for any purpose or purposes, may only be called by the Declarant.

3. **Place and Time of Meetings.** Meetings of the Members of the Association may be held at a place and at such time to be determined by the Board within Sumner County, Tennessee as specified in the written notice of such meeting. Meetings may be held electronically / virtually.

4. **Notice.** At the direction of Declarant, president, secretary, or other 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 percent (30%) 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 affirmative Vote of not less than sixty-seven percent (67%) of the 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; provided, however, during the Appointment Period, the Declarant, its successors and assigns, shall have one (1) Vote for each Lot

owned by the Declarant plus four (4) Votes of each Lot owned by any Person who is not the Declarant. Votes may be cast by electronic ballot. 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 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 Association, 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 Association, 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. 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 at least three (3) 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 may be made in writing by a Member submitted to the Board or may also be made from the floor at the annual meeting.

4. **Term of Office.** Directors shall be elected for terms of three (3) years or until their successor is elected. Provided, however, 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 total number of initially elected Directors are up for re-election each year. Thus, as to such initial Directors elected by the Members, the one-half of the Directors (or the minority if there is an odd number of Directors) receiving the fewest number of Votes will serve a one (1) year term, and the other one-half of the Directors (or the majority if there is an odd number of Directors) receiving the highest number of Votes will serve for a two (2) year term.

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 Board shall hold their meetings, both regular and special, in Sumner County, Tennessee or such other location as may be selected by unanimous consent of the Directors then elected and serving. Meeting may also be held electronically / virtually. 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 and/or other Governing Documents 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 and the Townhouse 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 Association shall be fixed by the Board but shall never be greater than an amount equal to one half ( $\frac{1}{2}$ ) of the annual 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 Association. 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 Association 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 Association 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 are 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 seventy-five percent (75%)

of the Members of the Association or the affirmative written consent of such percentage of the Members 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 Association shall indemnify any current or former Director, officer, or employee of the Association 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 Association 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 Association 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.

[ *Signature on Next Page* ]

**CERTIFICATION**

The undersigned hereby certifies that the foregoing By-Laws were duly executed and adopted by the Declarant on this the 21<sup>st</sup> day of October, 2024.

**DECLARANT:**

**Schell Brothers Nashville LLC,  
a Delaware limited liability company**

By: Jim Reece

Print  
Name: Jim Reece

Its: Dir. of Operations

**Exhibit C**

**CHARTER OF OAK CREEK ESTATES OWNERS ASSOCIATION, INC.**

*Insert Copy of Electronically Filed Charter*

## Exhibit D Design Guidelines

### WALLS, FENCES & GATES

All fencing, including taller features, such as trellis entryways, shall be submitted to the ARC for review prior to installation.

Create alternative design solutions may be submitted to the Architectural Review Committee for consideration.

Fence style shall be consistent within each lot.

#### **Front Yard Fencing (Picket Fencing)**

Only homes adjoining Jones Lane or Hacienda Dr. may include a front yard fence along the sidewalk and side lot lines of the front yard that comply with fencing standards herein; subject to ARC review.

- Side street corner fencing must be setback a minimum of 3 feet from property line (inside of the sidewalk) and originates from the building corner and continues at the same distance from the sidewalk to the extent of the rear property line (see Diagram A, fence location).
- Fence posts and gateways may have a maximum height of 4 feet.
- Fences may be black wrought iron, black powder coated aluminum, or matte white textured vinyl. Chain link fence shall not be permitted.
- The finished side of all board fences shall face away from the lot on which it is located.
- Reference Diagram A.

