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|--------------------------------------------|
| 30 PGS.: AL - RESTRICTIONS                 |
| PATRICIA BATCH 14683 06/04/2013 - 01:40 PM |
| VALUE                                      |
| MORTGAGE TAX                               |
| TRANSFER TAX                               |
| RECORDING FEE                              |
| ARCHIVE FEE                                |
| DP FEE                                     |
| REGISTER'S FEE                             |
| TOTAL AMOUNT                               |

STATE OF TENNESSEE, PERRY COUNTY  
PATRICIA W. BELL  
REGISTER OF DEEDS

This instrument prepared by:  
Waller Lansden Dortch & Davis, LLP (PFH)  
511 Union Street, Suite 2700  
Nashville, TN 37219

DECLARATION OF PROTECTIVE COVENANTS  
AND RESTRICTIONS

FOR

THE PRESERVE AT BUFFALO RIVER

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS ("Declaration") is made as of June 3, 2013 (the "Date of this Declaration"), by THE PRESERVE AT BUFFALO RIVER, LLC, a Tennessee limited liability company ("Declarant"), under the following circumstances:

RECITALS

A. Declarant owns certain land (the "Property") in Perry County, Tennessee, more particularly described in Exhibit A attached hereto; and

B. The Property has been subdivided in to forty-four (44) lots (the "Lots") by that certain Subdivision Plat recorded in Book PL, Page 161, Register's Office of Perry County, Tennessee (the "Plat").

NOW, THEREFORE, in consideration of the recitals and for the purpose of enhancing and protecting the value, desirability, operation and maintenance of the improvements located on the Lots, Declarant as fee simple owner of the Property declares that all Lots reflected on the Plat shall be held, sold, conveyed, transferred, leased, encumbered and mortgaged, subject to this Declaration.

I. DEFINITIONS

In addition to any terms defined elsewhere in this Declaration, the following terms shall have the following meanings:

Section 1. "Articles of Incorporation" means the Articles of Incorporation of THE PRESERVE AT BUFFALO RIVER ASSOCIATION, INC., a Tennessee nonprofit corporation and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, as may be adopted from time to time pursuant to the terms hereof.

Section 2. "Association" means THE PRESERVE AT BUFFALO RIVER ASSOCIATION, INC., a Tennessee nonprofit corporation.

Section 3. "Board" means the Board of Directors of the Association.

Section 4. "Bylaws" means the Bylaws of the Association and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, as may be adopted from time to time pursuant to the terms thereof. A copy of the current Bylaws of the Association are attached hereto as Exhibit B.

Section 5. "Committee" means the Architectural Review Committee of the Association.

Section 6. "Common Areas" mean all real property interests owned by the Association for the common use and enjoyment of the Members of the Association.

Section 7. "Declarant Control Period" means the time period that the Declarant appoints the Board of Directors of the Association (Article V, Section 5 of the Declaration) and appoints the members of the Architectural Review Committee (Article VIII, Section 10 of the Declaration).

Section 8. "Declaration" means this instrument, together with those exhibits which are attached hereto and made a part hereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof.

Section 9. "Declarant" shall mean THE PRESERVE AT BUFFALO RIVER, LLC, a Tennessee limited liability company.

Section 10. "Lot" means any numbered lot designated on the Plat.

Section 11. "Member" means the individual designated by an Owner to be a member of the Association.

Section 12. "Owner" means any person, corporation or legal entity that owns fee simple title to any Lot.

Section 13. "Person" means a person, firm, corporation or other legal entity.

Section 14. "Residence" means the single-family dwelling located upon a Lot.

Section 15. "Single-family dwelling" means a residential dwelling for one or more persons, each related to the other by blood, marriage, or legal adoption or, alternately, a group of not more than four (4) persons not so related who shall maintain a common household in such dwelling.

Section 16. "Supplemental Declaration" means any document made and executed by Declarant, which annexes any additional lands to be added to the Property and submits same to the terms and provisions of this Declaration or an amendment hereto.

## **II. PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO**

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

The Property is hereby declared to be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to this Declaration.

### **Section 2. Additions Thereto.**

Declarant shall have the right in its sole discretion from time to time to commit to development and to submit to the terms and conditions of this Declaration additional lands, but nothing contained in this Article or this Declaration shall obligate Declarant to so do. No lands other than the Property shall be burdened with the terms and conditions of this Declaration unless and until such lands are formally annexed as a part of the Property and submitted to the terms and conditions hereof in accordance with the provisions of Article III, Section 4, hereinbelow.

## **III. SPECIAL DECLARANT RIGHTS**

1. Declarant shall have the right to retain as to any roads within the Property, such rights thereto including but not limited to the use thereof and the right to improve, modify and maintain same as is necessary in Declarant's sole opinion for the possible development and sale of other adjacent lands, and rights-of-way for ingress and egress thereto and use and enjoyment thereof by Declarant, its successors and assigns.

2. Declarant shall have the right to use, maintain, improve, and/or replace the roadways, ditches, slopes and culverts, and to install, maintain and replace public and private utilities within the right-of-way of all roads within the Property, for the benefit of the Property and of such other lands as may be from time to time annexed thereto pursuant to the provisions hereof.

3. Declarant shall have the right to use, maintain, improve, and/or replace the Common Areas, for the benefit of Property and of such other lands as may be from time to time annexed thereto pursuant to the provisions hereof. Specifically, Declarant shall have the right, but not the obligation, to drill wells and install waterlines and other utilities within any of the Common Areas for the purpose of providing water or other utilities to Owners, and to grant easements to Owners, water associations, municipalities, or utility companies for the purpose of taking water and/or providing utilities and for the purpose of maintaining, repairing and/or replacing the utilities, wells and waterlines drilled and installed within said Common Areas. Notwithstanding the foregoing and anything herein to the contrary, each Owner shall be responsible for drilling its own well and constructing its own septic system within the bounds of its Lot.

4. Declarant may from time to time, and in its sole discretion, annex additional land to be added to the Property and submit said lands to the terms and conditions of this Declaration. Declarant shall effect such annexation by recording a plat of the real property to be annexed and by recording a Supplemental Declaration, which shall:

- A. Describe the real property being annexed and designate the permissible use thereof;
- B. Set forth any new or modified restrictions or covenants, which may be applicable to such, annexed property, including limited or restrictive uses of roads;
- C. Declare that such annexed property shall be held, transferred, sold, conveyed, encumbered, leased, used, occupied and improved subject to the provisions of this Declaration. Upon the recording of such plat and Supplemental Declaration, the annexed area shall become a part of the Property subject to all provisions of this Declaration as supplemented or modified by said Supplemental Declaration.

5. Notwithstanding any provisions herein to the contrary, Declarant may prepare and record a subdivision plat or plats that modify the Plat and does hereby reserve unto itself, its successors and assigns, the right to relocate, open, or close access roads shown on the Plat or any amendment thereof, and to revise, recombine, re-subdivide and change the size, shape, dimensions and locations of Lots. The covenants, conditions, restrictions and reservations hereby imposed shall be applicable to the resulting lots in lieu of the Lots as originally shown on the Plat prior to such revision, relocation or change. However, Lots sold prior to such revision, relocation or change shall not be deprived of that portion of the access roads on which it bounds nor of access to such Lot from the access roads within the Property.

