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DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR ROCK CREEK ESTATES

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**DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR ROCK CREEK ESTATES**

KNOW ALL MEN BY THESE PRESENTS, that SKY FALLS, LLC, a Florida Limited Liability Company (hereinafter referred to as "Developer"), is the owner and developer of that certain property (hereinafter referred to as "the Development") which is situate, lying and being in Eastatoo Township, Transylvania County, North Carolina, and more particularly described as being all of Lots \_\_\_\_\_ of Rock Creek Estates as shown on a plat thereof recorded in Plat File \_\_\_\_\_, Slide \_\_\_\_\_, Records of Plats for Transylvania County.

Developer intends to sell and convey the lots and parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the lots and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the lots and parcels hereinabove designated and such additional property as may by subsequent amendment or supplemental declaration be added to and subjected to this Declaration are held and shall be held, conveyed, and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contract and estate between the owners of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

**ARTICLE 1  
LAND USE AND STRUCTURE TYPE**

Each lot shall be used for residential purposes only. No trade or business of any kind may be conducted on any lot. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant, however, all provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners and which provide for sanctions against owners shall also apply to all occupants of any residential lot which is subject to this Declaration. Furthermore, while residences may be leased for residential purposes only, all leases shall require, without limitation, that the tenant acknowledge receipt of a copy of each of the following documents: this Declaration and all applicable amendments thereto, the bylaws of the property owners association or associations to which the lot on which the residence is constructed is subject, all use restrictions and rules and regulations to which such lot and the occupants of said lot are subject. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, Declarant and/or the Board of Directors of Rock Creek Estate Property Owners Association, Inc., in addition to any other remedies available to it/them, may evict the tenant on behalf of the owner of said lot and specifically assess all costs associated therewith against such owner and the owner's property.

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No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, together with a porch, terrace, private garage or carport large enough to accommodate at least two automobiles, and a storage structure, which must be enclosed on all four sides and may be used for the purpose of storing or housing household furniture and other personal possessions, boats, cars, recreational vehicles, lawn and garden equipment, and household pets. In addition to the above mentioned structures, each lot owner shall also be entitled to construct on his lot swimming pools, tennis courts, gazebos, guest houses and other noncommercial outbuildings associated with single-family residential uses.

Each dwelling constructed, erected or situated on a lot shall have fully enclosed floor area (exclusive of any roofed or unroofed porch, terrace, garage, carport or other areas not enclosed by the main structure) which shall contain not less than 1,200 square feet of fully enclosed floor area on the main living floor. Notwithstanding anything hereinabove set forth to the contrary, Developer reserves the right to record supplemental declarations converting one or more lots or portions of lots owned by it in the Development into common area with the use of any such lot or portion of a lot subsequent to the filing and recordation of any such supplemental declaration in the office of the Register of Deeds for Transylvania County to be governed by the provisions of Article 27 of this Declaration rather than the provisions of Article 1.

## ARTICLE 2 ARCHITECTURAL STANDARDS

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no planting, trimming or removal of plants, trees, or shrubs shall take place except in strict compliance with this article until the requirements thereof have been fully met, and until the approval of the Architectural Control Committee has been obtained.

### A. Architectural Control Committee.

In order to ensure that all houses and other structures are of appropriate size and harmonious design, properly located in their relationship to neighboring structures and adapted to the terrain of each lot, Developer retains for the Architectural Control Committee full architectural control in order to achieve these objectives. Accordingly, the Board of Directors of the Rock Creek Estates Property Owners Association, Inc., (sometimes hereinafter referred to as "the Association") shall appoint annually an Architectural Control Committee consisting of three or more competent persons to serve as members until their successors are appointed. A majority of said committee may also designate a representative to act for it.

The Architectural Control Committee shall have exclusive jurisdiction over all construction on any portion of the Properties and over all planting, trimming or removal of plants, trees or shrubs on any lot. The Architectural Control Committee shall prepare and, on behalf of the Board of Directors of the Association (sometimes hereinafter referred to as "the Board"), shall promulgate design guidelines including minimum square footages and application procedures. The standards and procedures shall be those of the Association, and the Architectural Control Committee shall have sole and full authority to prepare and to amend the standards and procedures. It shall make both available to owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and who shall conduct their operation strictly in accordance therewith.

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B. Procedure.

Plans and specifications showing the nature, kind, shape, color, size, materials, and location of structures and other authorized improvements to be constructed or modified, added to or altered, shall be submitted to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, with topography, and finished grade elevation.