#### **Side / Rear Yard Fencing and Walls (Privacy Fencing)**

- Side street corner fencing may be up to 6 feet in height provided the top 1/3 is semi-transparent (lattice). The fence is setback a minimum of 15 feet from property line (inside the sidewalk) and originates from the building corner and continues at the same distance from the sidewalk to the extent of the rear property line (see Diagram A, Rear Fence Zone).
- Fences along a common lot line do not require a setback; new fences on adjacent lots are encouraged to abut, preventing a gap between fences unless there are special yard conditions.
- Side / rear yard fencing may be matte vinyl (color white), wrought iron or black pre-finished aluminum. Glossy vinyl, Wood and chain link fencing shall not be permitted.
- Backyard privacy fences must be a minimum of 5' and maximum of 6'.  
\*\* List of Special Yard Conditions subject to ARC and Sumner County approval include but not limited to the following:
  - Drainage Inlet (interior and corner lots)
  - Headwalls and Swales
  - Easements
  - Vegetative Buffers

## **Diagram A – Fence Location**

### **General**

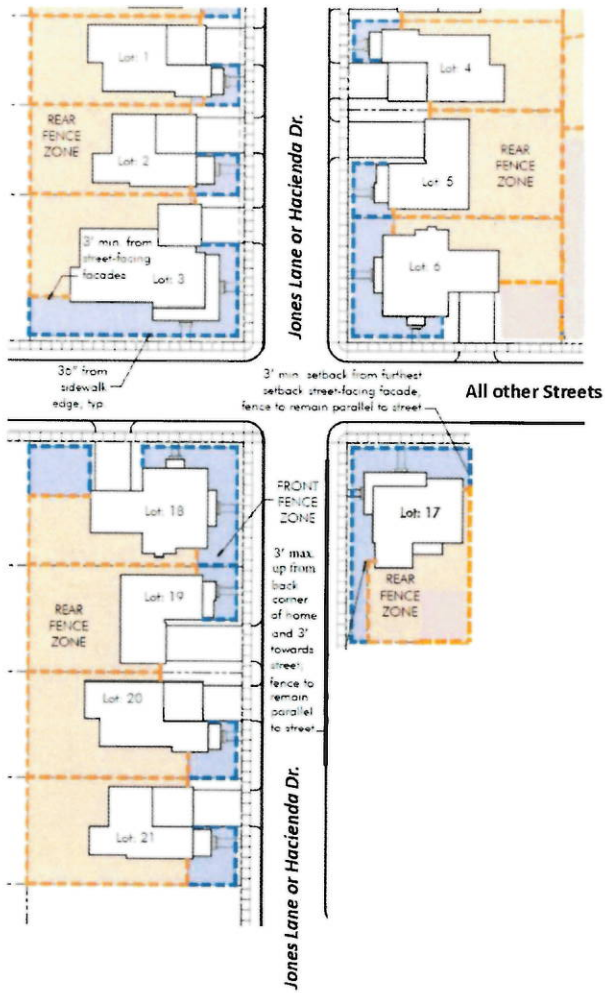
- All fence locations are subject to review by the Architectural Review Committee.
- Fences shall be setback from building corners a minimum of 3 feet from all street facing facades; exceptions are allowed to avoid placing fences in front of windows or other architectural features.
- Fence returns to homes / gates along adjoining property lines shall line up when possible.
- All fencing is required to meet local stormwater regulations, which may include additional gates for utility access.

### **Front / Corner Yard Fences (Picket)**




- When provided, front yard black aluminum picket fences are required to be placed 36 inches behind the sidewalk edge. This space shall be planted with approved groundcover.
- Fence posts and gateways may have a maximum height of 4 feet.
- Side street corner fencing must be setback a minimum of 3 feet from property line (inside of the sidewalk) and originates from the building corner and continues at the same distance from the sidewalk to the extent of the rear property line.

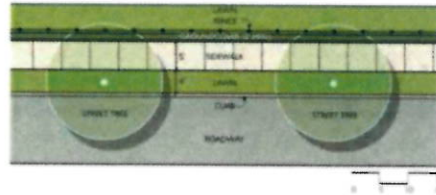
### **Side / Rear Yard Fences (Privacy)**

- Side street corner fencing may not exceed 6 feet in height provided the top 1/3 is semi-transparent (lattice). The fence is setback a minimum of 15 feet from property line (inside the sidewalk) and originates from the building corner and continues at the same distance from the sidewalk to the extent of the rear property line.