#### **IV. OWNER'S RIGHT AND EASEMENT OF ENJOYMENT IN THE ROADS AND COMMON AREAS.**

The non-exclusive right to use all roadways within the Property and all present and future easements appurtenant to the Property, including, but not limited to, that certain Access Easement recorded in Book D-10, Page 911, Register's Office of Perry County, Tennessee (collectively, the "Appurtenant Easements") shall be an appurtenance to each Lot within said Property, subject to the reserved right of Declarant set forth above, and every Owner shall have a right and easement of enjoyment in and to said roads, Common Areas and Appurtenant Easements in common with all other Owners, subject to:

1. All rules and regulations governing the use and enjoyment of the roads, Common Areas and Appurtenant Easements as shall be promulgated by the Board of the Association from time to time;
2. The right of the Declarant and the Association to establish easements over the roads and Common Areas for service to or in favor of any private or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers, water pipes, cable television lines or hook-ups or any other utility services serving any Lots within the Property;
3. All provisions of this Declaration not enumerated above, and all restrictions, obligations and provisions contained on the Plat of the Property and in the Appurtenant Easements.

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V. THE ASSOCIATION; ADMINISTRATION, MAINTENANCE AND IMPROVING OF ROADS, WATER SYSTEM AND COMMON AREAS; FINANCIAL RESPONSIBILITY OF OWNERS THEREFOR; AGREEMENT FOR ASSESSMENTS AND ENFORCEMENT THEREOF.

Section 1. General. The Association is a Tennessee non-profit corporation organized to further and promote the common interests of Owners of Lots within the Property. The Association shall have such powers as are set forth in the Tennessee Nonprofit Corporation Act and in its Articles and Bylaws. The Association shall be responsible for the administration, maintenance and improvement of the roads and other Common Areas within the Property.

Section 2. Membership. Every Owner who is a natural person, and a single natural person designated by multiple Owners, shall be a Member of the Association.

Section 3. Classes of Members. Class "A" members shall be the natural person designated by the Owner to be a Member, with the exception of the Declarant. The Class "B" member shall be the natural person designated by the Declarant to be a Member.

Section 4. Votes. Each Class "A" member shall be entitled to one (1) vote for each Lot it owns. Each Class "B" member shall have ten (10) votes for each Lot it owns. Voting shall be in person, by proxy or mail ballot.

Section 5. Board of Directors. The affairs of the Association shall be governed by the Board. Initially, the Board shall be composed of three persons designated by the Declarant, none of whom needs to be an Owner of a Lot. The members of the Board may be removed and/or replaced by the Declarant during the Declarant control period. The directors appointed by the Declarant shall be replaced as provided for in the Articles of Incorporation and Bylaws of the Association but in no event later than either: (i) the conveyance of all of the Lots then subjected to this Declaration (including Lots subsequently annexed to the development pursuant to the provisions of this Declaration) or (ii) May 31, 2033 whichever shall first occur, or at such time as Declarant in its sole discretion elects.

Section 6. Administration, Maintenance and Improvement. The Association shall be responsible for the administration, maintenance and improvement of the roads and Common Areas within the Property and all Appurtenant Easements benefiting the Property. Membership in the Association shall consist exclusively of all the Members. The Association shall have the powers enumerated in the Tennessee Nonprofit Corporation Act and in its Articles and Bylaws, and shall be managed by the Board.

Section 7. Financial Responsibility of Owners; Assessments by Association. The Owners are responsible for providing funds necessary to the Association to carry out the above purposes. The Association shall prepare an annual budget, and shall assess each Owner as provided herein for its pro rata share of such expenses.

Section 8. Assessments; Personal Obligations of Owners; Creation of Lien. The Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor whether or not it shall be so expressed in any such deed

or other conveyance is deemed to covenant (which covenant shall run with the land and be binding on every Owner) and agree to pay to the Association:

- A. Annual assessments for administration and maintenance;
- B. Annual assessments for capital improvements;
- C. Special assessments for administration, maintenance and capital improvements;
- D. An "impact" assessment for abnormal road usage during the construction of improvements, to be due and payable at the time a building permit is issued for construction on any Lot;
- E. An assessment or fine for damage to or destruction of Association property by an Owner, Member or guest of an Owner or Member, said damage or destruction not to include ordinary wear and tear; and
- F. An assessment or fine levied by the Board for failure by Owner to comply with the rules and regulations of the Association or failure to pay any other assessment or fine levied by the Board.

Section 9. Budget. The Board shall adopt a proposed annual budget for the Association, and, within 30 days thereof shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The meeting shall be held not less than 10 nor more than 60 days after mailing of the summary and notice. The budget shall be deemed ratified unless at that meeting a majority of all the Members rejects the budget.

Section 10. Effect of Non-Payment of Assessments; Remedies of the Association; The Personal Obligation of Owner; The Lien.

(A) Any assessment or fine levied against a Lot or Owner remaining unpaid for a period of 30 days or longer shall constitute a lien on such Owner's Lot when a claim of lien is filed of record in the Register's Office for Perry County, Tennessee. All fees, charges, late charges, fines, interest, and other charges are enforceable as assessments. The Association shall have any other remedy available under law.

(B) If any assessment against a Lot is not paid by the due date, such assessment shall be delinquent and shall bear interest from the due date at the rate of eighteen per cent (18%) per annum, or the maximum interest rate allowed by law, whichever is lower.

(C) If any delinquent assessment is not paid within (30) days from the date of the notice of assessment and is placed in the hands of an attorney for collection, there shall be added to the amount due all costs of collection including reasonable attorney's fees.

Section 11. Owner May Not Escape Liability by Non-use of Roads, and/or Common Areas. No Owner may waive or otherwise escape liability for the assessments provided for

herein by non-use of the roads, water system and/or Common Areas or the abandonment of his Lot.

Section 12. Suspension of Owner's Rights While Delinquent. An Owner's right to use the Common Areas and roads within the Property shall be automatically suspended during the following periods:

- (A) Any period during which any Association charge on such Owner's Lot remains unpaid;
- (B) The period of any continuing violation by such member of the provisions of the Declaration after the existence thereof shall have been declared by the Board;
- (C) A period to be determined by the Board, for repeated violations of the By-Laws or the rules and regulations of the Association.

Section 13. Fines for non-compliance. The Board may levy fines upon any Owner, as determined by the Board, for repeated violations of the Declaration, Bylaws or the rules and regulations of the Association, said fines, if unpaid, shall constitute a lien on the Owner's Lot pursuant to Section 10 of this Article V., above.