No bulldozing, clearing of trees, or excavation of lakes or ponds on any lot shall be commenced until plans and specifications showing the nature, kind, shape and location of work to be done and the grading plans of the lot to be built upon shall have been submitted to the Architectural Control Committee.

The Architectural Control Committee's approval or disapproval as required by these covenants shall be in writing. Such approval shall not be unreasonably withheld and shall be given or denied by the committee in writing within thirty days after any such plan and other required information have been properly submitted to the committee. Denial or approval of the plans, location, specifications and other matters requiring the approval of the committee may be based by it upon any reasonable grounds, including purely aesthetic considerations.

In the event the Architectural Control Committee fails to approve or disapprove within thirty (30) days after proper plans and specifications and other required information have been properly submitted to it, or in any event, if no suit to enjoin any construction for which the Architectural Control Committee's approval is required under this Article has been commenced prior to the completion thereof, approval will not be required and the provisions of these covenants specifying the manner in which proposed improvements must be approved shall be deemed to have been fully complied with provided that proper plans and specifications and other required information were properly submitted to the Architectural Control Committee at least thirty (30) days prior to the commencement of such construction or other work.

No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of such owner's residence, or to paint the interior of such owner's residence any color desired.

C. Improvement Completion Deadline. Unless specifically excepted in writing by the Architectural Control Committee, the exterior of all houses and other structures must be completed within one (1) year after construction has commenced. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days or which have been partially or totally destroyed or not rebuilt within one (1) year shall be deemed nuisances. All construction rubbish, trash and garbage must be regularly removed not less than once a week from any lot upon which construction has commenced. Any such rubbish, trash or garbage left on a lot for more than one week shall also be deemed to be a nuisance. The Architectural Control Committee may remove any such nuisances or repair or complete the same, if applicable, at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

D. Limitation of Liability.

No approval of plans, location or specifications, and no promulgation of detailed standards and procedures by the Board or the Architectural Control Committee shall ever be construed as representing or implying that such plans, specifications, standards or procedures comply with applicable laws, or that if

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followed will result in a properly designed residence. Such approvals, standards and procedures shall in no event be construed as representing or guaranteeing that any residence will be built in a proper and workmanlike manner. No implied warranties of good workmanship, design, habitability, quality, fitness for purpose or merchantability shall arise as result of any plans, specifications, standards or approvals established, given or promulgated by the Board, the Association, the Architectural Control Committee, or any agent thereof, or their successors or assigns. Neither the Board, the Architectural Control Committee, or any agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events, the members of the Architectural Control Committee shall be defended and indemnified by the Association in the same manner and to the same extent as officers and directors are indemnified under the provisions of the Articles of Incorporation and Bylaws of the Association.

**E. Variance.**

Notwithstanding anything set out to the contrary in Article 3 of these covenants, in the event that the Architectural Control Committee shall determine that application of the minimum setbacks specified in Article 3 of these covenants to a particular lot would unreasonably limit the use thereof by the owner and effectively deprive such an owner of an appropriate construction site upon said lot, the Architectural Control Committee shall have the authority to grant a variance to the owner of said lot from the provisions of the minimum setback restrictions specified in Article 3.

**ARTICLE 3  
BUILDING LOCATION**

Subject to the limitation set out in Article 2 of this Declaration that the location of buildings and other proposed improvements on each lot must be approved by the Architectural Control Committee, each lot is subject to the further restriction that no building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on any plat which Developer may prepare and record of lots in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 50 feet from the front lot line; (b) 50 feet from the rear lot line; and 50 feet from side lot lines.

**ARTICLE 4  
TEMPORARY STRUCTURES**

No motor vehicles or structures of a temporary character, including but not limited to, any trailer, tractor trailer, mobile home, basement, tent, shack, garage, carport, shed or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, nor shall any trailer, tractor trailer, single-wide or double-wide mobile home/manufactured home, manufactured dwelling, modular building, bus, tent, shack or type of structure, whether temporary or permanent, not specifically authorized by these covenants or any amendment thereto be placed on any lot at any time.

**ARTICLE 5  
SEWERAGE DISPOSAL**

No sewerage system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the minimum requirements of the appropriate governmental regulatory agencies having jurisdiction over the construction and operation of such system.