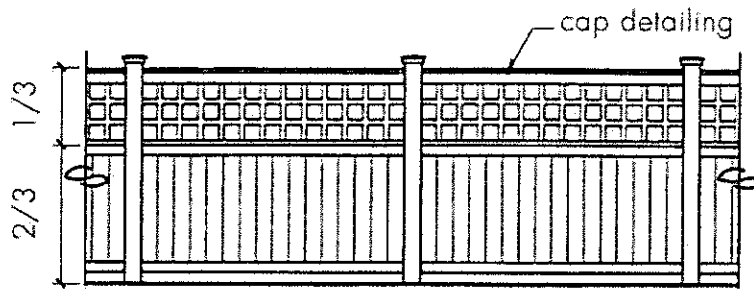
**\*Front Fence Zone Not Permitted on "All Other Streets."**

-  Rear Fence Zone
-  Front Fence Zone
-  6' Privacy Fence
-  3' 6" Picket Fence

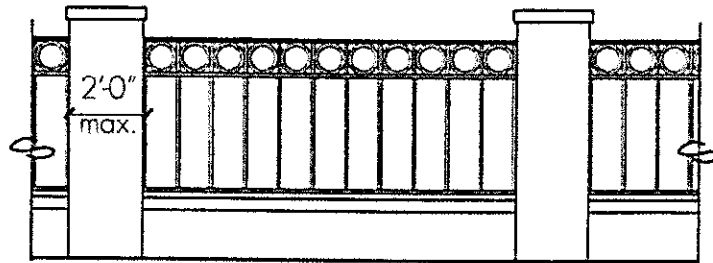


**Appropriate Fencing & Walls**

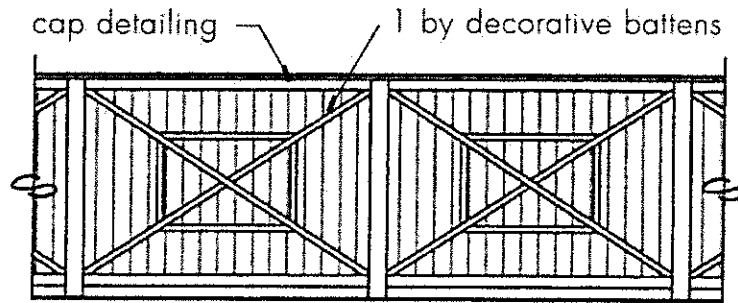




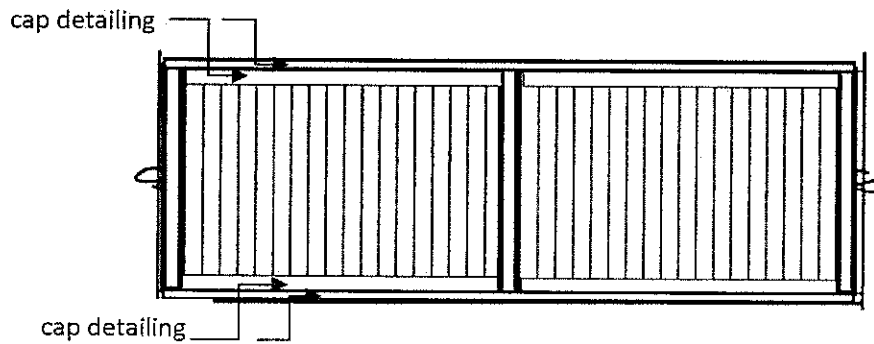
Double-Sided 2/3 Solid Vinyl with 1/3 Vinyl open above  
 (Appropriate for corner side yards, side yards and rear yard)



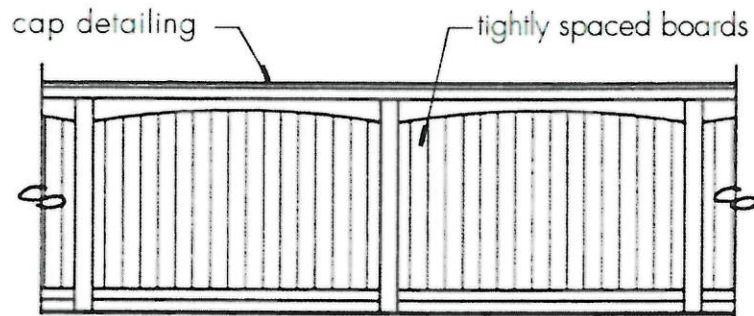
Masonry Piers with Low Wall & Iron or Aluminum Above  
 (Appropriate for corner side yards, side yards and rear yard)



