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**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR ELDER COVE**

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This Instrument Prepared By and After Recording Return to:  
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**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
ELDER COVE**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **3 AMIGOS LAND COMPANY, LLC**, a Tennessee limited liability company, in its capacity as the Developer (herein defined), as well as **RICHARD BROWN**, as co co-owner with Developer of the Property (herein defined) encumbered by this Declaration.

**Background:**

A. Developer (herein defined), as owner of certain real property located in Hamilton County, Tennessee, and being more particularly described on Exhibit "A" hereto attached and herein incorporated, in the process of creating thereon a residential development known as Elder Cove.

B. Richard Brown is co-owner of the Property, and is permitting Developer to develop the Property as herein described.

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

D. It is the plan of the Developer to devote the Home Sites in the Development solely to residential purposes in the form of single family homes.

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

F. Developer has caused or shall cause to be incorporated under the laws of the State of Tennessee, Elder Cove Homeowners Association, Inc., a Tennessee corporation not for profit, for the purpose of exercising the functions listed above and those which are more fully set out hereafter.

G. Developer is now acting and will continue to act as the Board of the Association (herein defined) in accordance with the provisions of this Declaration and the provisions of the Bylaws (herein defined) until such time as the Developer transitions the administration and operation of the Board and the Association over to the Owners, as set forth in the Bylaws.

**Declaration:**

NOW, THEREFORE, Developer subjects the Property, as described in Exhibit "A" hereto attached and herein incorporated, to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as "the Covenants") hereinafter set forth; and these Covenants shall touch and concern and run with the Property and each Home Site thereof.

## **ARTICLE I** **DEFINITIONS**

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01 Association. "Association" shall mean Elder Cove Homeowners Association, Inc., a Tennessee corporation not for profit.

1.02 Board of Directors or Board. "Board of Directors" or "Board" shall mean the governing body of the Association established pursuant to the this Declaration and continuing or hereafter elected pursuant to this Declaration.

1.03 Bylaws. "Bylaws" shall mean the Bylaws of the Association, as same may be adopted or amended from time to time.

1.04 Common Expense. "Common Expense" shall mean and include (a) expenses of administration of the Association and expenses of maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Association; (c) expenses declared Common Expenses by the provisions of this Declaration; and (d) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

1.05 Common Properties. "Common Properties" shall mean those items of personal property, fixtures, or areas of land with any improvements thereon, whether owned in fee simple or by virtue of an easement, license or otherwise, which are conveyed to the Association and are intended for the common use and development of all Owners, which may include without limitation, street lights, entrance signs, a community pool, parks, a clubhouse, and other undeveloped green spaces.

1.06 Covenants. "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.07 Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions and any supplemental Declaration filed pursuant to the terms hereof.

1.08 Design Review Committee. "Design Review Committee" or "DRC" shall mean the body established by and continued pursuant to this Declaration and charged with the responsibility of reviewing and enforcing various architectural and building covenants and restrictions herein provided, and which shall be the Developer until the DRC is appointed as herein provided and as provided in the Bylaws.



1.09 Development. "Development" shall mean the whole of Elder Cove development as being developed by Developer in Hamilton County, Tennessee, including the Property described on Exhibit "A" and all other real property later subjected to this Declaration.

1.10 Developer. "Developer" shall mean 3 Amigos Land Company, LLC, a Tennessee limited liability company and its successors and assigns.

1.11 First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other Mortgages.

1.12 First Mortgagee. "First Mortgagee" shall mean a beneficiary, creditor or holder of a First Mortgage.

1.13 Home. "Home" shall mean any building situated within the Development designated and intended for use and occupancy by a single family.

1.14 Home Site or Home Sites. "Home Site" or "Home Sites" shall mean any improved or unimproved plat of land shown as a Home Site upon any recorded final subdivision map of any part of the Development, with the exception of Common Properties.

1.15 Manager. "Manager" shall mean a person or firm appointed or employed by the Board to manage the daily affairs of the Association in accordance with instructions and directions of the Board.

1.16 Member or Members. "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.

1.17 Mortgage. "Mortgage" shall mean a deed of trust, as well as a mortgage.

1.18 Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of any Mortgage.

1.19 Owner or Owners. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Home Site situated in the Development, but, notwithstanding any applicable theory of a Mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. The Developer may be an Owner.

1.20 Plat. "Plat" shall mean the subdivision plat for the Development as recorded with the Register's Office of Hamilton County, Tennessee, including any and all amendments thereto.

1.21 Property. "Property" shall mean the real property described on Exhibit A.

1.22 Record or To Record. "Record" or "To Record" shall mean to record pursuant to the laws of the State of Tennessee relating to the recordation of deeds and other instruments conveying or affecting title to real property.

1.23 Rules and Regulations. Rules and Regulations shall mean the rules and regulations passed and established by the Association from time to time in accordance with the Bylaws that affect the use of the Home Sites.

**ARTICLE II**  
**PROPERTIES, COMMON PROPERTIES AND**  
**IMPROVEMENTS THEREON; ASSOCIATION AND BOARD**

2.01 Property. The real property which is covered by presently and subject to this Declaration (including Home Sites already subdivided, real property yet to be subdivided, and Common Properties) is described on Exhibit "A".

2.02 Additions to Property. Developer may subject additional real property to this Declaration in the following manner or any other lawful manner:

A. Additions by Developer. The Developer, its successors and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration additional properties in future stages of the Development beyond those described in Exhibit "A", so long as they are contiguous with then existing portions of the Development. For purposes of this paragraph, contiguity shall not be defeated or denied where the only impediment to actual "touching" is a separation caused by a body of water, road, right-of-way or easement, and such shall be deemed contiguous. The additions authorized under this Section shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants of this Declaration to such additional property after which it shall fall within the definition of Property as herein set forth. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants contained in this Declaration as may be necessary or convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

B. Separate Associations. For any property subjected to this Declaration pursuant to the provisions of this Section, there may be established by the Developer an additional associations limited to the Owners and/or residents of such additional properties in order to promote their social welfare, including their health, safety, education, culture, comfort and convenience, to elect representatives on the Board of the Association, to receive from the Association a portion, as determined by the Board of Directors, of the annual assessments levied pursuant hereto and use such funds for its general purposes, and to make and enforce rules and regulations of supplementary covenants and restrictions, if any, applicable to such additional lands.

2.03 Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights and obligations may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Declaration.

2.04 Common Properties and Improvements Thereon; Association Easements. Each of the following are declared to be Common Properties, and Developer agrees to grant and convey all of same to the Association:

A. Community Lots; Landscaping Easements. Any lots or other portions of the Development which are now or hereafter declared on the Plat to be "community lots," "common areas," "landscape easements," or other designation of common use and benefit, including, but not limited to, landscape easements on Lots 1, 39, 40 and 41 and the sign easement on Lot 41, or other such easements for the Association on the Plat.

