
**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND
RESTRICTIONS FOR DEER RIDGE SUBDIVISION**

(Cross References: Book 7119, Page 252; Book 4689, Page 216; Book 4918, Page 55)

This Instrument Prepared By and After Recording Return to:
Thomas L. Hayslett, III
Miller & Martin PLLC
1000 Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289
Telephone: 423/756-6600

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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS
AND RESTRICTIONS
FOR DEER RIDGE SUBDIVISION**

(Cross Reference: Book 7119, Page 252; Book 4689, Page 216; Book 4918, Page 55)

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS (this "Declaration") is made this _____ day of _____, 2005, by DEER RIDGE HOMEOWNERS' ASSOCIATION, INC. (the "Association"), a Tennessee non-profit corporation, after having been duly adopted and approved by the Owners (hereinafter defined) as more particularly hereinafter described.

Background:

A. Michael Shular ("Developer") developed all the lots shown on plats of record in Plat Book 54, Page 148 and in Plat Book 58, Page 64, Register's Office of Hamilton County, Tennessee ("ROHC"), being Lots 1 through 88 as shown thereon, together with any Common Properties (hereinafter defined) associated therewith (such lots and Common Properties collectively herein the "Property"), into a residential subdivision, commonly known as Deer Ridge Subdivision (the "Development").

B. In the course of developing the Development, Developer subjected the Property to certain restrictions recorded at Book 4689, Page 216, ROHC and in Book 4918, Page 55, ROHC (the "Original Declaration"), and Developer formed the Association for the purpose of administering the affairs of the Development, including enforcement of the Original Declaration, which Association operated under certain bylaws recorded with the Original Declaration (the "Original Bylaws").

C. Developer turned over control of the Association to the Owners, and the Association amended and restated the covenants and restrictions encumbering the Development, by replacing the Original Declaration with an Amended and Restated Declaration of Covenants and Restrictions for Deer Ridge Subdivision recorded in Book 7119, page 252, ROHC ("Amended Declaration"), in order to provide for the preservation of land values and home values within the Development and to better insure a coordinated and harmonious administration of the Development for the benefit of all Owners.

D. The Association desires to modify the Amended Declaration by replacing the Amended Declaration with this Declaration.

E. This Declaration was duly adopted by the Owners of the Deer Ridge Homeowners' Association, Inc. in accordance with the provisions of Section 10.02 of the Amended Declaration.

Declaration:

NOW THEREFORE, the Association subjects the Property and Development to the terms of this Declaration and declares that same, and any and all portions thereof, are and shall

be held, transferred, sold, conveyed, leased, occupied, and used subject to the Covenants (hereinafter defined) hereinafter set forth; and these Covenants shall touch and concern and run with the Property, the Development, and each and every Home Site (hereinafter defined).

FURTHERMORE, the Association declares that the Original Declaration and the Amended Declaration are hereby superseded, replaced, and restated by this Declaration and that the Original Declaration and Amended Declaration, as of the Recording of this Declaration, shall be of no further force or effect (except as to circumstances arising before the Recording of this Declaration and to which this Declaration cannot take effect and except in the event that this Declaration is deemed unenforceable against the Development or any portion thereof, in which case the Original Declaration and/or the Amended Declaration shall retain the same force and effect as to the Development or the portion thereof, as the case may be, as either or both of such instruments had prior to the Recording of this Declaration).

FURTHERMORE, the Association hereby certifies that it has adopted this Declaration in accordance with the terms and provisions of the Amended Declaration.

FURTHERMORE, the remainder of this Declaration is as follows:

ARTICLE I **DEFINITIONS**

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

1.01 Association. “Association” shall mean Deer Ridge Homeowners’ Association, Inc., a Tennessee non-profit corporation.

1.02 Board of Directors or Board. “Board of Directors” or “Board” shall mean the governing body of the Association established pursuant to this Declaration.

1.03 Bylaws. “Bylaws” shall mean the Bylaws of the Association, the initial text of which is set forth in Exhibit “B” attached hereto and made a part hereof.

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

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/or are intended for the common use and enjoyment of all Owners, which may

include without limitation, street lights, sidewalks, entrance signs, picnic areas, gazebos, swimming pools, recreational areas, and green spaces and walking trails.

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 Amended Declaration of Covenants and Restrictions for Deer Ridge Subdivision and any amendment or supplemental declaration filed pursuant to the terms hereof.

1.08 Development. “Development” shall mean the whole of Deer Ridge Subdivision, including the Property described on Exhibit “A” and all other real property later subjected to this Declaration, if any.