Double-Sided Matte White Vinyl with Batten and Cap Detailing  
 (appropriate for rear yard and side yard (not appropriate on corner side yard lots))



Double-Sided Matte White Vinyl with Cap Detailing  
 (appropriate for rear yard and side yard (not appropriate on corner side yard lots))



Double-Sided Matte White Vinyl with Cap Detailing  
(appropriate for rear yard and side yard (not appropriate on corner side yard lots))



Ornate Black Aluminum or Metal 'Picket Fence' 3'-6" Maximum Height  
Fence Posts not to exceed 4'-0" Maximum Height  
(front and rear zones, where allowed, see diagram A)

## **LANDSCAPE AND HARDSCAPE:**

### **Front Yard**

The front yard is a highly visible area and should be maintained in a manner which will complement others along the street. Front yards shall contain, at a minimum, lawn or other groundcover, shrubbery, flowering ornamental or specimen canopy trees, and perennials and/or annuals. Planting beds shall generally be regular and geometrically shaped. The location of landscape elements in each front yard shall reinforce the architectural lines of the building and streetscape.

### **Side and Rear Yard**

The side yard is located along the common property line and serves as a buffer to the private space of each property owner. Side and rear yards should generally complement front yards. Each single family dwelling unit shall be provided with a side or rear yard outdoor area enclosed by means of the building, a fence, screen wall, hedge or some combination of the same, which shall contribute to privacy from neighboring dwelling units and yards. It is encouraged that building and garage footprints be designed and varied to create privacy areas. HVAC Unit to be placed in rear yard.

### **Street Trees**

All street trees located on the lot or within the Right-of-Way (ROW) adjacent to the lot that was included in the original landscape package by Builder shall be maintained by the homeowner. If the ARC determines that a tree replacement is necessary, it is the responsibility of the homeowner to replace the tree with the same species and at a 3 inch caliper

### **Landscape Variety Packages**

Landscape packages shall be submitted for ARC review that include: 1) plot plan diagrams, 2) specifications that illustrate compliance with the minimum required quantities, species list, and 3) planting placements illustrated in the design guidelines. We require submitted options (ex. A,B,C & D) for standard lots that will be reviewed and approved for use to achieve the desired variety along a streetscape. The packages will allow for a quicker approval process for the landscape plans rather than on an individual lot by lot basis. When submitting the Application of Design, you would list the landscape package you are using (ex. Standard B).

### **Utility Easement Plantings**

No canopy tree shall be placed by homeowner within 15' of an overhead utility. No tree shall be located within a public utility easement. Locating plant materials within a drainage easement is acceptable, but only if installed as not to disturb existing drainage flow; in such instances, the materials shall be located no close than 5' from the centerline of drainage.

Vegetation QTY/Lot Type

	L Evergreen Shrub (Foundation) QTY	M/S Evergreen Shrub (Foundation) QTY	M/S Deciduous Shrub (Foundation) QTY	Groundcover/ Ornamentals QTY
	1	20	10	182
	4	33	24	233
	1	19	9	173
ion	3	32	23	221