## **VI. RESTRICTIONS ON USE**

### **Section 1. Use of Lots Restricted to Residential Purposes.**

As a portion of the consideration for each transaction for the sale and purchase of a Lot subjected to this Declaration, the Owner to whom said Lot is conveyed stipulates that the planned community is a small community, and that a portion of the value and attractiveness of said Lot is the assurance that each residence in the community will be occupied by the Owner of said residence, the non-paying guests of said Owner and certain permitted renters as set forth hereinbelow. Each Owner has covenanted to retain possession thereof, and has promised Declarant and all other Owners that said residence shall not be rented or leased for any period of time that is less than one (1) week in duration. Each Owner further stipulates that the restriction against short term, less than one (1) week in duration rentals, was an inducement that leads to the purchase of the Lot. No Lot or portion thereof shall be used for any purpose other than one single-family residential dwelling, a guesthouse for bona fide, non-paying guests, and out buildings approved by the Architectural Review Committee. There shall be no commercial activity on any Lot. For purposes of this Section, the rental of the single-family home situated on said Lot for a term less than one (1) week in duration shall be considered a commercial activity.

Section 2. Site Location. Residences shall be reasonably located on each Lot in a manner which shall not encroach on the privacy of the adjacent Lot or roads. Such locations must be approved by the Architectural Review Committee, which shall be the sole determiner of the above criteria.

Section 3. Setbacks; Design Standards. The building site on each Lot shall be determined by the Architectural Review Committee, which said Committee shall determine said site with reference to the views specific to said Lot and the placement of a structure thereon to

maximize said views while preserving the maximum amount of vegetation on said Lot. The exteriors of all improvements constructed on any Lot shall be constructed wholly of natural materials, which shall be deemed to mean wood, brick, stucco, and natural stone. All other materials, including, but not limited to, cinder blocks and vinyl siding, are expressly prohibited. All foundations for any improvements located on Lots shall be covered with materials approved by the Architectural Review Committee.

Section 4. Minimum Square Footage Requirement. No single-family dwelling situated on any Lot shall have less than 1,200 square feet of finished, enclosed, heatable living space. No dwelling shall exceed two stories in height above ground level, and the first floor of all dwellings shall be a minimum of five (5) feet above ground level. The minimum dwelling size may be reduced by the Architectural Review Committee under the variance powers provided for herein where it appears that a small size house will be more suitable for a particular Lot and not detrimental to adjoining Lots.

Section 5. Completion of Construction. Construction of improvements, once commenced, shall be completed within eighteen (18) months. Improvements not so completed or construction, which has been partially or totally destroyed and not rebuilt or cleaned away so as to leave a neat and tidy appearance, within twelve (12) months, shall be deemed a nuisance.

Section 6. Maintenance of Lots and Improvements. All Lots, whether occupied or unoccupied, and all improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. If not so maintained, the Association shall have the right to rectify such offensive situations, and the costs of such undertakings shall be a special assessment against the Owner of such Lot and the Lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so rectify any offensive situations.

Section 7. Burning of Garbage, Trash or Rubbish Prohibited. No Owner shall burn any trash, garbage or refuse on the Property.

Section 8. Storage of Garbage, Trash or Rubbish. No Owner shall accumulate on his Lot any junk vehicles, or any litter or garbage except in receptacles provided by Owner for such purposes. All rubbish, garbage, trash receptacles and fuel storage tanks shall be buried for concealment or covered in a manner so as not to be visible from any roadway or from adjacent property.

Section 9. Portable Structures Prohibited. Subject to the provisions of Section 14 below, no travel trailer, mobile home, relocatable dwelling, tent, lean-to or other temporary structure may be placed or erected on any Lot except that temporary structures, trailers or the like may be permitted by the Architectural Review Committee when used in the process of erection of improvements to said parcel, or for promotional activities.

Section 10. Resubdivision of a Lot. No original Lot may be subdivided, except by the Declarant pursuant to the terms of this Declaration.

Section 11. Access to Lots. There shall be no access to any Lot within the Property except from designated roads as contained on the Plat. All roads depicted on the Plat shall be

private roads maintained by the Association. All Appurtenant Easements shall be maintained by the Association, unless pursuant to the terms of any Appurtenant Easement another party is responsible for the maintenance thereof. All Owners and their invitees and guests shall at all times comply with the terms and provisions of the Appurtenant Easements, including, but not limited to, the terms of that certain access easement benefiting the Property recorded in Book D-10, Page 911, Register's Office of Perry County, Tennessee. There shall be no access from any Lot within the subdivision to any adjacent lands not within the Property. No Owner may grant a right-of-way through his Lot for the purpose of affording access to property not within the Property. This provision shall not apply to the Declarant.

Section 12. Animals. No animals other than those usually considered to be household pets shall be kept or maintained on any Lot, and such pets shall be kept reasonably confined so as not to become a nuisance. No animals shall be commercially raised or bred for resale or distribution to others. For purposes of this Section, the occasional litter of puppies or kittens shall not be considered commercial breeding of animals, however, the continued breeding of the animal and placement of offspring shall be in violation of this Section and shall be deemed a nuisance.

Section 13. Signs. No signs other than the Owner's name or identification of the Owner's property shall be permitted on any Lots; provided, however, that the Architectural Review Committee shall have the right to determine the kind, size and location of all permitted signs. This provision shall not apply to Declarant.

Section 14. Overnight Camping Provision. Overnight, recreational camping on any Lot by an Owner of such Lot for periods less than or equal to seven (7) days shall be permitted, but all other camping by any other persons is expressly prohibited.

Section 15. Recreational Vehicles, Boats and Trailers. Recreational vehicles shall be permitted on Lots, provided, however, that the Architectural Review Committee shall have the right to approve or disapprove the location for storage and parking of said vehicle, and the design and/or appearance of any such vehicle prior to the location of such vehicle on any Lot.

Section 16. Motorcycles; Off-Highway Vehicles. No motorcycle, motor bicycle, "dirt bike", "4-Wheeler", "off-road vehicle" or other such vehicle shall be operated on any Lot or roadway within the Property. This restriction shall be broadly construed to include all such vehicles, notwithstanding the number of wheels. Motorcycles used only for ingress and egress to Lots are permitted, as are motorized golf carts, and side-by-side off-highway vehicles such as Kawasaki Mules and Polaris Rangers when used only for ingress and egress to Common Areas and on individual Lots by the Owners of said Lots.

Section 17. Nuisance. No nuisance, and no noxious or offensive activities or noise shall be permitted within the Property.

Section 18. Water Impoundment. No impounding of water on any Lot shall be permitted, unless approved by the Architectural Review Committee.

Section 19. Removal of Trees and Shrubs. No trees measuring ten inches (10") or more in diameter at four feet (4') above ground level may be removed from any Lot without the

prior written consent of the Architectural Review Committee nor may any native flowering shrubs and trees, including, but not limited to, wild Azalea, Laurel, Dogwood, Rhododendron, Dog Hobble and Sarvis Berry be removed from any Lot or embankment without the prior written consent of the Architectural Review Committee. The Architectural Review Committee shall have the power to fine any Owner for wrongful removal of any such trees and shrubs as described herein without the prior written consent of the Architectural Review Committee, and the power to fine any Owner for the cost of replacing the wrongfully removed trees and/or shrubs. In the event Owner fails to pay said fines within thirty (30) days of notice thereof, the sum shall constitute a lien on the Owner's Lot when a claim of lien is filed of record in the Register's Office of Perry County, Tennessee as set forth in Article V, Section 10 of this Declaration.