B. Entrances. Any entrance signs to the Development as well as any walls and plantings installed by Developer. The Association is responsible for the operation, maintenance, repair and replacement of the sign(s), wall(s) and planting(s), and circular landscape area at front entrance of Development.

C. Other. The Developer may develop additional Common Properties for the Development (including but not limited to undeveloped green spaces, playgrounds, parks, and a clubhouse as Developer deems appropriate), which Developer shall convey to the Association at such time as Developer deems appropriate, and thereupon the Association shall become responsible for the operation, maintenance, and repair thereof.

Notwithstanding anything herein to the contrary, in the event that any Owner (or members of his/her family or such Owner's guests or invitees) intentionally, negligently, or accidentally causes damage to any Common Properties, then the Board is authorized to repair the damage and obtain reimbursement for the cost of such repair from such Owner.

2.05 Association and Board. The enforcement of this Declaration, the management, maintenance and control of the Common Properties and the other business of the Development shall be conducted by the Association and the Board as provided herein and in the Bylaws. The Association shall be created and the Board shall be appointed as provided in the Bylaws.

### ARTICLE III PURPOSES, USES AND RESTRICTIONS

3.01 Common Properties. The Common Properties shall be used to benefit the Owners of Home Sites of the Development and to enhance the appearance and liveability of the Development.

3.02 Home Site Residential Use.

A. All of the Home Sites in the Development shall be used for, and be known and described as, residential Home Sites, and no structure shall be erected, altered, placed or permitted to remain on any Home Site other than one (1) detached single family dwelling.

B. "Residential," refers to a mode of occupancy, as used in contradistinction to "business" or "commerce" or "mercantile" activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Home Sites as well as to buildings constructed thereon.

C. Home Sites, or any portion thereof, shall not be used as a means of service to business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a part of the Property, unless specifically consented to by Developer or the Board in writing.

3.03 Multi-Family Residences, Business. Homes shall not be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and Homes shall not be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or commercial activity where employees, clients, patrons or customers come and go, where commercial deliveries of supplies or equipment are made, or which otherwise is inconsistent with ordinary residential uses.

3.04 Frontal Appearance. All Homes shall have conventional and acceptable frontal appearance as determined by the DRC from the main street fronting said Home Sites.

3.05 Minimum Square Footage. No dwelling house shall be erected or permitted to remain in the Development unless it has the number of square feet of enclosed living area, exclusive of open porches or screened porches, carports, garages or basements, set forth in this section. For the purposes of this section, stated square footage shall mean the minimum floor area required, and floor area shall mean the finished and heated living area contained within the residence, exclusive of open porches, garages, and steps. In the case of houses which are known as "split-levels", in order for a level to qualify as a main living area, it must be exposed for full height on three sides. In the case of any question as to whether a sufficient number of square feet of enclosed living area have been provided, the decision of the Developer or the Board shall be final. The minimum number of square feet required is 1,500. A split foyer Home will not be allowed. Lots 42, 43, 44, 45, 46 and 66 must have a minimum finished floor elevation of 677.73 mean sea level ("MSL").

3.06 Building Specifications and Requirements.

A. General Style and Materials. Front exterior wall of Homes must be faced with brick, mountain stone, vinyl, or fiber cement board with at least one-third of the front faced with brick or mountain stone. Synthetic stone is permitted. In the event that an Owner wishes to construct a "craftsman" or "arts and crafts" style house, the DRC may waive some of the aforementioned restrictions; however, more stringent exterior trim requirements will be required. For example, crown molding on frieze boards, 1" x 4" minimum window and door trim (including garage doors), trim color painted box sill band, decorative garage doors, and shutters may be required.

B. Retaining Walls; Roofs; Foundations; Etc. All retaining walls visible from the street shall be finished with brick, stone or synthetic stone. Retaining walls that are not visible from the street may be modular block. All roofing material must be architectural grade three dimensional shingles. All roofs shall have a minimum pitch of 7:12. All exposed metal roof flashing, stack vents, attic ventilators and chimney caps shall be painted to match roof color or flat back. All step flashing exposed on finished wall surface shall be either copper or be painted a color approved by the Developer or the DRC to blend with adjacent materials. All

flashing steps shall not exceed eight (8) inches horizontally or vertically. All ridge vents shall be capped over with shingles. All foundations shall be composed of brick, stone, or synthetic stone on the front and sides, except Homes on Home Sites 42 - 66 shall have all four sides of the foundation covered with brick, stone, or synthetic stone. No exposed concrete block shall be allowed. The rear foundation of Homes that are not covered with brick, stone, or synthetic stone shall have stucco applied.

C. Landscape Requirements. For each Home built on any Home Site, the front and side yards must be sodded with fescue. Owners must keep reasonable amount of plants and landscaping that would be appropriate for similar neighborhoods to the Development.

D. Approved Builders. Only contractors or builders which have been approved by Developer ("Approved Builders") may construct homes within the Development, and Developer shall maintain a list of Approved Builders. Any contractor or builder requesting to be identified as an Approved Builder must submit information and materials as reasonably required by Developer, including but not limited to: (i) copies of the builder's state contractors license and all required business licenses and approvals from state and local governmental agencies; (ii) addresses for and pictures of the last five (5) residences constructed by the builder; (iii) a written statement of the builder's (and its principal's) experience in the residential construction industry; (iv) written evidence from the builder's lender evidencing that the builder has a current and available construction line of credit in an amount not less than \$250,000.00; and (v) a list of not less than five (5) material suppliers in the Chattanooga/Hamilton County area which have provided materials to at least two (2) of the last five (5) houses constructed by the builder. The foregoing list is not intended to be an exhaustive list of the criteria to be reviewed by Developer in order to determine whether a builder will be identified as an Approved Builder for the Development, and Developer reserves the right to require additional documentation or information. Developer reserves the right to review material from any available source to determine the builder's reputation, financial ability, and competency for construction of single-family residents. Developer reserves the right to attribute greater weight to one or more criteria in determining whether a builder will be identified as an Approved Builder. Developer reserves the right to make subjective assessments about the quality and craftsmanship of any builder's existing body of work in determining whether such party will be identified as an Approved Builder. The terms and provisions of this section are solely for the benefit of Developer, and no party (including any Owner) may rely on these criteria or on Developer's approval of any contractor or builder as being the representation or warranty by Developer that a particular contractor or builder has the qualifications or competency to construct single-family residences.