1.09 First Mortgage. “First Mortgage” shall mean a recorded Mortgage with priority over other Mortgages.

1.10 First Mortgagee. “First Mortgagee” shall mean a beneficiary, creditor or holder of a First Mortgage.

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

1.12 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.

1.13 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.

1.14 Member or Members. “Member” or “Members” shall mean any or all Owner or Owners who are Members of the Association.

1.15 Mortgage. “Mortgage” shall mean a deed of trust, as well as a mortgage.

1.16 Mortgagee. “Mortgagee” shall mean a beneficiary, creditor, or holder of any Mortgage.

1.17 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.

1.18 Property or Properties. “Property” or “Properties” shall mean all of that real property described in Exhibit “A” hereto attached and herein incorporated, together with any Common Properties associated therewith.

1.19 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.

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

2.01 Property. The Property and the Development and any and all portions thereof shall be held, transferred, sold, conveyed, leased and occupied, subject to the Covenants contained in this Declaration.

2.02 Additions to Property. Developer may subject additional real property to this Declaration upon the approval of the Association given in accordance with the Bylaws.

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. The Association is responsible for the operation, maintenance, repair and replacement of all Common Properties, if any. All Common Properties shall be conveyed to the Association and thereupon the Association shall become responsible for the operation, maintenance, and repair thereof.

2.05 Association and Board; Access. 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. To the extent reasonably necessary to enforce this Declaration or to perform any of the Covenants or the obligations of the Board and/or the Association, the Board and/or the Association shall have the right to access any Home Sites (but not to enter any Homes) and same shall not be deemed trespass.

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, 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, subject to the terms and conditions as herein specified.

(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.

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 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 Minimum Square Footage. Any Home must meet the minimum square foot livable floor area as set forth below as to the respective classification.

(a) A Two-Story Home with an attached double garage, 2500 square feet with 1100 square feet minimum on main level and not counting finished basements.

(b) A One-Story Home without basement and with a double car attached garage, 2000 square feet.

(c) A One-Story Home with full basement with attached double car garage, 1800 square feet on the upper level.

(d) A One-Story Home with full basement with a double car garage in the basement, 2000 square feet on the upper level.

(e) A One and One Half Story Home with attached double car garage, 1500 square feet on the first floor with a minimum of 2200 total square feet, not counting finished basement.

(f) A One and One Half Story Home with a garage in the basement, 1600 square feet on the first floor and a minimum of 2300 total square feet, not counting finished basement.

(g) A Two-Story Home with garage in the basement, 1250 square feet on the first floor, and with a minimum of 2500 total square feet, not counting finished basement.

No Home 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, garages or basements as set forth in this paragraph. For the purpose of this paragraph, stated square footage shall remain the minimum floor area required, and floor area shall mean the finished and heated living area contained with the residence, exclusive of open porches, garages and basements.

3.05 Detached Buildings; Pools. Detached garages, servants quarters, pool houses, or any other outbuilding shall not be placed on any Home Site without the prior written consent of the Board, which consent the Board may condition upon the location and size of any such outbuilding and/or upon any such outbuilding being constructed so as to complement the associated Home in style, color, theme, and materials. Above-ground pools are prohibited. All swimming pools must be enclosed by a fence permitted under this Declaration.

3.06 Fences. All fences and walls constructed on any Home Site must be approved by the Board, and a drawing showing location, height and materials shall be submitted to the Board for approval prior to construction. All fences shall be constructed either of wrought iron or aluminum or shall be wooden or vinyl “privacy fences,” not exceeding eight (8) feet in height. Wood fences shall be either painted or stained. Chain link and wire fences are prohibited. No fence may be constructed nearer to the front boundary of any Home Site than the rear elevation of the Home.

3.07 Lawn Care. For the benefit of the Development, Owners are required to keep their lawns and landscaping healthy and in a neat and orderly condition, including but not limited to keeping shrubs appropriately trimmed and lawns appropriately mowed and free of weeds and debris.

3.08 Refuse Containers and Screening. Garbage and refuse shall be placed in containers, which shall be concealed and contained within a building or garage or shall be concealed by means of a screening wall of material similar to and compatible with that of the Home, or sufficient landscaping to provide a permanent screen at all times of the year. These elements shall be integrated with the site plan for the Home Site, be designed so as not to attract attention and shall be located in a reasonably inconspicuous manner as is possible.

3.09 Unightly Conditions. All of the Homes and 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, and Homes being kept painted and in a neat and clean condition and in a state of good repair). 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 clean condition and a good state of repair, the Board, or its duly appointed agent, may enter upon said Home Site without liability

and proceed to put said Home Site into a state or condition compliant with this Section, billing the cost of such work to the Owner.