## **VII. EASEMENTS**

Section 1. Reservations of Easements. The following easements over each Lot and the right of ingress and egress to the extent reasonably necessary to exercise such easements are reserved to Declarant, its successors and assigns,

(A) Utilities. A ten (10) foot wide strip running along the inside of all Lot lines for the installation, maintenance and operation of utilities including radio and television transmission cables and the accessory right to cut, trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation;

(B) Roadways. Rights-of-way shall be as shown on the Plat, as the same may be amended pursuant to the terms of this Declaration;

(C) Other Easements. Any other easements shown on the Plat, as the same may be amended pursuant to the terms of this Declaration.

Section 2. Use or Maintenance by Owners. The areas of any Lots affected by the easements reserved herein shall be maintained continuously by the Owner of such Lot with the exception of the actual roadways, which shall be maintained by the Association. No structures, plantings or other materials shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas, including, but not limited utility lines and facilities, shall be maintained by the Owner, except those for which a public authority or utility company is responsible.

Section 3. Limitation on Liability for Use of Easement. No Owner shall have any claim or cause of action against Declarant or its licensees arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the Plat.

## **VIII. CONTROL OF IMPROVEMENTS; THE ARCHITECTURAL REVIEW COMMITTEE.**

The Declarant hereby creates an Architectural Review Committee, which shall perform the duties required of it by this Declaration.

Section 1. Improvements Prohibited Without Approval. No tree or shrub may be removed (as set forth in Article VI, Section 19, hereinabove), and no building, fence, wall, satellite dish antenna or other structure shall be commenced, erected, maintained or placed upon any Lot nor shall any exterior change or alteration to any residence or improvement thereon be made upon any Lot until the plans and specifications showing the nature, kind, shape, height, materials, square footage of finished, enclosed, heatable living space, and location of the same shall have been submitted to the Architectural Review Committee in the manner and form prescribed by it and approved by it. The application shall be accompanied by the number of sets of plans and specifications required by the Architectural Review Committee, which shall show all information, including but not limited to the location of all improvements, if any, existing upon said Lot, the location of the improvements proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping and any other information which the Architectural Review Committee may require.

Section 2. Approvals Other Than for Improvements Required by Architectural Review Committee. Where the approval of the Architectural Review Committee is required in matters other than the above by this Declaration, requests for such approval shall be submitted in writing to the Architectural Review Committee in the manner and form prescribed by it. The application shall show in sufficient detail those factors necessary for the Architectural Review Committee to render a decision on the request.

Section 3. Grounds for Disapproval. The Architectural Review Committee may disapprove any applications upon any of the following grounds:

(A) If, in the judgment of a majority of the Architectural Review Committee reasonably exercised, the proposed request fails to meet the criteria set forth in this Declaration.

(B) Because of the reasonable dissatisfaction of the Architectural Review Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height, or style of the proposed improvements, the materials used therein, the kind, pitch, or the type of roof proposed to be placed thereon;

(C) If in the judgment of a majority of the Architectural Review Committee reasonably exercised, the proposed improvements would not be harmonious with the improvements erected or planned to be erected on other Lots.

Section 4. Rules and Regulations. The Committee may, from time to time adopt written rules and regulations or general applications governing its procedures which may include, among other things, provisions for the form and content of applications; required number of copies of plans and specifications; and provisions for notice of approval or disapproval.

Section 5. Variances. The Committee may grant reasonable variances or adjustments from the provisions of this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

Section 6. Certification of Compliance. At any time prior to completion of construction of an improvement, the Architectural Review Committee may require a certification, upon such forms, as it shall furnish, from the contractor, Owner, or a licensed surveyor that such improvement does not violate any setback, ordinance, or statute nor encroach upon any easement or right-of-way of record.

Section 7. Liability. Notwithstanding the approval by the Architectural Review Committee of plans and specifications or its inspection of the work in progress, neither it, Declarant, the Association, nor any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Architectural Review Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans and specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

Section 8. Appeals. Any applicant shall have the right to appeal to the Board of the Association any decision of the Architectural Review Committee within thirty (30) days after entry of such decision.

Section 9. Certificate of Completion. Upon completion of the improvement of a Lot in accordance with the plans and specifications approved by the Architectural Review Committee, and payment of any fines levied by the Architectural Review Committee, the Committee shall issue a Certificate of Completion.

Section 10. Committee Membership. The Architectural Review Committee shall be composed of three (3) members to be appointed by Declarant. Architectural Review Committee members shall be subject to removal by Declarant. The power to appoint or remove Architectural Review Committee members shall be transferred to the Association upon the sale of all Lots within the Property or at such time as Declarant in its sole discretion elects.

## **IX. GENERAL PROVISIONS**

Section 1. Covenants, Conditions, Restrictions and Easements Run with Land. All covenants, conditions, restrictions and easements contained in this Declaration shall constitute covenants running with land.

Section 2. Grantee's Acceptance. Each Owner of any Lot, by acceptance of title thereto, or by the execution of a contract for the purchase thereof, shall accept such title or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of Declarant and of the Association. Such Owner or contracting party, for himself, his heirs, assigns, and successors, covenants, consents and agrees to and with the Declarant, the Association and the Owner of each other Lot to keep, observe, comply, and perform the covenants, conditions and restrictions contained in this Declaration.

## **X. REMEDIES**

Section 1. Enforcement. The Declarant, Association and each person to whose benefit this Declaration inures, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any provisions of this Declaration, and the court in such action may

award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

Section 2. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 3. Effect of Waiver of Violation. No waiver of a breach or violation of any of the covenants, conditions, restrictions and easements in this Declaration shall be construed as a waiver of any succeeding breach of the same covenant, conditions, restriction and waiver.

#### **XI. SEVERABILITY**

Each provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

#### **XII. TERM AND AMENDMENT**

The provisions of this Declaration shall affect and run with the Property and shall exist and be binding upon all parties claiming an interest in the Property until May 31, 2033, after which time they shall be automatically extended for successive periods of ten (10) years unless seventy-five percent (75%) of the voting Members of the Association decides to the contrary pursuant to an affirmative vote of the Members.

During the time period that the Declarant appoints the Board of the Association (Article V, Section 5) and the Architectural Review Committee (Article VIII, Section 10), (hereinafter "Declarant Control Period"), this Declaration may be amended by the Declarant without joinder of the Owners or the Association, except that the Declarant shall amend Article VI, Restrictions on Use, only by an affirmative vote or written agreement signed by Owners of Lots to which at least seventy-five percent (75%) of the votes in the Association are allocated. After the termination of the Declarant Control Period, this Declaration may be amended only by affirmative vote or written agreement signed by Owners of Lots to which at least seventy-five percent (75%) of the votes in the Association are allocated. Every amendment to the Declaration shall be recorded in the county in which the Property is located.

#### **XIII. GENDER**

Wherever the context so requires, the use of any gender shall be deemed to include all genders and the use of the singular shall include the plural and the plural shall include the singular.

[Signature on Following Page]

IN WITNESS OF, the Declarant has caused these presents to be executed this 3<sup>rd</sup> day of JUNE, 2013.