3.07 Completion of Construction. The exterior of all Homes must be completed within six (6) months after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. All construction of the Home and other related construction on a Home Site shall be completed within twelve (12) months from the date of the pouring of the footings for said Home.

3.08 Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Home Sites within the Development, each Owner and Developer (with respect to improved Property owned by Developer) shall have the

affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire, or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of these Covenants would be best effected by allowing such a variation. Variations to this section are to be strictly construed and the allowance of a variance by the Developer or the Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners.

3.09 Zoning. Whether expressly stated so or not in any deed conveying any one or more of said Home Sites, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect thereon.

3.10 Set-backs. Set-backs in the Development shall be as specified in the City of Chattanooga, zoning laws and regulations applicable as of the date of Recording this Declaration. The City of Chattanooga minimum set-back requirements are: 25' front, 25' back, and 10' side. The Owner and Owner's homebuilder shall assure that the structure complies with the current City requirements.

3.11 Exterior Home Care. For the benefit of the Development, the exterior of all Homes must be properly kept and maintained in a condition of appearance and repair that is appropriate for an up-scale neighborhood.

3.12 Lawn Care. For the benefit of the Development, Owners are required to keep their lawns and landscaping healthy and manicured, as appropriate for an up-scale neighborhood, including but not limited to keeping shrubs appropriately trimmed and lawns appropriately mowed and free of weeds and debris.

3.13 Unightly Conditions. All of the Home Sites in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). Tree limbs, rocks and other debris must be kept out of the streets. In the event that an Owner of a Home Site in the Development fails, of his own volition, to maintain his Home Site or Home in a neat and orderly condition (including but not limited to a violation of Section 3.11 or Section 3.12), Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Home Site without liability and proceed to put said Home Site into an orderly condition, billing the cost of such work to the Owner.

3.14 Offensive Activity. No noxious or offensive activity (be it offensive as to sight, sound, smell, or otherwise) shall be carried on upon any Home Site, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development or which may disrupt the peaceful and quiet enjoyment of any other Owner.

3.15 Permitted Entrances. In order to implement and effect insect, reptile and woods fire control, and to maintain unightly Home Sites, the Developer or the Board, or their respective agents, may enter upon any Home Site on which a dwelling residence has not been constructed and upon which no landscaping plan has been implemented, such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing,

clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Developer or the Board detracts from the overall beauty, setting and safety of the Development or Home Sites. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. The Developer and its agents or the Board and its agents may likewise enter upon a Home Site to remove any trash which has collected on said Home Site without such entrance and removal being deemed a trespass. The provisions of this section shall not be construed as an obligation on the part of the Developer and its agents or the Board and its agents to mow, clear, cut or prune any Home Sites or to provide garbage or trash removal services.

3.16 Chimneys. The Developer or the DRC shall review and approve the location and material of all chimneys or other fireplace structures on the exterior of any Home. Cantilevered chimneys will not be allowed. A foundation must be constructed under all chimneys.

3.17 Mailboxes. All Homes will be required to have a standard mailbox selected by Developer. Home Sites 42-66 will be required to have a lighted mailbox, and shall wire the mailbox during construction of a Home, maintain the light in proper working order, and shall be responsible for the power usage of the light fixture.

3.18 Windows. All windows shall be wood, clad wood, or vinyl double or single hung windows. Grilles or grilles between the glass are recommended. In circumstances where it is architecturally appropriate, casement windows will be allowed. Angle bay windows and box bay windows must be continuous to the ground and constructed of wood or composite material to emulate wood. The bay window roof may be either metal or match the color of the roof of the Home.

3.19 Exterior Lighting. All flood lighting, other exterior lighting, or other decorative lighting on any Home or Home Site must obtain the prior approval of the Board or the DRC and must be pointed downward so as not to disturb other Owners. Owners also must obtain Board or DRC approval when replacing any exterior lighting fixtures if the replacement fixtures are different from those originally provided with the Home by the Developer.

3.20 Wells. No private wells may be drilled or maintained on any residential Home Site without the prior written consent of the Developer or the Board.

3.21 Antennas. Television antennae, dishes, radio receivers or senders or other similar devices shall not be attached to or installed on the exterior portion of any Home or other structure on any Home Site within the Development, except that eighteen inch (18") satellite dishes shall be permitted provided that the location of such satellite dishes receives the prior written consent of the Board or the DRC, which consent shall be granted only if the selected location minimizes the visibility and obtrusiveness of such satellite dish to both the street and other Homes; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Home Site which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. Notwithstanding the foregoing, the provisions of this section shall not prohibit the Developer from installing equipment necessary for a master antenna system, security system, cable television, mobile radio system or other similar systems within the Development.

3.22 Flag Poles. No flag poles shall be situated on any Home Site except for such flag poles as are displayed from the exterior surface of a Home and are not more than five (5) feet in length. The exact location of any flagpole must be approved by the DRC.

3.23 Laundry. No Owner, guest, or tenant, shall hang laundry from any area within or outside a Home if such laundry is within the public view, or hang laundry in full public view to dry, such as on balcony or terrace railings. This provision may, however, be temporarily waived by the Developer or the Board during a period of severe energy shortages or other conditions where enforcement of this section would create a hardship.

3.24 Signs. No sign of any kind shall be displayed from any Home Site or from any Common Properties, with the exception of a "For Sale" sign to facilitate the sale of an Owner's personal residence, which shall only be placed in the front yard of the selling Owner. The required specifications for such "For Sale" sign shall be 18" high by 24" long. If a Home is to be sold personally by the Owner, the "For Sale" sign then shall say "For Sale By Owner" and if desired may also show the Owner's phone number. Garage or yard sale signs may be displayed on the day of sale only.

3.25 Heating and Air Units and Garbage Receptacles, Tanks. Heating or air conditioning units must be located on sides or rear of Home and must be properly screened with evergreen shrubs or fencing approved by the DRC. All garbage and trash containers must be placed in the garage or in enclosed areas of the rear or side yard which must be approved by the DRC as to materials, dimensions, and location. Window and/or wall air conditioning units are prohibited. Propane tanks are permitted, provided they are buried in the ground.