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**ARTICLE 6  
CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.**

All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other lots, streets and areas in the Development outside of the lot on which such items are located. All rubbish, trash, and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon. Furthermore no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any lot in the Development in such a manner as to be visible from any street or other lot or area located in the Development.

**ARTICLE 7  
NUISANCES**

It shall be the responsibility of each lot owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No lot shall be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any plant, substance, animal, thing, device or material be kept upon any lot that will be noxious, noisy, dangerous, unsightly, or unpleasant or which will emit foul or obnoxious odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Development. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the lot.

Noxious or offensive activity shall include but shall not be limited to (1) a public nuisance or nuisance per se, (2) any behavior which is inconsistent with both a reasonable pleasurable use of the properties of the owners of lots and parcels in the Development, their tenants and guests, and their reasonable expectation of vacationing, year-round living, studying, working and recreating, free of excessively noisy behavior grossly disrespecting the rights of others, (3) flashing or excessively bright lights, (4) racing vehicles (regardless of the number of wheels), (5) the operation of unlicensed motor vehicles in the Development (including specifically trail motor bikes with two, three or more wheels), (6) the operation of motor vehicles by unlicensed persons on any roads in the Development, (7) the operation of motorcycles, mopeds, motor powered bicycles, all terrain vehicles or any other noisy vehicle in the Development, (8) offensive displays of public sexuality, (9) public drunkenness, (10) significantly loud electronic music distractions or vibrations which extend beyond property lines, (11) the discharge of fireworks, (12) the assembly and disassembly of motor vehicles and other mechanical devices which might tend to create disorderly, unsightly or unkempt conditions, (13) parking or storing any junked, inoperable or unlicensed automobiles, trucks or heavy equipment on any lot or road in the Development, or (14) other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the lots in the Development.

**ARTICLE 8  
MAINTENANCE OF LOTS**

All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents, employees and contractors to do so, the cost of which shall be recoverable from and charged against the owner of the lot. If any such cost is not paid

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within 45 days after a written, itemized request for payment has been submitted to such owner by the Association, the cost may be levied by the Association as an assessment against the owner of such lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work performed.

**ARTICLE 9  
PETS**

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot at any time with the exception that a combined total of not more than three dogs, cats or other household pets may be kept on a lot, provided that they are not bred or maintained for commercial purposes, and that they are kept within a fence or restrained by a leash at all times.

Any pet shall be muzzled which consistently barks, howls or makes other disturbing noises which might be reasonably expected to disturb any other lot owner or his tenants or guests. The breach of any of these restrictions, obligations and duties shall be a noxious and offensive activity constituting a private nuisance.

**ARTICLE 10  
PROHIBITION OF SKATEBOARDING AND ROLLER SKATING**

No skateboarding or roller skating shall be allowed on any road located in the Development which is owned or maintained by Developer or by the Association.

**ARTICLE 11  
MAILBOXES**

The location and design of all mailboxes and their support posts shall conform to the guidelines established by the Architectural Control Committee.

**ARTICLE 12  
COMMON ELEMENTS, COMMON AREA OR  
COMMON AREAS AND FACILITIES**

All real property owned by the Association, including all roads located in the Development owned by the Association, and all tangible personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the owners including all tangible personal property required for the maintenance and operation of other property owned, maintained or operated by the Association, excluding lots, shall constitute common area.

**ARTICLE 13  
SIGNS**

With the exception of (1) those lots owned by Developer on which Developer may in its absolute discretion erect such signs as it may deem appropriate, and (2) one for sale or for rent sign and one sign giving the name and/or street number of the occupant, none of which shall exceed 18 inches by 24 inches in size, no signs shall be erected, placed or permitted to remain on any lot subject to this Declaration nor shall any other sign of any kind be displayed to the public view on any lot or common area without the prior written consent of the Architectural Control Committee. Notwithstanding anything hereinabove set forth to the contrary, the Architectural Control Committee shall have the right to erect reasonable and appropriate signs on the common areas.

**ARTICLE 14  
OUTDOOR LIGHTING**

All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by the Architectural Control Committee which shall have the right at any time to

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prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other lot owner and such other lot owner's use and enjoyment of his lot at any time.

**ARTICLE 15  
AERIALS AND ANTENNAS**

With the exception of satellite dishes 36 inches or less in diameter which are expressly permitted, no radio or television or other aerial, antenna, dish, tower, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained on any lot unless so erected, installed, placed, or maintained entirely within the enclosed portion of the individual residence or garage.