THE PRESERVE AT BUFFALO RIVER, LLC,  
a Tennessee limited liability company

By: Buffalo River Land Company, LLC, a  
Tennessee limited liability company  
Its: Sole Member

By: [Signature]  
Name: JOEL E. DOMIN III  
Title: Managing Member

STATE OF TENNESSEE

COUNTY OF LAWRENCE

Before me, the undersigned, a Notary Public in and for the County and State  
aforesaid, personally appeared JOEL E. DOMIN III, with whom I am personally acquainted  
(or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to  
be the Managing Member of Buffalo River Land Company, LLC, the Sole Member of The Preserve  
at Buffalo River, LLC, the within named bargainer, a Tennessee limited liability company, and that  
he as such Managing Member of the Sole Member, being authorized so to do, executed the  
foregoing instrument for the purposes therein contained, by signing the name of the limited liability  
company by himself as the Managing Member of the Sole Member thereof.

the 3<sup>rd</sup> day of JUNE, 2013. Witness my hand and seal, at office in Lawrenceburg TN, this

My Commission Expires: 4/2/17



[Signature]  
NOTARY PUBLIC

Exhibit A

Property

Being and lying in the 4<sup>th</sup> Civil District of Perry County, Tennessee, lying east of State Route #13, being more particularly described as follows:

Beginning at an iron pin found, said iron pin being the southeast corner of Buffalo River County Club as recorded in Deed Book E-6, Page 120, ROPCT, and being in the north boundary of Raymond Byrd as recorded in Deed Book X-24, Page 525, ROPCT, and being the westernmost southwest corner of the tract being described; thence leaving Byrd with Buffalo River County Club North 5 degrees, 07 minutes, 49 seconds East, and passing an iron pin set at 850.00 feet, in all 879.29 feet to a point at the edge of the Buffalo River, said point being the northeast corner of Buffalo River Country Club, and being the northwest corner of the tract being described; thence leaving Buffalo River Country Club with edge of said river North 64 degrees, 15 minutes, 09 seconds East 56.11 feet, North 74 degrees, 01 minutes, 56 seconds East 109.14 feet, North 82 degrees, 21 minutes, 39 seconds East 98.58 feet to a point, said point being the northwest corner of Raymond Byrd et ux as recorded in Deed Book U-22, Page 231, ROPCT; thence leaving edge of said river with Byrd South 26 degrees, 00 minutes, 00 seconds East, and passing an iron pin set at 32.37 feet, in all 206.37 feet to an 18" beech, said beech being the southwest corner of Byrd; thence continuing with Byrd South 81 degrees, 00 minutes, 00 seconds East 75.57 feet to an 18" beech, said beech being the southeast corner of Byrd; thence continuing with Byrd North 24 degrees, 30 minutes, 00 seconds West, and passing an iron pin set at 174.00 feet, in all 227.28 feet to a point at the edge of Buffalo River, said point being the northeast corner of Byrd; thence leaving Byrd with said edge of river North 82 degrees, 21 minutes, 39 seconds East 30.97 feet, South 87 degrees, 44 minutes, 56 seconds East 116.60 feet, North 64 degrees, 20 minutes, 44 seconds East 116.78 feet, North 56 degrees, 43 minutes, 33 seconds East 112.77 feet, North 71 degrees, 41 minutes, 56 seconds East 100.44 feet, North 85 degrees, 17 minutes, 11 seconds East 86.99 feet, South 69 degrees, 58 minutes, 21 seconds East 213.98 feet, South 62 degrees, 38 minutes, 39 seconds East 53.04 feet, South 79 degrees, 46 minutes, 22 seconds East 79.02 feet, South 66 degrees, 10 minutes, 02 seconds East 127.28 feet, South 48 degrees, 21 minutes, 13 seconds East 176.06 feet, South 43 degrees, 15 minutes 04 seconds East 131.61 feet, South 60 degrees, 13 minutes, 23 seconds East 58.35 feet, South 87 degrees, 22 minutes, 27 seconds East 31.27 feet to a point, said point being the northeast corner of the tract being described; thence continuing with said edge of river, South 52 degrees, 48 minutes, 27 seconds East 74.33 feet, South 31 degrees, 21 minutes, 48 seconds East 264.92 feet, South 33 degrees, 06 minutes, 56 seconds East 178.87 feet, South 5 degrees, 23 minutes, 51 seconds East 137.15 feet, South 32 degrees, 28 minutes, 05 seconds East 83.41 feet, South 10 degrees, 55 minutes, 46 seconds East West 279.24 feet, South 6 degrees, 47 minutes, 00 seconds West 168.85 feet, South 13 degrees, 14 minutes 34 seconds West 83.82 feet, South 49 degrees 08 minutes, 08 seconds West 71.31 feet, North 88 degrees, 09 minutes 48 seconds West 27.92 feet, South 63 degrees, 05 minutes, 15 seconds West 122.39 feet, South 75 degrees, 10 minutes, 52 seconds West 61.48 feet, South 55 degrees, 33 minutes, 55 seconds West 154.30 feet, South 59 degrees, 57 minutes, 03 seconds West 133.71 feet, South 14 degrees, 22 minutes, 26 seconds West 191.90 feet, South 48 degrees, 10 minutes, 00 seconds East 291.28 feet, South 0 degrees, 50 minutes, 06 seconds East 98.05 feet, South 34 degrees, 22 minutes, 49 seconds West 76.58 feet, South 52 degrees, 50 minutes, 15 seconds West 119.76 feet, South 61 degrees, 39 minutes, 52 seconds West 150.27 feet, South 82 degrees, 05 minutes, 03 seconds West 91.28 feet, South 64 degrees, 45 minutes, 58 seconds West 194.78 feet, South 73 degrees, 19 minutes, 50 seconds West 151.89 feet, South 38 degrees, 29 minutes, 24 seconds West 172.16 feet, South 29 degrees, 26 minutes, 09 seconds West 40.33 feet, South 44 degrees, 13 minutes, 22 seconds West 132.38 feet to a point, said point being in the southeast corner of Raymond Byrd et ux as recorded in Deed Book X-24, Page 525, ROPCT; and being the southeast corner of the tract being described; thence leaving said edge of river with Byrd, North 44 degrees, 22 minutes, 11 seconds West, and passing an iron pin set at 50.00 feet, in all 625.55 feet to an iron pin set, said iron pin being the southernmost southwest corner of the tract being described; thence continuing with Byrd and a fence North 50 degrees, 21 minutes, 10 seconds East 214.50 feet to an iron pin set, North 13 degrees, 03 minutes, 38 seconds East

70.25 feet to an 18" Hackberry, North 25 degrees, 25 minutes, 36 seconds East 74.63 feet to an 18" hackberry, North 15 degrees, 26 minutes, 26 seconds East 110.06 feet to a 12" ash, North 9 degrees, 50 minutes, 45 seconds East 99.46 feet to a 24" hackberry, North 10 degrees, 53 minutes, 11 seconds East 121.30 feet to a 24" hackberry, North 7 degrees, 16 minutes, 55 seconds East 53.97 feet to a 24" hackberry, North 5 degrees, 19 minutes, 37 seconds West 51.39 feet to a 10" maple, North 13 degrees, 33 minutes, 24 seconds West 26.73 feet to an 18" hackberry, North 16 degrees, 53 minutes, 37 seconds West 153.38 feet to a 15" hackberry, North 9 degrees 05 minutes, 37 seconds West 16.79 feet to an 8" elm, North 15 degrees, 07 minutes, 44 seconds West 164.61 feet to a 36" hackberry, North 7 degrees, 20 minutes, 18 seconds West 71.04 feet to a 15" box elder, North 1 degrees, 47 minutes, 16 seconds East 66.16 feet to a 6" hackberry, North 3 degrees, 56 minutes, 23 seconds West 138.03 feet to an painted rock, said painted rock being the northeast corner of Byrd; thence continuing with Byrd and said fence North 84 degrees, 22 minutes, 11 seconds West 449.06 feet to the point of the beginning and containing 82.84 acres, as surveyed by Kenneth Carroll R.L.S., TN License Number 1335, May 2001.