3.26 Doors, Screen Porches, Patios, Decks, and Repainting of Homes. Bright finished or bright plated metal exterior doors, stained glass doors, two story glass entries, louvers are prohibited. Storm or screen doors shall not be permitted on the front of any Home, unless sliding screens are used on the front door. All porches shall be supported by a masonry foundation. Round or square columns are permitted on porches, provided, careful attention is given to the correct proportions of the width and height to match the style of the Home. Two story porches are not permitted; provided, however, double stacked porches are permitted for certain styles as approved by the Developer or the DRC. For all decks, support posts shall be a minimum of six (6") inches by six (6") inches for wood or a minimum of twenty (20") inches by twenty (20") inches for stucco or brick columns. For all decks, exposed metal posts shall not be permitted; provided, however, metal posts may be used on a Home Site when the posts are enclosed with wood, stone or brick columns and satisfy the aforementioned minimum requirements. When repainting a house, all portions of every Home must be repainted the original colors unless the Owner obtains approval from the DRC for alternative colors (which must be in keeping with the existing colors of the other Homes in the Development), which colors shall thereafter be deemed the original colors for purposes of future repainting.

3.27 Shutters. Shutters are not required, but are recommended. All shutters shall be ½ the width of the adjacent window and of the same height. Shutter styles shall consist of panel, louvered, batten or any other style that may be approved by Developer or the DRC.



3.28 Dormers. All dormers shall be appropriately detailed and proportioned to match the historic precedent for the particular style of the Home. For all dormers, the overhangs on the sides and front shall be minimal and equal on all three sides.

3.29 Cornice and Trim. All cornice proportions and style shall be in keeping with the style of the Home. Half round or ogee gutters are permitted, provided all downspouts are round.

3.30 Sidewalks. Each Owner of Home Sites 42-66 shall construct and maintain a sidewalk along the street frontage of such Owner's Home Site in accordance with all applicable requirements and specifications of the City of Chattanooga including a greenbelt area between sidewalk and street. The sidewalk must be constructed as part of constructing the Home. The greenbelt area shall be two feet in width, as measured from the back of the curb, and shall be sodded and maintained by the Owner. The sidewalk shall be four feet in width, four inches in thickness, and constructed with 4,000 psi class "A" city mix concrete. No trees or plantings in greenbelt area will be permitted, except limited flowers around mailbox.

3.31 Fences. All fences constructed on any Home Site, including those to encompass a swimming pool, shall be constructed of wood or wrought iron or wrought iron style. Fences may not exceed five feet in height. Fences are prohibited on Home Sites 42-66 except wrought iron or wrought iron style and the design of all such fences shall be subject to the approval of Developer or the DRC. Chain link fences, front yard fences, dog runs and barbed wire fences are prohibited.

3.32 Driveways. Each residence constructed upon a Home Site must be served by a driveway constructed of hard surface materials such as concrete, brick, exposed aggregate, or pre-cast pavers. All other hard surface materials must be approved by the Developer or the DRC. Asphalt driveways will not be allowed. Where a Home Site borders on more than one street, the Home Site shall be entered from the secondary street. It shall be obligatory upon all owners of Home Sites in this subdivision to construct or place any driveways, culverts, or other structures, or gradings, which are within the limits of any dedicated roadways, in strict accordance with the specifications therefor, as set forth on the recorded subdivision plat, in order that the roads or streets, which may be affected by such placement or construction, may not be disqualified for acceptance into the road system of Chattanooga, Tennessee

3.33 Curbs. No permanent cuts may be made in the curbs for any purpose. Owners shall repair damaged curb cuts in front of their respective Home Sites, except that if another, identifiable Owner causes damage to a curb cut, then such Owner shall be responsible for repairing the damage. Planting bed curbs of extruded concrete must be approved by the Developer or the DRC.

3.34 Garages. All garage doors shall be panel wood, hard board, or metal panel. All garages may have one or two separate garage doors.

3.35 Vehicle Parking. Vehicles owned by Owners shall be parked only in the Owner's garage or driveway. Vehicles owned by Owners must be parked in the Owner's garage from sunset to sunrise, unless the Owner has more than two (2) vehicles, in which case all additional vehicles shall be parked in the Owner's driveway. The maximum number of vehicles which an

Owner may park at a Home Site shall be four (4). In order to protect the aesthetic character of the Development, vehicles which do not have a visually attractive exterior, are commercial in nature, or otherwise would detract from the overall character of the neighborhood, as determined by the Board in its discretion, must be parked inside garages at all times. Tractor trucks may not be parked in the Development. No inoperable vehicle, tractor or other machinery shall be stored on any Home Site at any time, even if not visible from the street. No campers, trailers, or boats shall be parked in the driveways or yards.

No house trailer or other such vehicle shall be stored at a Home Site or otherwise in the Development. There shall be no overnight parking of vehicles on the streets of the Development (including curbside parking areas) except in the case of overnight houseguests, and then only for periods of not more than one (1) week and only if there is no parking room in the driveway of the Owner. Owners may not construct or have constructed parking pads or expansions to existing driveways.

3.36 Detached Buildings. Detached garages, outbuildings or servants quarters shall not be placed on any Home Site without the prior written consent of Developer or the DRC. A bathhouse (which shall not include sleeping quarters) built expressly in conjunction with a private swimming pool shall not be included in this prohibition. Thus a bathhouse will not have to be connected or attached to the dwelling but the plans and specifications, including the exterior material, must be approved by Developer or the DRC. However, the square footage of such a structure shall not be included in complying with the minimum square footage requirements as set forth herein.

3.37 Temporary Structures. No part of any Home Site shall be used for residential purposes until a completed Home, conforming fully to the provisions of the Covenants contained in this Declaration, shall have been erected thereon. The intent of this section is to prevent the use thereon of a garage, incomplete structure, trailer, barn, tent, outbuilding or other structure as temporary living quarters before or pending the erection of a permanent building. No structure of temporary character, including trailers and similar structures, shall be erected or permitted to remain on any Home Site except during the period of construction.

3.38 Animals; Dog Houses. No sheep, swine, goats, horses, cattle, burros, fowls (excluding household birds such as parrots and parakeets) or any like animals shall be permitted to be kept or to remain on any of the Home Sites, or to roam at large on any of the streets or way in or bordering the same. There shall be no kennels permitted on any Home Site for the commercial breeding or boarding of domestic pets. Pet owners shall not allow pets to roam unattended, and pets shall be leashed if off their master's Home Site. The pet owners shall also muzzle any pet that consistently barks. If the barking persists, the pet owner shall have the pet removed from the Development. If the pet owner refuses, it shall be deemed an "offensive activity" under Section 3.14. Dog houses are prohibited unless kept inside a garage or kept in an unobtrusive location on the rear of a Home Site with proper screening, and the dog house's location and the associated screening must be approved by the Developer or the DRC.

3.39 Tree Removal; Tree Planting. No trees larger than 2-inch CAL or shrubs taller than six (6) feet in height shall be removed prior to obtaining approval of the DRC. The majority of the trees may not be removed from any Home Site except in the area of the Home Site upon

which the house and driveway are to be constructed. Except for view enhancement, excessive removal of trees will be deemed to be a nuisance to the adjoining neighbors and will mar the beauty of the Development. Notwithstanding the foregoing, Developer may remove any and all trees and shrubs as it deems necessary.