**ARTICLE 16  
UTILITY LINES**

No overhead utility lines, including lines for cable television, shall be permitted on any lot without the written permission of the Architectural Control Committee.

**ARTICLE 17  
ENERGY CONSERVATION EQUIPMENT**

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee.

**ARTICLE 18  
RESUBDIVISION OF LOTS**

Except as set out below, no lot or parcel, with the exception of those lots or parcels owned by Developer, shall be further divided, however, Developer shall have the absolute right, in Developer's sole discretion, to combine and divide or redivide any lots or parcels owned by Developer and to place on record plats of any such combined, divided or redivided lots or parcels and to submit or withdraw said lots or parcels from the provisions of these covenants without the consent or joinder of the owners of the other lots and parcels in the Development.

Lot owners other than Developer may not subdivide a lot into more than two lots (neither of which may be further subdivided and neither of which shall be less than five (5) acres in size) nor may the boundary lines of any lot not owned by Developer be changed except with the prior written approval of the Association.

Notwithstanding hereinabove set forth to the contrary, no lot owner other than Developer shall have the right to subdivide any lot prior to January 1, 2003, or such time as Developer shall no longer own any lot in the Development, whichever event shall occur the sooner.

**ARTICLE 19  
EASEMENTS**

The following easements over each lot or parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to Developer, Developer's successors, assigns or licensees:

A. Utilities. A fifteen (15) foot wide strip running along the inside of all lot lines, however, where lot lines run along the center of roads or along road right-of-way lines, such strips shall, at the option of Developer, run along either the inside or the outside of the road right-of-way line, but Developer, after having located said fifteen foot wide strip on a particular lot, may not thereafter relocate said strip on said lot without the express written consent of the owner of said lot. Said strips



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shall be used for the installation, maintenance and operation of utilities, including radio and television transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation.

B. Roads. An easement on, over and under all roads in the Development for the purpose of installing, maintaining and operating utilities thereon or thereunder; for the purpose of drainage control; for access to any lot or parcel; and for the purpose of maintenance of said roads.

C. Other Easements. Any other easements shown on recorded plats of portions of the Development.

D. Use of and Maintenance by Owners. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owners of such lots, but no structures, plantings or other material 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 shall be maintained by the owners of said improvements except those for which a public authority or public authority or utility company is responsible.

#### ARTICLE 20

##### ROCK CREEK ESTATES PROPERTY OWNERS ASSOCIATION, INC.

###### Section 1. Membership

Every person (or entity) who/which is a record owner of a fee or undivided fee interest in any lot that is subject to this Declaration shall be deemed to have a membership in Rock Creek Estates Property Owners Association, Inc., and be subject to the bylaws and rules and regulations of the Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold interests merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons, shall have more than one membership per lot owned. In the event that a owner of a lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in the bylaws and rules and regulations of the Association.

###### Section 2. Voting

The Association shall have two classes of membership, Class A and Class B, as follows:

(a) Class A members shall be all owners with the exception of the Class B member, if any. Class A members shall be entitled on all issues to one vote for each lot in which they hold the interest required for membership by Section 1 hereof; however, there shall be only one vote per lot regardless of the number of persons or other entities owning an interest in a particular lot.

(b) The Class B member shall be the Declarant or any successor of the Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B member shall originally be entitled to two votes for each lot in which it holds the interest required for membership by Section 1 hereof on all issues on which the Class B member is entitled to vote; this number shall be decreased by one vote for each Class A member existing at any one time. The Class B membership shall terminate and become converted to Class A membership upon the happening of the earlier of the following: (i) when the total outstanding Class A votes equal or exceed fourteen (14); (ii) January 1, 2004; or (iii) when, at its discretion, the Declarant so determines. From and after the happening of these events,

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whichever occurs sooner, the Class B member shall be deemed to be a Class A member entitled to one vote for each lot in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the bylaws of the Association for special meetings, advising the membership of the termination of Class B status.

### Section 3. Assessments

A. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners and occupants of lots and units, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors of the Association (sometimes hereinafter referred to as "the Board").

B. Creation of Assessments. Each owner of any lot, by acceptance of a deed whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made.

Each assessment, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the owner of such lot at the time of the assessment, and his or her grantee shall be jointly and severally liable for such portion of the assessment due and payable at the time of conveyance, to the extent expressly assumed; provided, however, no first mortgagee who obtains title to a lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in the manner and on dates fixed by the Board of Directors, and may include, without limitation, acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, the assessments shall be paid in monthly installments.

