

This Instrument Prepared By:

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**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR BROTHERS' COVE SUBDIVISION, PHASE 2**

This Declaration is effective the 5th day of October, 2003, by Randolph D. Jones and wife, Paula J. Jones (collectively, "Developer") and by Tony Tincher, Lori Tincher, Jeff Davis, Vonnie Davis, Todd Hudson, Susan Hudson, Joel Henson, Mary Jane Henson, Thomas Scott, Cindy Scott, Carlos Urrutia, Marina Urrutia, Charles Pepper, Brenda Pepper, Johnny Deal, Dale Deal, Julie Bess, Mark Heet, Terry Jackson, Geraldine Jackson, Dave Study, Kim Study, Kip Galbraith, Laura Galbraith, and Jay Sykes (collectively, "Homeowners").

WITNESSETH:

WHEREAS, Developer is the owner of a tract or tracts of land consisting of approximately sixteen (16) acres in the aggregate, more or less, situated in the Sixteenth (16th) Civil District of Sevier County, Tennessee, being a portion of a larger tract of land owned by Developer, and being more particularly described on the Plats of Brothers' Cove Subdivision of record in Map Books P33, Page 197, P32, Page 327, and P33, Page 25 of the Register of Deeds Office for Sevier County, Tennessee; and

WHEREAS, the Plats of Brothers' Cove Subdivision subdivides the Property into sixteen (16) numbered lots, Lots 20 through 35, said Lots all being considered as a part of the Property and as separate "Lots" for the purposes of these Covenants and Restrictions; and

WHEREAS, Developer desires to impose certain Covenants and Restrictions on the Property for the purpose of insuring the proper use of the Property to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to provide for the maintenance of any roadways which may be constructed within the Property and to thereby secure to the Developer and each future owner of Lots within the Property the full benefit and enjoyment of the Property, hereby declaring the same to be for the benefit of the Property and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it advisable to create an agency to be known as the BROTHERS' COVE OWNERS ASSOCIATION which, upon the recordation of an instrument by Developer so stating, shall be delegated and assigned the power and authority to maintain the Property and to administer and enforce the Covenants and Restrictions herein set forth and to collect and disburse all assessments and charges necessary for such maintenance, administration, and enforcement as are hereinafter provided.

NOW THEREFORE, Developer declares that the Property hereinabove described is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges,

assessments, obligations, and liens (generally, "Covenants and Restrictions") hereinafter set forth in order to provide an orderly plan of construction and to protect the common interests of the property owners. The following listed Covenants and Restrictions are hereby agreed upon and shall be covenants running with the land and shall be binding upon the Developer and all subsequent owners thereof in any capacity whatsoever; provided, however, these Covenants and Restrictions shall only encumber and apply to the Property (as defined herein), and shall in no way have any effect or constitute an encumbrance, equitable servitude, or reciprocal negative easement upon any other or remaining portion of the Tract.

ARTICLE I DEFINITIONS

Section I. The following words and terms, when used in this Declaration, (unless the context clearly indicates otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to Brothers' Cove Owners Association, a Tennessee nonprofit Association to be formed.
- (b) "Lot" shall mean and refer to any improved or unimproved plot of land shown upon any recorded final subdivision map of any part of the Property.
- (c) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Section I of Article IV hereof.
- (d) "Owner" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Lot situated upon the Property but, notwithstanding any applicable theory of a mortgage or pledge, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired legal title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.
- (e) "Plat" or "Plats" shall mean to the subdivision Plats for Brothers' Cove Subdivision of record in Map Books P33, Page 197, P32, Page 327, and P33, Page 25, of the Register of Deeds Office for Sevier County, Tennessee.
- (f) "Property" shall mean and refer to the existing real property as shown and described on the above-mentioned Plats, but does not include the Tract.
- (g) "Roadways" shall mean and refer to any private roads within the Property intended for the joint use and benefit of the Owners as shown on the Plats and in particular the 40-foot right-of-way designated as "Brothers' Way" on the Plats.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be, held, transferred, sold, conveyed, leased, and occupied, subject to this Declaration, is located in the County of Sevier,

State of Tennessee, and is more particularly described on the Plats which description is incorporated herein by reference, but shall include no other or further property.