3.40  Pools, Decorative Items, Play Equipment  The location and design of all in-ground pools and hot tubs, and any decks or patios related to the same, must be approved by the DRC, which approval shall be conditioned upon approval of a proper landscaping and screening plan submitted to the DRC. Above ground pools are prohibited in the Development. Construction or location of any decorative items such as statues, ornaments, and fountains must be requested in writing and approved by the DRC. Playsets and swingsets should be located in back yards.

3.41  Sound Devices . No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon Home Sites within the Development. The playing of loud music from any balconies or porches shall be offensive, obnoxious activity constituting a nuisance.

3.42  Rearrangement of Home Site Lines .

A. Not more than one dwelling house shall be erected or maintained on any one Home Site. The division or rearrangement of boundary lines of subdivision Home Sites by any person or entity other than the Developer shall not increase the total number of Home Sites in the Development, and the same shall conform to zoning laws and subdivision regulations in effect thereon. In the event of a combination of Home Sites or other abandonment of lot lines, the assessments allocated and payable by the Owner of the combined lots shall be based upon the original number of Home Sites platted as subdivided lots.

B. Notwithstanding any other provisions herein to the contrary, the Developer reserves unto itself, its successors and assigns, the following rights, privileges and powers: to subdivide Home Sites, to combine Home Sites or parts of Home Sites, to rearrange boundaries of Home Sites, to cause any part of any Home Site to become a part of the Common Properties, to cause portions of Common Property to become a part of any of the Home Sites bordering them, and to cause any Home Site it owns to be dedicated as a right of way to any adjoining parcel of land.

3.43  Application . It is expressly stipulated that these Covenants set forth in this Article apply solely to the herein listed Home Sites in the Development, and are not intended to apply to any other tracts or parcels of land in the area or vicinity, owned by the Developer. Specifically, the Developer, its successors or assigns, reserve the right to use or convey such other tracts and parcels with different restrictions or unrestricted.

**ARTICLE IV**  
**ARCHITECTURAL CONTROL**

4.01 Architectural and Design Review

A. In order to preserve, to the extent possible, the natural beauty of the Development and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the Development, to avoid harsh contrasts in the landscape and architectural theme of the Development, and to promote and protect the value of the Home Sites, the Developer and the Board shall create a Design Review Committee (the "DRC") which will be charged with reviewing compliance with the architectural, building, and landscaping Covenants herein specified, and developing a body of rules and regulations pertaining to such review, which shall be available for all Owners or prospective Owners of Home Sites. The primary goal of the DRC shall be to review the applications, plans, specifications, materials, and samples submitted for construction of Homes or other structures located in the Development and any additions, alterations, or improvements thereto, as well as for landscaping plans. The DRC may make periodic inspections during any such construction to review for compliance with the Covenants herein contained. In the event of any violation of covenants herein contained which is not promptly cured upon notice from the DRC of such violation, the DRC shall notify the Developer or the Board, who then shall proceed to enforce compliance with such Covenants.

B. No action, improvement, or alteration which first requires DRC (or Board) approval hereunder shall be taken or made until the Owner shall have submitted to the Board or DRC (as appropriate) for approval at least thirty (30) days prior to the proposed date of construction: (i) any Architectural Review Submittal Form, as may be required by the Board or the DRC, (ii) the proposed building plans and specifications (including height, and composition of roof, siding, or other exterior materials and finish), and (iii) Home Site plan (showing the proposed location of such building or structure, drives and parking areas), drainage plan, landscape plan or construction schedule, as the case may be. The Developer or the DRC shall give written approval or disapproval of the plans within 30 days of submission. However, if written approval or disapproval is not given within 30 days of submission, the plans shall be deemed to have been approved. Developer or the DRC may, by written notice given from time to time to the Owners of Home Sites, exempt certain matters of a non-essential nature (but not including the reduction of the minimum square footage requirements as set forth herein), from the review requirements subject to the terms and conditions and for the time periods established by Developer or the DRC. In the event of the completion of any Home on any Home Site, without any proceedings having been instituted in the courts of Hamilton County, Tennessee to enjoin the construction thereof or without a complaint or grievance having been filed with the DRC or the Board, the said Home shall be conclusively presumed to have had such approval.

C. The architectural and design review shall be directed toward preventing excessive or unsightly grading, indiscriminate clearing of property, removal of trees and vegetation which could cause disruption of natural water courses, insuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the surrounding property and improvements thereon, and insuring that plans for landscaping provide visually pleasing settings for structures on the same Home Site and on adjoining or nearby Home Sites.

D. The DRC shall consist of the Developer (or its appointees) until a Board consisting entirely of persons other than Developer (or its appointees) has been elected to succeed the Developer at a special meeting of the Association called for such purpose as provided in the Bylaws. Within sixty (60) days of the election of a Board to succeed Developer as above described, such Board shall appoint three (3) persons to make up the DRC. The President of the Association shall always be a member of the DRC. The Board shall promptly fill all vacancies to the DRC. The DRC may adopt rules and bylaws for its own procedural operation as are necessary and convenient, provided however, that such rules and bylaws must be approved by the Board.

4.02 Approval Standards. Approval of any proposed building plan, location, specifications or construction schedule submitted under Section 4.01 will be withheld unless such plans, location and specifications comply with the provisions of Article IV of this Declaration and unless such construction schedule complies with the provisions herein provided. Approval of the plans and specifications by the DRC is for the mutual benefit of all Owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint, and the DRC shall incur no liability for approving plans and specifications that are not technically sound or correct from an engineering or architectural viewpoint. Each Owner shall be individually responsible for the technical aspect of the plans and specifications. Said approval as required of the DRC, herein, as well as all other approvals required of the DRC as stipulated throughout this Declaration shall be in the DRC's reasonable discretion.

4.03 Appeals. Any Owner may appeal any decision of the DRC to the Board by written request. The Board shall hear such appeal within twenty-one (21) days of such request and shall decide such appeal within twenty-one (21) days of such hearing, said decision being made pursuant to the provisions contained within the Bylaws. The hearing of any such appeal need not occur at a formally called or convened meeting of the Board.

4.04 Variances. All requests for variances to the Covenants herein contained shall be made in writing to the DRC. The DRC shall, within twenty-one (21) days of such request, make a recommendation to the Board either to approve or to disapprove such variance request. The Board shall issue a final decision on such request for variance within twenty-one (21) days of the DRC's recommendation.