The Association shall upon demand at any time furnish to any owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular lot. Such certificate shall be conclusive evidence of payment of such assessment to the Association therein stated to have been paid.

C. Computation of Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. Within thirty (30) days after the preparation of an annual budget pursuant to the provisions of Subsection (a) of Section 19 of Article III of these Bylaws, and Subsection C of Section 3 of Article 20 of the Declaration, and at least thirty (30) days prior to the end of the current fiscal year, the Board of Directors shall provide to all of the lot owners a copy 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 budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. At the same time that each lot owner is provided with a copy of the budget, the lot owner shall also be notified of the amount of the assessments to be levied against each lot for the following year. The meeting to consider the ratification of the budget shall be held not less than ten (10) nor more than sixty

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(60) days after the mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the Association or any larger vote which may be specified in the Declaration rejects the budget. In the event that the proposed budget is rejected, the periodic budget last ratified by the lot owner shall be continued until such time as the lot owners ratify a subsequent budget proposed by the Board of Directors.

D. Special Assessments. In addition to the other assessments authorized in this Article, the Association may levy special assessments in any year. In those instances where the total amount of special assessments allocable to each lot does not exceed Five Hundred (\$500) Dollars in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any lot to exceed this limitation shall be effective only if approved by a vote of voting members or their alternates representing a majority of the Class A members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. The Association is specifically authorized to levy a special assessment against any member to reimburse the Association for costs incurred in bringing a member and his or her lot into compliance with the provisions of the Declaration, any amendments or supplemental declarations to the Declaration, the Articles, the Bylaws, and the Association's rules and regulations. The special assessment against a member may be levied by the vote of the Board after notice to the member and an opportunity for a hearing.

E. Lien for Assessments. Upon recording of a notice of lien in the office of the Register of Deeds for Transylvania County, North Carolina, there shall exist a perfected lien for unpaid assessments on the respective lot prior and superior to all other liens, except (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto, (b) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deed of trust) made in good faith and for value, and (c) the lien for assessments or other charges of the Association.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure,

The Association, acting on behalf of the owners, shall have the power to bid for the lot at 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: (a) no right to vote shall be exercised on its behalf (b) no assessment shall be assessed or levied on it, and (c) 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. Suit to recover a money judgment for unpaid common expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and hearing, the Board may temporarily suspend the vote of a member who is in default in payment of any assessment.

F. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessments which are not paid when due are delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount the Board may from time to time determine. The Association shall give a notice of delinquency to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as provided in this Article, shall be perfected against such owner's lot by the recording of a notice thereof in the office of the Register of Deeds for

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Transylvania County, North Carolina. Said lien and notice thereof shall include as a part thereof the late charge, interest on the principal amount due (not to exceed the maximum legal rate), and all late charges from the date first due, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid after sixty (60) days from the due date, the Association may, as determined by the Board, institute suit to collect the amounts due and to foreclose the lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents, the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as other liens for the improvement of real property may be foreclosed. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other owners.

No owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of common areas, or abandonment of any lot owned by him. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws; or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessments or special assessments which are not the subject matter of suit, in the order of their coming due, and then to any unpaid installments of the annual assessments) and/or special assessment(s) which are the subject matter of suit, in the order of their coming due.

G. Subordination of the Lien to First Deeds of Trust and First Mortgages. The sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to judicial or nonjudicial foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first mortgage of record or other purchaser of a lot obtains title pursuant to judicial or nonjudicial foreclosure of such lot, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the lots, including such acquirer, his or her successors and assigns.

H. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each lot on the first day of the month following the conveyance of such lot by the Declarant to a Class A member, or the first occupancy of such lot, whichever event shall occur the sooner, and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

I. Payment of Assessments by Declarant.  
Notwithstanding anything to the contrary herein, the

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Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

J. Limitation on Use of Assessments. No assessments or other funds collected by the Association shall be utilized for the purpose of prohibiting or financing any attempt to prohibit the Developer from following the general scheme of development set out or disclosed in the Declaration, the Bylaws, any management agreement, or any other document or exhibit for the Development, or in any public offering statement, sales contract or promotional literature for the Development.

K. Specific Assessments. The Board shall have the power specifically to assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess lots for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the lots may be specifically assessed equitably among all of the lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all lots but which do not provide an equal benefit to all, may be specifically assessed equitably among all lots according to the benefit received.