Acceptable Vegetation Options

L Evergreen Shrub (Foundation)	M/S Evergreen Shrub (Foundation)	L Deciduous Shrub (Foundation)	M/S Deciduous Shrub (Foundation)	Canopy Tree	Flowering Tree	Groundcover/ Ornamentals
<i>Ilex cornuta</i> <i>Ilex x attenuata 'Fortenii'</i> <i>Ilex x 'Cona'</i> <i>Ilex x meserveae</i> <i>'China Girl'</i> <i>Ilex x 'Helle R. Stevens'</i> <i>Prunus laurocerasus</i> <i>'Schipkaensis'</i> <i>Thuja orientalis</i> <i>'Green Giant'</i> <i>Viburnum plicatum f.</i> <i>tomentosum</i> <i>Viburnum 'Pacense'</i>	<i>Buxus microphylla</i> <i>Coloneaster horizontalis</i> <i>Ilex cornuta 'Carissa'</i> <i>Ilex cornuta 'Rotunda'</i> <i>Ilex glabra 'Higo'</i> <i>Ilex vomitoria 'Kona'</i> <i>Nyctanthes aquifolium</i> <i>Prunus laurocerasus 'Otto</i> <i>Luxten'</i> <i>Rhododendron 'Encore'</i> <i>Toxus x media</i> <i>'Densiformis'</i>	<i>Abelia grandiflora</i> <i>Buddleia davidii</i> <i>Calycanthus americanus</i> <i>Calycanthus floridus</i> <i>Chaenactis speciosa</i> <i>Clethra alnifolia</i> <i>'Hummingbird'</i> <i>Forsythia x intermedia</i> <i>Hydrangea macrophylla</i> <i>Hydrangea quercifolia</i> <i>Hydrangea arborescens</i> <i>Ilex verticillata</i> <i>Lindera bentata</i> <i>Leucocorymbus fragrans</i> <i>Spiraea nipponica</i> <i>Spiraea x bumalda</i>	<i>Abelia grandiflora</i> <i>'Edward Goucher'</i> <i>Berberis thunbergii</i> <i>Cephalotaxus horingtonia</i> <i>'Duke Gardens'</i> <i>Fothergilla gardenii</i> <i>Hydrangea quercifolia</i> <i>'Pee Wee'</i> <i>Hypericum calycinum</i> <i>Ilex cornuta 'Carissa'</i> <i>Ilex virginica 'Little</i> <i>Henry'</i> <i>Jasminum nudiflorum</i> <i>Leucocorymbus axillaris</i> <i>Rhus aromatica</i> <i>'Grow Low'</i> <i>Rosa 'Carpel'</i> <i>Rosa (Knockout)</i> <i>Spiraea nipponica</i> <i>'Snowmound'</i>	<i>Acer rubrum 'October</i> <i>Glory'</i> <i>Acer saccharum</i> <i>'Green Mountain'</i> <i>Cladrastis kentuckea</i> <i>Fagus grandiflora</i> <i>Liriodendron tulipifera</i> <i>Nyssa sylvatica</i> <i>Platanus x acerifolia</i> <i>Quercus alba</i> <i>Quercus coccinea</i> <i>Quercus lyrata</i> <i>'Highbeam'</i> <i>Quercus macrocarpa</i> <i>Quercus muhlenbergii</i> <i>Quercus phellos</i> <i>Quercus prinus</i> <i>Quercus rubra</i> <i>Quercus shumardii</i> <i>Tilia cordata</i> <i>Ulmus americana</i> <i>'Princeton'</i> <i>Ulmus parvifolia 'Alle'</i> <i>Ulmus parvifolia</i> <i>'Bosque'</i>	<i>Acer buergerianum</i> <i>Acer glabrum</i> <i>Americanhickory x</i> <i>grandiflora 'Autumn</i> <i>Brilliance'</i> <i>Betula nigra 'Heritage'</i> <i>Cercis canadensis</i> <i>Chionanthus virginicus</i> <i>Cornus florida</i> <i>Cornus kousa</i> <i>Crataegus viridis</i> <i>'Winter King'</i> <i>Lagerstroemia indica</i> <i>'Natchez'</i> <i>Magnolia x</i> <i>soulangiana</i> <i>Prunus x incom</i> <i>'O'Hara'</i> <i>Prunus x yedoensis</i>	<i>Achillea x (Yarrow)</i> <i>Ajuga reptans</i> <i>Asclepias incarnata</i> <i>Asclepias tuberosa</i> <i>Astilbe</i> <i>Calamagrostis x</i> <i>oculifera 'Karl Foerster'</i> <i>Carex</i> <i>Carex</i> <i>Carex</i> <i>Echinacea purpurea</i> <i>Hebebaris orientalis</i> <i>Hierba</i> <i>Hypericum mivatum</i> <i>Lunaria muscari 'Big Blue'</i> <i>Lobelia cardinalis</i> <i>Oxypetalon japonicus</i> <i>Pachysandra terminalis</i> <i>Panicum virgatum</i> <i>Phlox divaricata</i> <i>Phlox paniculata</i> <i>Rudbeckia fulgida</i> <i>Saxif</i> <i>Schizachyrium scoparium</i> <i>Sedum x 'Autumn Joy'</i> <i>Stachys laevis</i>
<b>Evergreen Trees</b>						
<i>Cryptomeria japonica</i> <i>Ilex opaca</i> <i>Juniperus virginiana</i> <i>Magnolia grandiflora</i> <i>Magnolia virginiana</i> <i>Metasequoia</i> <i>glyptostroboides</i> <i>Tsuga x 'Green Giant'</i>						