## ARTICLE V ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed conveying a Home Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of the Covenants contained in this Declaration and pay to the Association annual assessments and special assessments for the purposes set forth in Section 5.02 and Section 5.04 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Home Site shall be personally liable, such liability to be joint and several if there are two or more Owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are

Owners of a Home Site. The annual and special assessments, together with such interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing lien on the Home Site and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Home Sites are combined into a single Home Site by an Owner, the assessments will continue to be based upon the number of original Home Sites purchased.

5.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties or the Development generally. The special assessments shall be used for the purposes set forth in Section 5.04 of this Article.

5.03 Determining the Amount of Annual Assessment. Until the election of a Board to succeed Developer consisting entirely of persons other than Developer (or its appointees) as described in the Bylaws, the amount of the annual assessments shall be set and may be adjusted by the Developer as it deems appropriate relative to the budgetary needs of the Association. Annual assessments may be adjusted more frequently than annually if necessary (whether by the Developer or by the Board). Thereafter, the annual budget for the Association and the amount of the annual assessments shall be set by the Board.

5.04 Special Assessments for Improvements and Additions. In addition to the annual assessments, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Properties, including the necessary fixtures and personal property related thereto and capital improvements or additions to the Common Properties. Notwithstanding the foregoing the Board shall not authorize structural alterations or capital additions to the Common Properties which require an expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) without approval of a majority vote of those Members who are present or represented by proxy at any annual or special meeting of the Association; or in excess of Two Hundred Thousand Dollars (\$200,000.00) without approval of two-thirds of the vote of those Members who are present or represented by proxy at any annual or special meeting of the Association; provided, however, that the Board shall have the power to make any repairs to and to undertake maintenance of an urgent nature on the Common Properties as may be necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval.

5.05 Property Subject to Assessment. Only Home Sites subject to this Declaration shall be subject to these assessments. Projected locations for future platted Home Sites shown on the Master Plat will not be subject to assessment, unless and until such locations are subdivided into Home Sites, filed of record, and subjected to this Declaration.

5.06 Exempt Property. No Owner may exempt himself from liability for any assessment levied against his Home Site by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Home Site or in any other way.

The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) All Home Sites owned by the Developer (Home Sites owned by Approved Builders will be subject to the assessments).
- (b) The grantee of a utility easement.
- (c) All properties dedicated and accepted by a local public authority and devoted to public use.
- (d) All Common Properties.
- (e) All Properties exempted from taxation by the laws of the State of Tennessee, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the Owners.

5.07 Date of Commencement of Annual Assessments.

A. Imposition of the annual assessments provided for herein shall commence with the first sale of the first Home Site. Each Owner shall pay an initial assessment of \$500.00 upon closing the purchase of any Home Site, and that shall satisfy such Owner's assessment obligations through December 31<sup>st</sup> of the calendar year of such closing, regardless of when closing occurs. Thereafter, Owners shall pay the annual assessments, which are estimated to be \$250.00 for the first full calendar year.

B. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

C. The due date of any special assessment under Section 5.04 hereof shall be fixed in the resolution authorizing such assessment.

5.08 Lien. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Home Site and the improvements thereon as security for the payment of all assessments against said Home Site, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Home Site. The lien shall become effective on a Home Site immediately upon the closing of that Home Site. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Failure by the Owner or Owners to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association. In addition to the foregoing, the Association may record notices of liens separate and apart from this Declaration as further evidence of any amounts due and payable by an Owner hereunder.

5.09 Estoppel Certificates. Whenever any Home Site may be sold or mortgaged by the Owner thereof, the Association, upon written request of the Owner of such Home Site, shall furnish to the proposed purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Home Site; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Home Site and the Association under this Declaration. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event that a Home Site is to be sold or mortgaged at the time when payment of any assessment against said Home Site shall be in default, then the proceeds of such purchase or mortgage shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before payment of proceeds of purchase or mortgage to the Owner of any Home Site who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Home Site, the grantee(s) shall be jointly and severally liable with the grantor(s) for all unpaid assessments against the grantor(s) and the Home Site made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee(s) to recover from the grantor(s) the amounts paid by the grantee(s) therefor.

#### ARTICLE VI MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING THERETO

6.01 Register of Owners and Mortgages. The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Home Site to a third party, the purchaser or transferee shall notify the Board in writing of his name and his interest in such Home Site. Any Mortgagee may, if it so desires, notify the Association of the existence of any Mortgage held by it, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

6.02 Subordination of Lien to First Mortgages. The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Home Site if, and only if, all assessments, whether annual or special, with respect to such Home Site having a due date on or prior to the date such Mortgage is recorded have been paid. In the event any such First Mortgagee (i.e., one who records a Mortgage on a Home Site for which all assessments have been paid prior to Recording) shall acquire title to any Home Site by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments, whether annual or special, as shall accrue and become due and payable for said Home Site subsequent to date of acquisition of such title. In the event of the acquisition of title to a Home Site by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such



delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

6.03 Amendments. No Amendment to this Article VI shall adversely affect the rights of any First Mortgagee whose Mortgage was recorded prior to the Amendment unless such Amendment is approved by the affirmative vote of three-fourths (3/4ths) of the Mortgagees of which the Association has been notified in accordance with Section 6.01; provided that Mortgagees who fail to vote within the period of time set by the Board, which shall be at least ten (10) days and no more than sixty (60) days, shall be deemed to have approved the amendment.

6.04 Extension of Benefits to Other Mortgagees. By subordination agreement executed by a majority of the Board, the benefits of Sections 6.02 and 6.03 of this Article may be extended to Mortgagees not otherwise entitled thereto.

6.05 Mortgagees' Approval of Certain Actions. Unless at least three-fourths (3/4ths) of the First Mortgagees of which the Association has been notified in accordance with Section 6.01 have given their prior written approval, subject to and within the time periods and deemed approval set out in Section 6.03, the Association shall not be entitled to:

A. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned, directly or indirectly, by the Association;

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Home Site Owner;

C. By act or omission change, waive or abandon material regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the Homes, the maintenance of the Common Properties or the upkeep thereof; or

D. Use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such Common Properties.

6.06 Notice of Default to First Mortgagees. If requested by a First Mortgagee, the Association shall notify each First Mortgagee of any default by the Mortgagor of a Home Site in the performance of said Mortgagor's obligations under this Declaration which is not cured within sixty (60) days of the date of such default.

6.07 Examination of Books. Each Owner and each Mortgagee of a Home Site shall be permitted to examine the books and records of the Board and Association during regular business hours.