L. Exempt Property. Notwithstanding anything to the contrary herein, common elements, common area, common areas and facilities shall be exempt from payment of general assessments.

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

N. Period of Declarant Control.

As provided for in the bylaws of the Association, the directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Class B membership exists, as set forth in this Declaration, unless the Declarant shall earlier surrender this right to select directors. The directors selected by the Declarant need not be owners or residents in the Development.

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After the period of declarant appointment, all directors must be members of the Association.

**ARTICLE 21  
TERM**

All of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and be binding on all parties and all persons claiming under them in perpetuity. However, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such other provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, II, Queen of England.

**ARTICLE 22  
AMENDMENT**

This Declaration may be amended at any time and from time to time either by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of at least sixty-seven percent (67%) of the lots in the Development, and also by the Developer so long as Developer shall own any lots which are subject to this Declaration, or by the recordation in said office of a document prepared and executed by the Secretary of the Board of Directors certifying that the amendment to the declaration set out therein has been approved by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association. The signatures appearing on such documents shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a latter effective date is specified therein.

**ARTICLE 23  
ENFORCEMENT**

Developer and each person to whose benefit these restrictions inure, including Rock Creek Estates Property Owners Association, Inc., and other lot owners in the Development, may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these restrictions, either to restrain violation, to recover damages, or both.

**ARTICLE 24  
SEVERABILITY**

Invalidation of any one of these restrictions by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

**ARTICLE 25  
DELEGATION OF USE**

Any lot owner may delegate in accordance with the bylaws of the association, subject to reasonable rules, regulations and limitations as may be adopted in accordance therewith, his or her right of enjoyment to any common areas or other facilities which he is entitled to use by virtue of being a lot owner and/or a member of the Association, to the members of his or her family, tenants and social invitees and shall be deemed to have made a delegation of all such rights to the occupant of any leased building which may be situated on a lot which is subject to this Declaration.

**ARTICLE 26  
ASSIGNMENT OF DEVELOPER'S RIGHTS**

Developer's rights under these restrictions may be assigned

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at any time, in whole or in part, to any other person, persons or legal entity, including, but not limited to, Rock Creek Estates Property Owners Association, Inc.

**ARTICLE 27  
USE OF COMMON AREA**

No planting or gardening shall be done upon any portion of any area within the Development which may be designated as a common area in this Declaration or in any supplemental declaration placed on record in the office of the Register of Deeds for Transylvania County by Developer pursuant to the provisions of Article 1 of this Declaration or upon any portion of any area within the Development which may be designated as common area on any of the recorded plats referred to on Page 1 of this Declaration except for such as may be approved by the Association, nor shall any fences, hedges, or walls be erected or maintained upon any common area except in accordance with the initial construction of the improvements located thereon or as approved by the Association. Except for the right of ingress and egress, the owners of lots may use the property outside their respective lots only in accordance with such reasonable regulations as may be adopted by the Association or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this article is for the mutual benefit of all owners and is necessary for the protection of all owners.

**ARTICLE 28  
AIR CONDITIONING UNITS**

Except as may be permitted by the Association, no window air conditioning units may be installed in any house or other structure which is located on any lot which is subject to these covenants.

**ARTICLE 29  
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE  
AND SIMILAR ITEMS**

No artificial vegetation shall be permitted on any lot. Exterior sculptures, fountains, flags, and similar items must be approved in writing by the Association before being placed on any lot.

**ARTICLE 30  
PICNIC, PLAYGROUND AND PARK FACILITIES**

Any picnic, playground or other recreational areas or equipment furnished by Developer or the Association located on any common area shall be used at the risk of the user, and the Developer and the Association shall not be held liable to any person for any claim, damage or injury occurring therefrom or related to use thereof.

**ARTICLE 31  
DRAINAGE**

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves a perpetual easement across each lot for the purpose of altering drainage and water flow.

**ARTICLE 32  
IRRIGATION**

No sprinkler or irrigation systems of any type which draw upon water from wells, community water systems, creeks, streams, rivers, lakes, ponds, canals, or other waterways within the Development shall be installed, constructed, or operated within

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the Development unless prior written approval has been received from the Association.