## Exhibit E

### FINE AND ENFORCEMENT POLICY FOR OAK CREEK ESTATES

In addition to the rights and powers set forth in the Declaration of Covenants, Conditions, and Restrictions for Oak Creek Estates (the "CCRs"), the following are the currently effective fine and enforcement policies for Oak Creek Estates:

1. Background. The Oak Creek Estates community is subject to certain CCRS of record in the Register's Office for Sumner County, Tennessee, as the same may be amended from time to time. In accordance with the CCRs, Oak Creek Estates Owners Association, Inc., a Tennessee non-profit corporation (the "Association") was formed to administer the terms and provisions of the CCRs. Unless the CCRs or applicable law expressly provides otherwise, the Association acts through a majority of its board of directors (the "Board"). The Association is empowered to enforce the covenants, conditions and restrictions of the CCRs and all other Governing Documents (as defined in the CCRs) of the Association, including the obligation of Owners to pay assessments pursuant to the terms and provisions of the CCRs and the obligations of the Owners to compensate the Association for costs incurred by the Association for enforcing violations of the CCRs and Governing Documents. As authorized in the CCRs, the Board hereby adopts this Fine and Enforcement Policy to establish equitable policies and procedures for the imposition of fines within the Development Property. To the extent any provision within this policy is in conflict with any applicable law, such provision shall be modified only to the extent necessary to comply with the applicable law. Terms used in this policy, but not defined, shall have the meaning subscribed to such term in the CCRs.

2. Policy. The Association uses fines to discourage violations of the CCRs and Governing Documents, and to encourage compliance when a violation occurs. Further, the fines serve to offset costs and expenses incurred by the Association in pursuing compliance with the CCRs and Governing Documents. The fines are not intended to punish violators or to generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the CCRs and Governing Documents. The Association's use of fines does not serve as an election of a remedy or in any way limit the Association's rights to exercise any of the other rights and remedies available to it in connection with the same violation.

3. Owner's Liability. An Owner is liable for fines levied by the Association for violations of the CCRs and Governing Documents by the Owner and the relatives, guests, employees, and agents of the Owner and residents. Regardless of who commits the violation, the Association may direct all communications regarding the violation to the Owner.

4. Amount. The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine is to be reasonable in comparison to the violation and should be consistent for similar violations of the same provision of the CCRs and Governing Documents.

5. Violation Notice. Except as set forth in *Section 5.c.* below, before levying a fine, the Association will give a written violation notice to the Owner (at the Owner's last known address as shown in the Association records) (each, a "Violation Notice") and an opportunity to respond to the violation, if requested by the Owner. The Association's Violation Notice will contain the following items:

(i) a description of the violation, (ii) the date (or approximation thereof) of the violation that is the subject of the Violation Notice, (iii) a reference to the rule or provision that is being violated; (iv) the action required to cure the violation and a reasonable timeframe in which to take such curative action in order to avoid the fine; and (v) the amount of the fine in the event of noncompliance. The Violation Notice sent out pursuant to this Section is further subject to the following:

A. First Violation. If the Owner has not been given notice and a reasonable opportunity to cure the same or similar violation within the preceding ninety (90) calendar days, the Violation Notice will state those items set out in (i) – (v) above, along with a reasonable timeframe by which the violation must be cured to avoid the fine. The Violation Notice will state that any future violation of the same rule may result in the levy of a fine. A fine pursuant to the *Schedule of Fines* (attached hereto) may be levied, if an Owner does not cure the violation within the timeframe set forth in the notice.