## ARTICLE VII OWNER COMPLAINTS

7.01 Scope. The procedures set forth below for Owner complaints shall apply to all complaints by Owners against the Board or the Association for decisions, actions, or omissions either regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Board or the Association.

7.02 Grievance Committee. The Board may establish a Grievance Committee (referred to in this Article as "the Committee") to receive and consider all Owner complaints (except for such complaints as should be addressed to the DRC). The Committee shall be composed of the President of the Association or his appointee and two other Owners appointed by and serving at the pleasure of the Board of Directors, but who shall not also be members of the Board.

7.03 Form of Complaint. All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the President of the Association and sent in the manner provided in Section 10.03 for sending notices.

7.04 Consideration by the Committee. Within twenty (20) days of receipt of a complaint, the Committee shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefor. Within ten (10) days after notice of the decision, the complainant may proceed under Section 7.05; but if complainant does not, the decision shall be final and binding upon the complainant.

7.05 Hearing Before the Committee. Within ten (10) days after notice of the decision of the Committee, the complainant may, in a writing addressed to the President of the Association, request a hearing before the Committee. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The complainant, at his expense, and the Committee, at the expense of the Association, shall be entitled to legal representation at such hearing. The hearing shall be conducted before at least two members of the Committee and may be adjourned from time to time as the Committee in its discretion deems necessary or advisable. The Committee shall render its decision and notify the complainant in writing of its decision and the reasons therefore within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Section 7.07, the decision shall be final and binding upon the complainant.

7.06 Questions of Law. Legal counsel for the Association shall decide all issues of law arising out of the complaint, and such decisions shall be binding on the complainant.

7.07 Questions of Fact; Arbitration. If there shall be any dispute as to any material fact, either the Committee or the complainant may, at their option, within ten (10) days after notice of the decision as provided for in Section 7.05, submit the same to arbitration in accordance with the provisions for arbitration adopted by the American Arbitration Association by filing with the other party a notice of its intention to do so. The decision of the arbitrator shall be final and binding upon the complainant and the Committee. In the event of arbitration, each party shall bear one-half of the expense thereof.

7.08 DRC. With regard to Owner complaints about decisions, actions, or omissions of the DRC, Owners first must appeal to the Board as provided in this Declaration. Upon an adverse decision by the Board as to such appeal, Owners then shall proceed according to the process established in this Article.

7.09 First Remedy. The process for Owner complaints provided herein shall be exhausted prior to resorting to any other remedy, and no Owner shall bring suit against the Committee, the Association, or the Board without first complying with the procedures for complaints herein established.

7.10 Expenses. All expenses incurred by complainant in the course of the procedures set forth in this Article, including, without limitation, attorneys' fees and arbitration expenses and the like, shall be the sole responsibility of complainant. All expenses of the Board or Committee incident to such complaint shall be deemed a Common Expense of the Association.

## ARTICLE VIII REMEDIES ON DEFAULT

8.01 Scope. Each Owner shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, servants, guests, occupants, invitees or agents.

8.02 Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Developer, the Association, or any Owner to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together with interest as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof or any other remedies available at law or in equity, and which relief may be sought by the Association or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws, by an aggrieved Owner.

### 8.03 Fines; Restriction from Common Properties.

A. In addition to all other rights, remedies, and privileges granted to the Association herein for the enforcement of this Declaration, the Association hereby authorizes the Board to assess, impose and collect monetary fines against Owners who violate or fail to comply with their duties under this Declaration, the Bylaws, or the Rules and Regulations of the Association, as same may be amended from time to time. Such fines shall not exceed the sum of the amount of the annual assessment then in effect for the Development, per instance of violation or noncompliance. Prior to assessing any fine, the Board shall give to the violating Owner written notice of the violation or noncompliance and shall allow the Owner fifteen (15) days from the date the Board sends such notice to cure the violation or noncompliance, or if a cure cannot be reasonably completed within such fifteen (15) days, then the Owner will be allowed such additional time as is reasonably necessary to complete cure so long as the Owner commences cure within the initial fifteen (15) day period and diligently pursues cure to its end. Notwithstanding the foregoing, the Board is not required to provide either written notice of or an opportunity to cure a violation or noncompliance (and the Board may immediately impose and assess a fine) if within one year of receiving written notice of a violation or noncompliance, an Owner commits a second violation or noncompliance that is similar in kind. All fines imposed and assessed by the Board shall be deemed part of an Owner's assessment against his/her Home

Site, shall benefit from the provisions herein pertaining to assessments, and until paid shall be and become a lien against such Home Site, enforceable in accordance with the provisions of this Declaration and the Bylaws pertaining to assessments, including but not limited to the right to record a notice of lien encumbering the Home Site and to collect the amounts due by enforcing the lien through foreclosure or otherwise. The Board shall be entitled to use its business judgment in determining which instances of violation or noncompliance merit assessment of a fine, and the Board's failure to assess a fine in any particular instance of violation or noncompliance shall not undermine the general enforceability of this provision and shall not constitute a waiver of any future or other instances of violation of or noncompliance with this Declaration.

B. In addition to all other rights and privileges granted to the Association herein for enforcement of this Declaration, the Board is authorized to impose against Owners who violate or fail to comply with their duties under this Declaration restrictions and/or prohibitions against use of any Common Properties in the Development (other than streets and sidewalks) or any other amenities associated with the Development, until such violation or failure is cured.

8.04 Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall, in addition to the relief provided for in this Article, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the defaulting or allegedly defaulting Owner be entitled to such attorneys' fees.

8.05 Waiver.

A. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

B. In the event of a violation of set-back lines, side, rear or front, which may be minor in character, a waiver thereof may be made by the Developer, its successors or assigns or the Board. Further, the Developer or the Board may grant variances of the restrictions set forth in these Covenants (but not including the reduction of the minimum square footage requirements as set forth herein), if such variances do not, in the reasonable discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby.

8.06 Election of Remedies. All rights, remedies and privileges granted to the Association or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

**ARTICLE IX**  
**EMINENT DOMAIN**

9.01 Board's Authority. If all or any part of the Common Properties (excluding personalty) is taken or threatened to be taken by Eminent Domain, the Board is authorized and directed to proceed as follows:

A. To obtain and pay for such assistance from such attorneys, appraisers, architects, engineers, expert witnesses and other persons, as the Board in its discretion deems necessary or advisable, to aid and advise it in all matters relating to such taking and its effect, including, but not limited to (i) determining whether or not to resist such proceedings or convey in lieu thereof, (ii) defending or instituting any necessary proceedings and appeals, (iii) making any settlements with respect to such taking or attempted taking and (iv) deciding if, how and when to restore the Common Properties.