**ARTICLE 33  
PROHIBITION OF OIL AND GAS WELLS  
AND SUBSURFACE MINING**

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any common area or upon any lot not owned by Developer, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

**ARTICLE 34  
STREAMS**

No lot owner shall pollute any stream or lake in the Development nor shall any lot owner cause or allow any stream in the Development which may flow across his lot to be diverted in part or in whole from its natural direction and course of flow. No solid or liquid waste of any kind shall be drained, dumped or disposed of in any way into open ditches or water courses.

**ARTICLE 35  
WILLFUL DESTRUCTION OF WILDLIFE**

No hunting shall be allowed in the Development. Any violation of this provision with respect to common areas shall constitute both a breach of these covenants and a trespass against property owned by the Association.

**ARTICLE 36  
STORAGE AND PARKING OF VEHICLES**

With the exception of (1) Declarant, who shall have such right at any time when Declarant is engaged in the construction or repair of any building or any other improvement on any portion of the Properties, and (2) trucks, construction vehicles and any commercial vehicles being utilized by any owner in connection with the construction or repair of any authorized improvement on such owner's lot (which has been approved pursuant to the provisions of Article 2 of this Declaration by the Architectural Control Committee) which may be parked in spaces designated by the Architectural Control Committee during such times and for such periods of time as may be designated by such committee, there shall be no outside storage or parking upon any lot or upon the common area of any automobile, commercial vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other water craft, boat trailer, or any other transportation device of any kind, except by owners within the parking spaces in the owner's garage and in two additional parking space for automobiles, pickup trucks, SUVs and such other types of vehicles, if any, which may be authorized in the rules and regulations adopted by the Association's Board of Directors pursuant to Article 20 of the Declaration (with any pickup truck to be screened in such a manner that it is not visible from any other lot or portion of the Properties) which may be used by such owner and such owner's visitors and which may also be used, on a temporary basis only, by commercial vehicles making delivery, pickup, service and other calls of a similar nature, and in accordance with rules and regulations designated and promulgated by the Board of Directors of the Association.

With the exception of one vehicle titled in the name of the owner or tenant occupying the residential unit located on a lot which is located within the garage located on such lot and is being restored by such owner or tenant, no owners or tenants



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shall repair or restore any vehicle of any kind upon any lot, unit or common area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

**ARTICLE 37  
CONSTRUCTION ROAD DAMAGE FEE**

Not later than fifteen (15) days prior to the commencement of construction of the main residence on any lot, the owner of such lot shall pay to the Association a nonrefundable construction road damage fee of \$500.00 which shall be expended by the Association for road maintenance purposes only. In addition, such lot owner shall be liable to the Association and shall indemnify the Association against any damages to roads and other portions of the common areas in excess of \$500.00 caused by such construction. In the event that a lot owner fails to pay such construction road damage fee within the time required, such fee may be levied by the Association as an assessment against the owner of such lot and be enforceable in the manner herein provided for in Article 20.

**ARTICLE 38  
GRANTEE'S ACCEPTANCE**

Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and all amendments thereto, and to the jurisdiction, rights, powers, privileges and immunities of Developer and the Association herein provided for. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Developer and the grantee or purchaser of each other lot or parcel to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration, and all amendments and supplemental declarations thereto.

IN WITNESS WHEREOF, the Developer has executed this Declaration, this 21<sup>st</sup> day of November, 2001.

SKY FALLS, LLC,  
a Florida Limited Liability Company

By: [Signature] (SEAL)  
Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, Kathy Hooper, a Notary Public of said State and County, do hereby certify that C. Guy Batzel personally appeared before me this day and acknowledged that he (or she) is a member-manager of SKY FALLS, LLC, a Florida Limited Liability Company, the limited liability company described in and which executed the foregoing instrument; that he (or she) executed said instrument in the name of said limited liability company by subscribing his (or her) name thereto; and that the instrument is the act and deed of said limited liability company.

WITNESS my hand and Notarial Seal, this the 21<sup>st</sup> day of November, 2001.

[Signature]  
Notary Public

My commission expires: 3-29-2004

STATE OF NORTH CAROLINA,  
COUNTY OF TRANSYLVANIA.

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The foregoing certificate of Kathy Hooper, Notary  
Public, is certified to be correct. This instrument was  
presented for registration and recorded in this office in Book  
77, page 704.  
This 30 day of November, 2001, at 12:20  
o'clock P.M.

Vicki R. Edwards  
Register of Deeds

By:

Cindy M. Dumbey Asst.  
Deputy Register of Deeds

G:\Norma\Ramsey\SkyFallsCovenants