3.10 Signs. No sign of any kind shall be displayed from any Home Site, with the exception of a customary "For Sale" sign to facilitate the sale of an Owner's personal residence.

3.11 Animals. 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 at the Development. 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.

3.12 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 1 meter (39.37 inches), or smaller, satellite dishes shall be permitted.

3.13 Vehicle Parking. Vehicles owned by Owners shall be parked only in the Owner's garage or driveway. Commercial vehicles, tractors, mobile homes, recreational vehicles, trailers, campers, camper trailers, boats or other watercraft shall be parked only in the Owner's garage or screened from view of streets. No inoperable vehicle or other machinery shall be stored on any Home Site at any time, unless kept within a garage.

3.14 Garages; Driveways. All Homes shall have at least a double-car garage, either attached thereto or integrated in or beneath the Home. Garage entrances shall be from the side or rear of the Home. Before any construction on a Home is begun, a temporary driveway shall be installed and said drive shall be crowned and have proper drainage so that overflow, if any, from the Home Site shall not flow upon the main road. After construction is completed, the driveway shall be concrete or better. Under special topographic circumstances or excessive driveway length, the Board may approve other wearing surface after an initial 50 feet from the road is constructed with concrete or better.

3.15 Tree Removal. Except as provided in the site plan prior to construction, trees having a height of approximately 20 feet or taller may not be removed from any Home Site, except where such trees (1) are dead, severely damaged, or uprooted, (2) pose an imminent threat to cause damage to any Home or other improvement in the Development, or (3) are located within any field lines or easement area (for public utilities or otherwise) in a way that inhibits the use and enjoyment of the field lines or easement area.

3.16 Vegetable Gardens. No vegetable gardens shall be planted or extended nearer to any street than the rear elevation of any Home or nearer than 25 feet to any adjoining Home Site.

3.17 Laundry. No laundry shall be hung within public view on any Home Site.

3.18 New Construction; Alterations. Any new Homes being constructed within the Development must be completed within twelve (12) months of commencement of construction. The Board may grant extensions of this period for completing construction in its discretion. Owners of the Home Site on which new construction is ongoing shall be responsible for keeping the Home Site free from unnecessary debris and garbage so as not to create a nuisance or litter other parts of the Development. The Board shall require that any such owner pay to the Board, prior to new Home plan approval, a reasonable construction deposit, against which the Board may deduct any costs and expenses associated with enforcing this provision or with curing non-compliance by the Owner; if the Owner complies with this provision such that the Board does not incur expenses in enforcement hereof or in curing any non-compliance herewith, then the Board shall promptly return the construction deposit to the Owner upon completion of the Home. The amount of the construction deposit shall be set by the Board and shall be in no case less than One Thousand Five Hundred Dollars (\$1,500.00). The Board may not increase the construction deposit amount without first acquiring the approval of two-thirds (2/3) of those Members of the Association who are present or represented by proxy at the annual meeting or special meeting to approve such change. Prior to commencing construction of any Home or material alterations to any Home, the Owner of the Home Site on which construction is to commence shall submit to the Board plans and drawings for the Home or the alterations and a site plan showing the proposed location of the Home on the Home Site (with set-backs provided for herein indicated thereon), the location of the mailbox, driveways, walk ways, retaining walls, fences, exterior lighting, landscaped areas, propane tanks, and other improvements. Construction on the Home may not commence until the Board has approved the plans and drawings and/or the site plan, such approval not to be unreasonably withheld, conditioned or delayed, and any construction must be done in conformity with the plans and drawings and/or the site plan.

3.19 Architectural Design. The exterior of every Home in the Development must be constructed of brick, stone, stucco, or other material approved by the Board. There shall be no exposed concrete on any Home, outbuildings, or retaining walls. All roofs shall be at a minimum of 9/12 pitch and shall be constructed of a dimensional shingle or such other material as is approved by the Board; provided however, porch roofs or other minor or accent roofs may have a lesser pitch if approved by the Board.

3.20 Mailboxes. All mailboxes must have design and material approved by the Board and must have a functional photocell-controlled A/C powered top light.