B. Incurable Violation / Violation of Public Health or Safety. If the violation is of an incurable nature or poses a threat to public health or safety, then the Violation Notice shall state those items set out in (i) – (iii) and (v) above, and the Association shall have the right to exercise any enforcement remedy afforded to it under the CCRs and Governing Documents, including but not limited to the right to levy a fine pursuant to the *Schedule of Fines*.

C. Repeat Violation without Attempt to Cure. If the Owner has been given a Violation Notice and a reasonable opportunity to cure the same or similar violation within the preceding ninety (90) calendar days but commits the violation again, then the Owner shall not be entitled to an additional Violation Notice or opportunity to respond, and the Association shall have the right to exercise any enforcement remedy afforded to it under the CCRs and Governing Documents, including but not limited to the right to levy a fine pursuant to the *Schedule of Fines*. After an Owner has been provided a Violation Notice as set forth herein and assessed fines in the amounts set forth in the *Schedule of Fines*, if the Owner has never cured the violation in response to any Violation Notices sent or any fines levied, then the Board, in its sole discretion, may determine that under such circumstances a continuous violation exists and warrants a levy of a fine based upon a daily, monthly, or quarterly amount as determined by the Board.

6. Violation Hearing. If the Owner is entitled to an opportunity to cure the violation, then the Owner has the option within five (5) business days of delivery of the Violation Notice to submit a written response (the "Violation Response") to the Association identifying the facts and circumstances surrounding the violation and possible consideration or relief requested. The Board or a committee appointed by the Board to consider such relief sought by an Owner will respond the Owner's Violation Response within ten (10) days. The decision of the Board or appointed committee shall be final.

7. Due Date. Fine and/or damage charges are due immediately, if the violation is incurable or poses a threat to public health or safety. If the violation is curable, the fine and/or damage charges are due immediately after the later of: (i) the date that the cure period set out in the First Violation notice ends and the Owner has not cured the violation or the attempted cure is unacceptable to Association, or (ii) if the Owner delivers a Violation Response, such fines or damage charges will be due immediately after the Board's final decision on the matter, assuming that a fine or damage charge of some amount is confirmed by the Board.

8. Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot, together with interest and all costs of collection, including attorney's fees as provided, is secured by the lien granted to the Association pursuant to the CCRs.

9. Levy of Fine. Any fine levied shall be reflected on the Owner's periodic statements of account or delinquency notices.

10. Amendment of Policy. This policy may be amended, revised, supplemented, terminated, or otherwise modified from time to time by the Board. Copies of the current, effective Fine and Enforcement Policy shall be maintained in the records of the Association and available for review and copying at the principle office for the Association.

**Oak Creek Estates Owners Association, Inc.**

By: Jim Reece

Print  
Name: Jim Reece

Its: Dir of Operations

**Schedule of Fines**

The Board has adopted the following general schedule of fines. The number of notices set forth below does not mean that the Board is required to provide each notice prior to exercising additional remedies as set forth in the CCRs and the Governing Documents. The Board may elect to pursue such additional remedies at any time in accordance with applicable law. The Board also reserves the right to set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effect of the violation.

Violation categories are identified as Tier 1 or Tier 2 categories. Tier 1 categories are those that can be promptly addressed by the homeowner and/or consist of a violation that represents a nuisance or danger to others. Tier 2 categories are those that may need time for correction as other entities (i.e. the ARC, permits, use of contractors, etc.) may need to be called upon by the homeowner to correct the violations under these categories.

**Tier 1 Violation Categories**

**Tier 2 Violation Categories**

Animals and Pets	Architectural
Landscaping/Yard Maintenance	Fencing
Unsanitary	Maintenance
Rubbish and Debris	Land and Structures
Signs	
Sports Equipment	
Decorations	
Vehicle Parking	
Hazardous Activities	
Noise	
Improper Use	

Tier 1 violations will carry a shorter cure period than Tier 2 violations. Any violation that reoccurs within ninety (90) calendar days of a prior violation and within the same subcategory will be considered a repeat violation. The cure period and fees for repeat violations will be assessed via the stages and fines below.