B. To negotiate with respect to any such taking, to grant permits, licenses and releases and to convey all or any portion of the Common Properties and to defend or institute, and appeal from, all proceedings as it may deem necessary or advisable in connection with the same.

C. To have and exercise all such powers with respect to such taking or proposed taking and such restoration as those vested in boards of directors of corporations with respect to corporate property, including but not limited to, purchasing, improving, demolishing and selling real estate.

9.02 Reimbursement of Expenses. The Board shall be reimbursed for all attorneys', engineers', architects' and appraisers' fees, and other costs and expenses paid or incurred by it in preparation for, and in connection with, or as a result of, any such taking out of the compensation, if any. To the extent that the expenses exceed the compensation received, such expenses shall be deemed a Common Expense.

**ARTICLE X**  
**GENERAL PROVISIONS**

10.01 Duration. The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developer or Owner of any Home Site subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

10.02 Amendments. This Declaration may be amended, modified or revoked in any respect from time to time by the Developer prior to the date that a Board consisting entirely of persons other than the Developer (or its appointees) is elected in accordance herewith and with the Bylaws. Thereafter, this Declaration may be amended in accordance with the following procedure:

A. An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if considered at an annual meeting, notice of consideration of the amendment and a general description of the terms of such

amendment shall be included in the notice of the annual meeting provided for in the Bylaws, and, if considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws.

B. At any such meeting, the amendment must be approved by an affirmative two thirds (2/3rds) vote of those Owners represented in person or by proxy at the meeting.

C. An amendment adopted under Paragraph B of this Section shall become effective upon its Recording in the Register's Office of Hamilton County, Tennessee, and the President of the Association and Secretary of the Association shall execute, acknowledge and record the amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided, that in the event of the disability or other incapacity of either, the Vice President of the Association shall be empowered to execute, acknowledge and record the amendment. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company that the amendment was adopted in accordance with the provisions of this Section.

D. The certificate referred to in Paragraph C of this Section shall be in substantially the following form:

### CERTIFICATE

I, \_\_\_\_\_, do hereby certify that I am the Secretary of Elder Cove Homeowners Association, Inc. and that the within amendment to the Declaration of Covenants and Restrictions of Elder Cove was duly adopted by the Owners of said Association and the Mortgagees, if applicable, in accordance with the provisions of Section 10.02 of said Declaration.

Witness my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary  
Elder Cove Homeowners Association, Inc.

**10.03 Notices.** Any notice required to be sent to any Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Owner or Mortgagee on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Home Site shall constitute notice to all co-owners. It shall be the obligation of every Owner to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, or the Developer under the provisions of this Declaration shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

Elder Cove Homeowners Association, Inc.  
Attention: Frank Geismar  
6735 Ringgold Road  
Chattanooga, Tennessee 37412

The address for the Board, the Association, or any officer thereof may be changed by the Secretary or President of the Association by executing, acknowledging and Recording an amendment to this Declaration stating the new address or addresses. Likewise, the Developer may change its address by executing, acknowledging, and Recording an amendment to this Declaration stating its new address.

10.04 Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

10.05 Captions. The captions herein are inserted only as a matter of convenience and for reference and are in no way intended to define, limit or describe the scope of this Declaration nor any provision hereof.

10.06 Use of Terms. Any use herein of the masculine shall include the feminine, and the singular the plural, when such meaning is appropriate.

10.07 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

10.08 Law Governing. This Declaration is made in the State of Tennessee, and any question pertaining to its validity, enforceability, construction or administration shall be determined in accordance with the laws of that State.

10.09 Effective Date. This Declaration shall become effective upon its Recording.

10.10 Board or DRC Approval. Wherever this Declaration requires Board of DRC approval or consent, such approval or consent in all cases must be in writing, even if not so stated in the specific section of this Declaration.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have executed, or caused to have executed this Declaration on the date first above written.

Richard Brown  
RICHARD BROWN

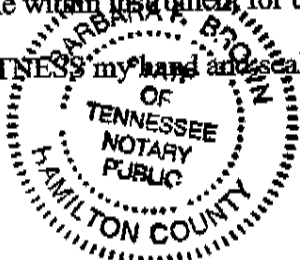
3 AMIGOS LAND COMPANY, LLC, a Tennessee limited liability company

By: Bernard H. Braum  
Print Name: Bernard H. Braum  
Title: President

STATE OF TENNESSEE )  
COUNTY OF HAMILTON )

Before me, Barbara R Brown, a Notary Public in and for the state and county aforesaid, personally appeared **RICHARD BROWN**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and seal, at office, this 9<sup>th</sup> day of December, 2008.

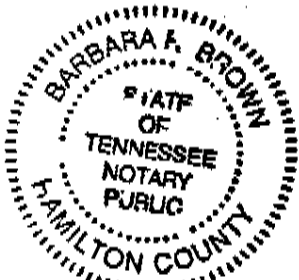


Barbara R Brown  
NOTARY PUBLIC  
My Commission Expires: 11-19-2012

STATE OF TENNESSEE )  
COUNTY OF HAMILTON )

Before me, Barbara R Brown, a Notary Public in and for said State and County aforementioned, personally appeared Bernard H Braum III to me known (or proved to me on the basis of satisfactory evidence) and who acknowledged that he is the President of **3 AMIGOS LAND COMPANY, LLC**, a Tennessee limited liability company, and that he, being first duly authorized so to do, executed and delivered the within instrument for the purposes therein contained by signing the name of the company as 3 Amigos Land Company LLC.

WITNESS my hand and seal, at office, this 9<sup>th</sup> day of December, 2008.



Barbara R Brown  
NOTARY PUBLIC  
My Commission Expires: 11-19-2012



**EXHIBIT "A"**

(Legal Description of the Property)

LOCATED IN HAMILTON COUNTY, TENNESSEE: Lots One (1) through Sixty-Seven (67), as shown on Plat of record in Plat Book 90, Page 151, in the Register's Office of Hamilton County, Tennessee.

As well as all rights-of-way, streets, and alley ways shown on the aforesaid plat, except to the extent that any of the foregoing are dedicated as public rights-of-way, streets, or alley ways.

### True Copy Certification

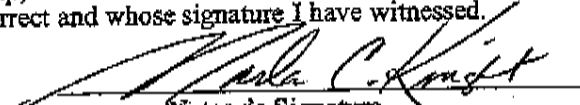
I, Thomas L. Hayslett, III, Esq., do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

  
Signature

State of TENNESSEE

County of HAMILTON

Personally appeared before me, Marla C. Knight, a notary public for this county and state, Thomas L. Hayslett, III, Esq., who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

  
Notary's Signature

My Commission Expires: 7/21/2010  
Notary' Seal (if on paper)