3.21 Set-Backs. All Homes shall have a front set-back of not less than 35 feet, measured from the front elevation of the Home to the nearest edge of the right-of-way which the Home faces. All Homes shall have a rear set-back of not less than 25 feet, measured from the rear elevation of the Home to the rear boundary line of the Home Site. All Homes shall have a side set-back of either ten (10) feet, measured from the side elevation of the Home to the side boundary line of the Home Site, or of twenty-five (25) feet, measured from the side elevation of the Home to the nearest edge of the public right-of-way on that side of the Home. No structures or improvements, including swimming pools, pool houses, children's playhouses, outdoor fireplaces, etc., shall be located nearer than twenty-five (25) feet to any property line of the Home Site.

3.22 Utilities. Owners shall be responsible for preserving and protecting underground utilities within their Home Site. No utilities may be above ground, including but not limited to electric, telephone, and cable television. Likewise, propane tanks must be buried. There shall be an easement for utilities ten (10) feet wide along the boundary lines of each Home Site, except that in the case where Home Sites are contiguous, the easement shall be five (5) feet in width on each Home Site, for a total of ten (10) feet in width.

3.23 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.

3.24 Offensive Activity. No noxious or offensive activity 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, including but not limited to the emanation of foul odors or disruptive noise.

3.25 Duty to Rebuild or Clear Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Home Sites within the Development, each Owner shall have the affirmative duty to rebuild, replace, repair, or clear, 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 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 Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners. In the event of damage or destruction by fire or other casualty, this provision shall control over other provisions contained herein regarding maintenance to and the condition of Homes and Home Sites.

3.26 Leasing and Subleasing. All leasing and subleasing of Homes and Home Sites, or any portion thereof, by any other party is strictly prohibited; provided that the Board may grant waivers to this provision upon compelling evidence of extraordinary circumstances or undue hardship.

ARTICLE IV **VIOLATIONS AND ENFORCEMENT**

4.01 Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of these Covenants, the Association, its successors or assigns, including the Board acting on behalf of the Association, and any and all Owners, acting individually (but subject to **Articles VII** and **VIII**), of any one or more of the Home Sites to which provisions of these Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, for specific performance, and the said Owner if found to be in violation or attempted violation shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys' fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. The Board may grant variances to the

Covenants, if such variances do not, in the sole discretion of the Board, adversely affect the purposes sought to be obtained hereby.

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 to pay to the Association annual assessments and special assessments for the purposes set forth herein, 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 therefor 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 incur a 10% late charge to cover the costs of collection, and 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 Amount of Annual Assessment. The annual assessment may be adjusted more frequently than annually if necessary. The annual budget for the Association and the amount of the annual assessment shall be set by the Board and the annual assessment shall be in no case less than One Hundred Dollars (\$100.00) per lot per year; provided however, that the Board may not increase the Association's annual assessment without first acquiring the approval of two-thirds (2/3) of those Members of the Association who are present or represented by proxy at the annual or special meeting held to approve such assessment.

5.04 Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by this Article, 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 or for other unanticipated expenses of the Association. Notwithstanding the foregoing the Board shall not authorize structural alterations or capital additions to the Common Properties which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) 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 Ten Thousand Dollars (\$10,000.00) 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. Common Properties and projected locations for future platted Home Sites 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) The grantee of a utility easement.
- (b) All properties dedicated and accepted by a local public authority and devoted to public use.
- (c) All Common Properties.
- (d) 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. Assessments for any year, shall become due and payable the first day of January of said year. Assessments shall be deemed delinquent, and subject to any interest, fees, and collection efforts specified herein, if not paid by the first day of February of said year. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

5.08 Lien. Recognizing that the necessity for providing proper operation and management of the Development 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. Upon delinquency in paying any assessment, the Board may record further evidence of this lien in the ROHC.

5.09 Lease, Sale or Mortgage of Home Site. Whenever any Home Site may be sold or mortgaged by the Owner thereof, which sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration, 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 purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before payment of any 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
THERE TO

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 interest in such Home Site, together with such recording information that shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Home Site. Further, the Owner shall at all times notify the Association of any Mortgage and the name of the Mortgagee on any Home Site, and the recording information which shall be pertinent to identify the Mortgage and Mortgagee. The 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.

ARTICLE VII **OWNER COMPLAINTS**

7.01 Scope. The procedures set forth in this Article for Owner complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board. No Owner shall bring suit against the Board, the Association or another Owner without first complying with the procedures for complaints herein established.

7.02 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 Board and sent in the manner provided in **Section 10.03** for sending notices.

7.03 Consideration by the Board. Within twenty (20) days of receipt of a complaint, the Board shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefor. Within three (3) months 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.

7.04 Hearing Before the Board. Within ten (10) days after notice of the decision of the Board, the complainant may, in a writing, request a hearing before the Board. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The hearing may be adjourned from time to time as the Board in its discretion deems necessary or advisable. The Board shall render its decision and notify the complainant in writing of its decision and the reasons therefor within ten (10) days of the final adjournment of the hearing.