**TOGETHER WITH ALL OF DECLARANT'S INTEREST IN THE FOLLOWING DESCRIBED ACCESS EASEMENT:**

Being and lying in the 4<sup>th</sup> Civil District of Perry County, Tennessee, lying east of and adjacent to state route #13, being more particularly described as follows:

Commencing at a ¾ iron pipe found, said pipe being the SE corner of Buffalo River Country Club as recorded in Deed Book E-6, Page 120, ROPCT, and being the north boundary of Raymond Byrd as recorded in Deed Book X-24, Page 525, ROPCT, and the SW corner of Graham and Richardson as recorded in Deed Book Y-26, Page 63, ROPCT; thence with Byrd and Graham & Richardson South 84 degrees 22 minutes 14 seconds East a distance of 10.00 feet to the true point of beginning and being in the center of a 20" R.O.W. Easement; thence with the center of said easement South 05 degrees 07 minutes 49 seconds West a distance of 11.15 feet; thence North 78 degrees 11 minutes 09 seconds West a distance of 93.60 feet; thence North 81 degrees 24 minutes 39 seconds West a distance of 335.58 feet; thence North 82 degrees 23 minutes 47 seconds West a distance of 244.62 feet; thence North 78 degrees 33 minutes 44 seconds West a distance of 106.70 feet; thence North 79 degrees 08 minutes 01 seconds West a distance of 210.90 feet; thence North 80 degrees 46 minutes 27 seconds West a distance of 148.99 feet; thence North 84 degrees 20 minutes 23 seconds West a distance of 239.10 feet; thence South 84 degrees 34 minutes 11 seconds West a distance of 138.11 feet; thence South 75 degrees 16 minutes 35 seconds West a distance of 52.05 feet; thence South 68 degrees 07 minutes 52 seconds West a distance of 102.57 feet; thence South 76 degrees 56 minutes 38 seconds West a distance of 69.14 feet; thence South 85 degrees 11 minutes 40 seconds West a distance of 127.41 feet; thence South 72 degrees 45 minutes 59 seconds West a distance of 41.42 feet; thence South 59 degrees 27 minutes 12 seconds West a distance of 48.44 feet; thence South 88 degrees 40 minutes 54 seconds West a distance of 31.16 feet; thence North 80 degrees 24 minutes 53 seconds West a distance of 49.21 feet; thence South 83 degrees 09 minutes 04 seconds West a distance of 46.34 feet; thence South 78 degrees 56 minutes 52 seconds West a distance of 120.39 feet; thence North 84 degrees 52 minutes 55 seconds West a distance of 8.78 feet to a point in the East R.O.W. of State Highway 13, as surveyed by Scottie Brewer, 612 Longbranch Road, Hobenwald, TN 38462, R.L.S., TN License Number 2393, September 7, 2010.

Said 20' R.O.W. crosses Raymond Byrd as recorded in Deed Book X-24, Page 525, Register's Office of Perry County, Tennessee.

10809207.4

**Exhibit B**

**Bylaws**

**See Attached.**

10809207.4

17

**BYLAWS  
OF  
THE PRESERVE AT BUFFALO RIVER ASSOCIATION, INC.**

**ARTICLE I**  
General: Members  
(Owners)

Section 1. Applicability. These Bylaws provide for the self-government of The Preserve At Buffalo River Association, Inc., a Tennessee nonprofit corporation (the "Association"), in accordance with the provisions of the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 *et seq.*, as the same may be amended from time to time (the "Act"), the Charter of the Association filed with the Secretary of State of the State of Tennessee, and that certain Declaration of Protective Covenants and Restrictions for The Preserve at Buffalo River (the "Declaration") recorded in the Register's Office for Perry County, Tennessee.

Section 2. Definitions: Gender. All capitalized terms set forth herein which are not otherwise defined herein shall have such meanings as are specified in the Declaration. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

Section 3. Eligibility. The members of the Association shall consist of the Owners. The words "member" or "members" as used in these Bylaws mean and shall refer to "Owner" or "Owners."

Section 4. Succession. The membership of each Owner shall terminate when it ceases to be an Owner, and upon the sale, transfer or other disposition of its ownership interest in the Property (as defined in the Declaration), its membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

Section 5. Annual Meetings of the Association.

(a) The regular annual meetings of the Owners may be held, subject to the terms hereof, on any date, at the option of the Board. All such meetings of the Owners shall be held at the club house located on the Property or other place designated by the Board in the vicinity of the Property.

(b) At each annual meeting, the Owners shall elect and appoint Directors in accordance with these Bylaws, and may transact such other business of the Association as may properly come before them at such annual meeting.

(c) Written notices of the Association meetings shall be given to each Owner by the Secretary in the manner provided in these Bylaws. All such notices of any meeting shall be sent to each Owner not less than ten (10) days and not more than sixty (60) days before such meeting, shall specify the date, time and location of such meeting, and shall generally state those matters that the Association shall consider at the meeting.

(d) Prior to each annual meeting, a roster (the "Roster") including the names and addresses of each Owner shall be prepared. The Roster must be made available for inspection at the Association's principal office by the Owners or their agents for the purpose of communication with the Owners concerning the meeting. The Roster shall be available for such inspection at any time during the meeting or during any adjournment. Each Owner who inspects the Roster is hereby deemed to have agreed not to make any use of the Roster prohibited by applicable law (including, without limitation, use of the Roster to solicit money or property or for any other commercial purpose) or to distribute the names or any other information on the Roster to any person who is not an Owner for any purpose unrelated to any Owner's interest as an Owner and member of the Association. Any Owner who uses the Roster in a manner prohibited under this Section shall, in addition to all other rights, powers and remedies available to the Association under the Declaration, these Bylaws or otherwise at law or in equity, indemnify and defend the Association and the Board against and hold the Association, the Board and the Association's property manager, if any, harmless from any and all claims arising from or related to such Owner's use of the Roster.

#### Section 6. Special Meetings of the Association.

Special meetings of the Owners may be called by the President or by a majority of the Directors of the Board, or by Owners having at least twenty percent (20%) of the votes entitled to be cast at such meeting. Except in special cases where other express provision is made by statute, the Declaration or these Bylaws, notice of such special meetings shall be given in the same manner as for annual meetings and may be given by any person or persons entitled to call such meeting. Notices of any special meetings shall specify, in addition to the date, time and location of such meeting, the general nature of the business to be transacted (and no other business may be transacted).