**FINES\*:**

	<u><b>Tier 1</b></u>	<u><b>Tier 2</b></u>
<b>New Violation:</b>	<ul style="list-style-type: none"> <li>• <b>Stage 1</b> = (14) day cure/ \$0 fine</li> <li>• <b>Stage 2</b> = (7) day cure/ \$25 fine</li> <li>• <b>Stage 3</b> = (7) day cure/ \$50 fine</li> <li>• <b>Stage 4</b> = (7) day cure/ \$75 fine</li> <li>• <b>Stage 5</b> = (7) day cure/\$100 fine</li> <li>• <b>Stage 6</b> = (7) day cure/\$125 fine</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Stage 1</b> = (30) day cure/ \$0 fine</li> <li>• <b>Stage 2</b> = (30) day cure/ \$0 fine</li> <li>• <b>Stage 3</b> = (7) day cure/ \$100 fine</li> <li>• <b>Stage 4</b> = (7) day cure/ \$125 fine</li> <li>• <b>Stage 5</b> = (7) day cure/ \$125 fine</li> <li>• <b>Stage 6</b> = (7) day cure/ \$125 fine</li> </ul>
<b>Repeat violation under the same subcategory and within (90) days of previous, same subcategory violation.</b>	<b>Repeat of Tier 1</b>	<b>Repeat of Tier 2</b>
	<ul style="list-style-type: none"> <li>• <b>Repeat 1</b> = (7) day cure/ \$25 fine</li> <li>• <b>Repeat 2</b> = (7) day cure/ \$50 fine</li> <li>• <b>Repeat 3</b> = (7) day cure/ \$75 fine</li> <li>• <b>Repeat 4</b> = (7) day cure/ \$100 fine</li> <li>• <b>Repeat 5</b> = (7) day cure/\$125 fine</li> <li>• <b>Repeat 6</b> = (7) day cure/\$125 fine</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Repeat 1</b> = (7) day cure/ \$100 fine .</li> <li>• <b>Repeat 2</b> = (7) day cure/ \$125 fine</li> <li>• <b>Repeat 3</b> = (7) day cure/ \$125 fine</li> <li>• <b>Repeat 4</b> = (7) day cure/ \$125 fine</li> <li>• <b>Repeat 5</b> = (7) day cure/ \$125 fine</li> <li>• <b>Repeat 6</b> = (7) day cure/ \$125 fine</li> </ul>

**EXAMPLE:** I receive a violation on June 1<sup>st</sup> for not mowing my lawn, and I correct this violation by June 6<sup>th</sup>. Then, I will have corrected this new violation within Stage 1 and will not receive a fine. However, if I am again given another violation for not mowing my lawn before August 29<sup>th</sup> (within 90 days of the June 1<sup>st</sup> violation for the same thing), I will receive a Repeat 1 fine. The repeat violation will progress as represented in the Repeat of Tier 1 table above.

\* The Board reserves the right to adjust these fine amounts based on the severity and/or frequency of the violation.

**CONSTRUCTION FINES:**

Construction Fines commence upon the expiration of the cure period provided in the First Notice. There is no Warning Notice. Construction Fines may be assessed pursuant to the schedule of fines as follows:

Premature Clearing	\$500
Construction Without ARC Approval	\$500 plus \$100/day
Inadequate Construction Entry	\$250
Inadequate/Removed Silt Fence	\$250
Excessive Mud/Debris on Street	\$250 plus \$50/day
Excessive Construction Debris	\$250 plus \$50/day
No Dumpster Provided	\$150 plus \$50/day
No Chemical Toilet Provided	\$150 plus \$25/day
Violation of designated Construction Times	\$100
Encroachment on Adjacent Properties	\$500 plus repair cost
Damage to Streets, Curbs, Infrastructure	\$500 minimum
Failure to Obtain Inspection upon Completion of Construction	\$500 minimum
Miscellaneous Violation of Construction Rules	TBD by Board