7.05 Further Relief. After complying with the provisions of this Article, an Owner may pursue such additional relief at law or in equity as he/she deems himself/herself to be entitled.

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 breach of this Declaration and shall entitle the Association, the Board, and 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, and which relief may be sought by the Association, the Board, or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws, by an aggrieved Owner.

8.03 Recovery of Association Expenses. In any proceeding arising because of an alleged breach by an Owner, the party seeking enforcement, if successful, shall, in addition to the relief provided for herein, 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 allegedly defaulting Owner be entitled to such attorneys' fees if the party seeking enforcement is unsuccessful.

8.04 Waiver. 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.

8.05 Election of Remedies. All rights, remedies and privileges granted to the Association, the Board, 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 until such time as the Association elects to terminate this Declaration entirely in accordance with the amendment provisions hereof.

10.02 Amendments. 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 three-fourths (3/4ths) vote of those Owners represented 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 either the President of the Association or Secretary of the Association shall execute, acknowledge and record the amendment and shall certify on its face that it has been adopted in accordance with the provisions of this section. 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:

C E R T I F I C A T E

I, _____, do hereby certify that I am the _____ of Deer Ridge Homeowners' Association, Inc. and that the within amendment to the Amended and Restated Declaration of Covenants and Restrictions of Deer Ridge Subdivision was duly adopted by the Owners of said Association, in accordance with the provisions of **Section 10.02** of said Declaration.

Witness my hand this _____ day of _____, _____.

Title: _____
Deer Ridge 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 Board in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, 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:

Deer Ridge Homeowners' Association, Inc.
P.O. Box 781
Ooltewah, Tennessee 37363

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. Amendments changing the

Association's/Board's notice address shall not be subject to the voting requirements in **Section 10.02**.

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.

ARTICLE XI **SPECIAL PROVISIONS**

The following special provisions shall apply to certain Home Sites described in this paragraph.

11.01 Private Access Right-of-Way. Home Sites 1 – 8, as shown on the plat of record, are served or have additional access by way of a private access right-of-way as shown on such plat. The owners of these Home Sites shall be jointly and equally liable and responsible for the maintenance and upkeep of this private access right-of-way. The annual fee for the maintenance and upkeep for this private access right-of-way shall be \$180.00 per year; provided however, this amount may be increased by a vote of owners of five of the eight Home Sites benefited thereby. The owners of these eight Home Sites shall designate who shall act as trustee and have responsibility for collection of these maintenance fees. Any owner who damages this private access right-of-way during the construction of a Home shall pay all repairs associated with the damage thereby caused.

11.02 Termination of Walkway Easement. The Walkway Easement located on Home Sites 29 – 38 and Home Sites 48 – 58, as shown on the plat of record and as described and

conveyed to the Association in the Amended Declaration is hereby terminated and shall be of no further force and effect.

11.03 Entrance Easement. Home Sites 1, 8 and 46, as shown in the plat of record, are at the location of the entrance of the Development and are subject to easement in favor of the Association for maintenance of the lighting, landscaping, sprinkler system, signage, and general maintenance of the entrance areas, which easements are hereby declared to be Common Properties.

CERTIFICATION

The undersigned certifies that he is the Secretary/Treasurer of Deer Ridge Homeowners' Association and that this Declaration was duly adopted by the Owners of said Association, in accordance with the provisions of Section 10.02 of the Amended Declaration.

[Signature on Following Page]

IN WITNESS WHEREOF, the Association, by and through its duly elected officer has executed, or caused to have executed this Declaration on the date first above written.

**DEER RIDGE HOMEOWNERS'
ASSOCIATION, INC.**
a Tennessee non-profit corporation

By: _____
Craig Downs, Secretary/Treasurer

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Personally appeared before me, _____, a Notary Public in and for said State and County duly commissioned and qualified, Craig Downs, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Secretary/Treasurer of Deer Ridge Homeowners' Association, Inc., a Tennessee non-profit corporation, and is authorized by the corporation to execute this instrument on behalf of the corporation as Secretary/Treasurer.

WITNESS my hand, at office, this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

EXHIBIT "A"

In Hamilton County, Tennessee:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, and 88 of Deer Ridge Subdivision as shown on plats of record in Plat Book 54, Page 148 and in Plat Book 58, Page 64, Register's Office of Hamilton County, Tennessee.

EXHIBIT "B"

[Bylaws of the Association]