If a special meeting is called by the Owners, the request shall be submitted by those Owners in writing, specifying the nature of the business proposed to be transacted, and shall be given to the President, any Vice President or the Secretary of the Association in the manner provided in these Bylaws. The officer receiving the request shall cause notice to be promptly given to the Owners entitled to vote, stating that a meeting will be held and the date for such meeting, which date shall be not less than thirty (30) nor more than sixty (60) days following the receipt of the

request. If the notice is not given within thirty (30) days after the receipt of the request, the persons requesting the meeting may give notice.

Section 7. Voting Rights of Owners.

(a) Votes in the Association shall be calculated as set forth in Article V of the Declaration.

(b) When an entity or more than one (1) person is the Owner of a Lot, the voting rights of such Owner shall not be divided but shall be exercised as if the Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Owner.

(c) Except where a greater number is required by the Act, the Declaration or these Bylaws, a majority of the votes cast by the Owners in person or by proxy at a meeting of the Owners duly called and at which a quorum is present shall be sufficient to take or authorize action upon any matter which may properly come before the Association.

Section 8. Quorum for Association Meetings. A quorum of Owners for any meeting of the Association shall be constituted by Owners represented in person or by proxy and holding ten percent (10%) of the votes entitled to be cast at such meeting.

Section 9. Proxies for Association Meetings.

(a) Every Owner entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such Owner as his or her duly authorized agent and filed with the Secretary of the Association prior to commencement of the meeting at which the proxy is to be exercised. A form of proxy may be distributed to each Owner to afford him the opportunity to vote in absentia at a meeting of the Owners if it meets the requirements for a written ballot set forth in Article I, Section 10, below, and includes the name or names of the person(s) who expect to be in attendance in person at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Owner's vote as specified in the form of proxy.

(b) A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless, (i) revoked by the Owner executing it, before the vote cast pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked, by delivery to the Association of a subsequent proxy executed by such Owner, or by personal attendance and voting at a meeting by such owner, or (ii) if written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote pursuant to that proxy is counted. No proxy shall be valid after the expiration of eleven (11) months from the date of the proxy.

Section 10. Action By Association Without Meeting. Any action may be taken by the Association without a meeting and without prior notice if:

- (a) a written ballot is distributed to every Owner entitled to vote that provides an opportunity to specify approval or disapproval of each order of business proposed to be acted upon by the Association and a reasonable amount of time for the Owner to return the ballot to the Association;
- (b) the number of signed approvals of the Owners, with the votes required under these Bylaws or the Act, setting forth the action so taken, is received in writing;
- (c) the number of votes cast within the time period specified equals or exceeds the quorum to be present at a meeting authorizing the action; and
- (d) the number of votes represented by the approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total votes cast was the same as the votes cast by such ballots.

All such solicitations shall indicate the number of votes needed to meet the quorum requirement and, with respect to ballots other than for the election of Directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted and that a ballot received within the specified time will be cast in accordance with the choice(s) specified by the Owner casting the ballot.

Any Owner casting a ballot, or the proxyholder of an Owner, or a personal representative of the Owner or their respective proxyholders, may revoke the ballot, or substitute another, by a writing received by the Association prior to the time specified in the solicitation pursuant to the preceding paragraph, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of the Association.

Section 11. Order of Business for Association Meetings. Unless modified by the Board or the Owners, the order of business at annual meetings and, as far as practicable at all other meetings of the Association, shall be:

- (a) Call to order by the President;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Calling of the roll and certifying of proxies;
- (d) Reading and disposal of any unapproved minutes;

(e) Report of officers; including the report of the President on the activities of the Association, and of the Treasurer on the financial condition of the Association;

(f) Reports of committees;

(g) Election and appointment of Directors, as appropriate;

(h) Unfinished business;

(i) New business; and

(j) Adjournment.

## ARTICLE II

### Board of Directors

#### Section 1. Number, Election and Term of Office of Directors.

(a) During the Class B Membership. During the time there is a Class B Membership (the "Class B Membership Period"), the Board of Directors of the Association shall consist of three (3) Directors. Such Directors shall be elected at the annual meeting of the Association. Directors elected during the Class B Membership Period shall serve until the next annual meeting and until their successors have been elected.

(b) After the Expiration of the Class B Membership Period. After the Class B Membership Period, the Board of Directors shall consist of five (5) persons to be elected at the first annual meeting of the members after the expiration of the Class B Membership Period. At such meeting, the term of office of two (2) members shall be fixed at three (3) years, that of two (2) members shall be fixed at two (2) years, and that of one (1) shall be fixed at one (1) year. The election shall be by ballot and by a plurality of the votes cast, each Owner voting must cast his vote(s) for as many nominees as there are vacancies to be filled, but there shall be no cumulative voting. The term of each Director's service shall be three (3) years except for Directors elected for shorter terms at the first annual meeting after termination of the Class B Membership Period. A Director's term of service shall extend until such Director's successor is elected at the annual meeting of the Owners and thereafter until the successor is qualified and assumes office.

Section 2. Qualification of Directors. Except for the Directors elected during the Class B Membership Period, each Director shall be an Owner, or, if an Owner is not a natural person, an officer, director, member (if the Owner is a limited liability company), partner (if the Owner is a partnership), manager, employee or trust officer of an Owner of a Lot or Lots in the Property. If a Director

shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacated.

Section 3. Voting by the Directors. Each Director shall have one (1) vote upon any matters that come before the Board.

Section 4. Vacancies. Any vacancy occurring in the Board during the Class B Membership Period shall be filled by the Class B member or its designee. After the termination of the Class B Membership Period, except for vacancies caused by removal of Directors by Owners, vacancies shall be filled by the remaining Directors until the next annual meeting at which time a Director shall be elected to fill the remaining term of such vacancy.

Section 5. Removal of Directors. Any Director may be removed by the Owners only at a meeting called for the purpose of removing the Director and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of a Director. In order to remove a Director, a majority of the votes of Owners present at such a meeting at which a quorum is present must be voted in favor of the removal.

Section 6. Meetings. A regular annual meeting of the Board shall be held within fifteen (15) days following the regular annual meeting of the Owners. Special meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each Director, delivered in the manner provided in these Bylaws. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Director's attendance at a meeting shall constitute his waiver of notice of said meeting.

Section 7. Compensation. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by the Owners.

Section 8. Quorum. So long as the Board contains three (3) Directors, at least two (2) of the Directors must be present in order to constitute a quorum of the Board. So long as the Board contains five (5) Directors, at least three (3) of the Directors must be present in order to constitute a quorum of the Board.

Section 9. Powers and Duties. The Board shall have the following powers and duties:

- (a) to elect and remove the officers of the Association as hereinafter provided;
- (b) to administer the affairs of the Association as hereinafter provided;

- (c) to engage the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- (d) to formulate policies for the administration, management and operation of the Property and the Common Areas thereof;
- (e) to adopt rules and regulations, with written notice thereof to all Owners, governing the administration, management, operation and use of the Property and the Common Areas, and to amend such rules and regulations from time to time;
- (f) to provide for maintenance, repair and replacement of the Common Areas and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the manager or Managing Agent;
- (g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Areas, and to delegate any such powers to the Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);
- (h) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;
- (i) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;
- (j) to prepare the budget, and to provide the manner of assessing and collecting from the Owners their respective shares of such estimated expenses, as hereinafter provided;
- (k) to enter into any lease agreement for lease of any Lot owned or leased by the Association or any portion of the Common Areas upon such terms as the Board may approve;
- (l) to impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and rules and regulations of the Association.
- (m) unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Owners as expressed in a resolution duly adopted at any annual or special meeting of the Owners; and

(n) to exercise any and all other powers and duties of the Board of Directors or Owners as a group referred to in the Act, and all powers and duties of the Board of Directors referred to in the Declaration or these Bylaws.

Section 10. Non-Delegation. Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Owners. Except as expressly authorized by the Act, the Declaration or these Bylaws, the Directors and officers of the Association may not enter into any contractual agreement, or bind the Association or any Owner, or sue or be sued in any capacity other than in its operating or management capacity.

Section 11. Emergency Bylaws.

(a) General. The following provisions of this Article II, Section 11 shall be effective during an "Emergency." An "Emergency" is defined as when a quorum of the Directors cannot be readily assembled because of some catastrophic event.

(b) Notice of Board Meetings. During an Emergency, any one (1) Director or any one (1) of the following officers: President, any Vice-President, Secretary or Treasurer, may call a meeting of the Board. Notice of the emergency meeting need be given only to those Directors and officers whom it is practicable to reach, and may be given in any practical manner, including by publication and radio. The notice shall be given at least six (6) hours prior to commencement of the meeting.

(c) Temporary Directors and Quorum. During an Emergency, one (1) or more officers of the Association present at the emergency Board meeting shall be considered to be temporary Director(s) for the meeting. The number of officers needed shall equal the number of Directors necessary to constitute a quorum. The officers shall serve in the order of rank, and within the same rank, in order of seniority. In the event that less than a quorum of the Directors are present (including any officers who are to serve as Directors for the meeting), those Directors present (including the officers serving as Directors) shall constitute a quorum.

(d) Actions Permitted to be Taken. The Board as constituted in subsection (c), and after giving notice as described in subsection (b) may:

- (i) Prescribe emergency powers to any officer of the corporation;
- (ii) Delegate to any officer or Director any of the powers of Directors;
- (iii) Designate lines of succession of officers and agents, in the event that any of them are unable to discharge their duties;

- (iv) Relocate the principal place of business of the Association or designate successive or simultaneous principal places of business; and
- (v) Take any other action, convenient, helpful, or necessary to carry on the business of the Association.

### ARTICLE III Officers

Section 1. Designation. At each regular annual meeting, the Directors present at said meeting shall elect the following officers of the Association by a majority vote:

- (a) a President, who shall be a Director and who shall preside over the meetings of the Board and of the Owners, and who shall be the chief executive officer of the Association;
- (b) a Secretary, who shall keep the minutes of all meetings of the Board and of the Owners; have charge of such books and records as the Board may direct; maintain the Roster; and who shall, in general, perform all the duties incident to the office of Secretary, and who may be a representative of the Managing Agent;
- (c) a Treasurer, who shall be responsible for financial records and books of account of the Association, and the manner in which such records and books are kept and reported; the office of Secretary and Treasurer may be held by one person;
- (d) such additional officers as the Board shall see fit to elect.

Section 2. Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

Section 3. Term of Office. Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

Section 4. Vacancies. Vacancies in any office shall be filled by the Board by a vote of a majority of the Directors at a meeting of the Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by vote of a majority of the total membership of the Board.

Section 5. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Owners.

#### ARTICLE IV Assessments

Section 1. Annual Budget. The Board shall prepare the annual budget for each fiscal year of the Association in accordance with the provisions of Article V of the Declaration.

Section 2. Assessments. Owners shall pay assessments in accordance with the provisions of Article V of the Declaration. However, the payment of the annual assessment or any supplemental assessment shall be paid in such installments and at such times as may be determined by the Board.

Section 3. Annual Report. Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Owner a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 4. Supplemental Budget. In the event that during the course of any year, it shall appear to the Board that the assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Owner, and thereupon a supplemental assessment shall be made to each Owner for the proportionate share of such supplemental budget.

Section 5. Records and Statement of Account. The Board shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures of the Association, specifying and itemizing the expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

The Board shall, upon receipt of ten (10) days written notice to it or the Association and upon payment of a reasonable fee, furnish to any Owner a statement of its account setting forth the amount of any unpaid assessments or other charges due and owing from such party.

Section 6. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Areas, rather than a lien against only a particular Lot. When less than all the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

ARTICLE V  
Contractual Powers

No contract or other transaction between the Association and one or more of its Directors or between the Association and any corporation, firm or association in which one or more of the Directors of the Association are Directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or
- (b) the contract or transaction is just and reasonable as to the corporation at the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

ARTICLE VI  
Amendments

These Bylaws may be amended or modified from time to time by action or approval of Owners holding two-thirds (2/3) of the total votes of the Association by action taken at a meeting or by a written consent. Any such amendment shall be recorded in the Register's Office of Perry County together with a certification by the President of the Association that the amendment was passed by the required number of votes.

ARTICLE VII  
Indemnification

Section 1. General. The Association shall indemnify and hold harmless each of its Directors and officers, each member of any committee appointed pursuant to the Declaration or Bylaws, and the Board and Declarant, against all contractual and other liabilities to others arising out of contracts made by or other acts of such Directors, Board, officers, committee members or Declarant, on behalf of the Owners, or arising out of their status as Directors, Board, officers, committee members or Declarant, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and

expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director, officer, Board, committee member or Declarant may be involved by virtue of such persons being or having been such Director, officer, Board, committee member, or Declarant; provided, however, that such indemnity shall not be operative with respect to:

(a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director, officer, Board, committee member, or Declarant, or

(b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such Director, officer, Board, committee member, or Declarant.

Section 2. Success on Merits. To the extent that Declarant, a Director or an officer of the Association or a member of any committee appointed pursuant to the Bylaws has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Article VII, Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 3. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article VII.

Section 4. Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article VII. The indemnification provided by this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be Declarant or a member of the Board of Directors, officer of the Association or a member of such committee,

and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such person or entity.

#### ARTICLE VIII Conflicts

These Bylaws are set forth to comply with the requirements of the Act as it may be amended from time to time, and to allow the Bylaws to control in specific situations where the Act allows. In case any of the Bylaws conflict with the provisions of the Act or of the Declaration, the provisions of the Act or of the Declaration, as the case may be, shall control.

#### ARTICLE IX Notices

All notices, demands, statements or other communications shall be in writing and shall be deemed to have been duly given to an Owner if delivered either (i) personally, (ii) by mail to an Owner at the address given to the Board by the Owner for such purpose, or to the address of the Lot, if no address has been given to the Board, or (iii) by email to an email address given to the Board by an Owner for such purpose. Notice to the Association, or the Board, shall be personally delivered or mailed to the principal office of the Association or at such other address as shall be designated in writing to the Owners pursuant to this Article IX.