ARTICLE III RESTRICTIVE COVENANTS

Section 1. No Lot shall be used for any commercial or industrial purpose or for any commercial husbandry or agricultural activity. This shall not prohibit the overnight rental of residences within the Property nor shall it prohibit the maintenance of a household garden or household pets; provided that any pets shall at all times be kept under the close supervision of the Owner.

Section 2. No junk yard, noxious, or offensive operation(s) shall be conducted or maintained within the Property or on any Lot, and none shall be done on any Lot which may constitute a nuisance or an unreasonable annoyance to the neighborhood. Failure to maintain a Member's yard, garden or fences shall be deemed a nuisance under this provision.

Section 3. Any subdividing or re-subdividing of Lots other than by Developer is strictly prohibited.

Section 4. No house trailer or mobile home or modular or premanufactured home shall be used, stored, or placed on any Lot. No bus, heavy equipment, tractor trailer rig (separate or in combination), houseboat, wrecked vehicle of any kind, vehicle in disrepair of any kind, or building materials not for immediate use on the Lot, shall be placed, stored, or parked on any Lot. Off street parking of recreational vehicles owned by the Owner of a Lot, so long as such vehicles are not used as a residence whether temporary or permanent, shall be permitted.

Section 5. No building, fence, sidewalk, wall, drive, or other structure shall be erected, placed, or altered on any Lot unless and until the proposed building plans, specifications, exterior color finishes, plot plan (showing the proposed location of such structures), and construction schedule shall have been approved in writing by the Developer or, in the event Developer has recorded an instrument delegating such authority to the Association, the Association.

Section 6. Exterior walls of buildings, fences or enclosures may consist only of wood, stone from this locality, rough sawn siding or a combination of both, unless otherwise expressly approved in writing by Developer or the Association.

Section 7. Without prior approval of the Developer or the Association, the height of any main residence shall not be more than two (2) full stories above the normal ground surface.

Section 8. All Lots shall be used exclusively for residential purposes which shall be deemed to include overnight rentals. No structure except as hereinafter provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling and one-story accessory building which may include a detached private garage and/or servants quarters, provided the use of such dwelling or accessory building does not include and business activity. Such accessory building may not be constructed prior to the construction of the main

dwelling and shall conform substantially with the style and exterior finish of the main dwelling. Unless otherwise approved by Developer (in Developer's sole discretion) or the Association, the main dwelling shall have a minimum living area of 1000 square feet.

Section 9. A guest suite or like facility with a kitchen may be included as part of the main dwelling.

Section 10. No trees, measuring 10 inches or more in diameter at a point three (3) feet above ground level, may be removed unless located with 10 feet of the main dwelling or accessory building or the approved site therefor. No tree shall be removed from any Lot until the Owner is ready to begin construction and must have the prior approval of the Developer or the Association. During construction, all trees, brush, and stumps left as a result of cutting and clearing activities, must be removed from the Lot.

Section 11. No building or paving on any Lot shall be erected or placed nearer than ten (10) feet from the rear or side Lot lines and ten (10) feet from the front Lot line (or as otherwise shown on the Plats), with the exception of a driveway not to exceed twenty-four (24) feet in width, per Lot.

Section 12. No planting or landscaping shall be placed on the corner line or lines of Lots or at intersections in such a way and manner as to obstruct, partially or wholly, the visibility of traffic.

Section 13. No commercial signs, including "For Rent", "For Sale" or other similar signs shall be erected or maintained on any Lot if that sign has a surface area greater than two (2) square feet.

Section 14. The main dwelling and any accessory building must be completed by the Owner within two (2) years after the Lot is purchased or within six (6) months after construction is commenced, whichever comes first. Only the Developer shall have the authority to waive this provision, and then only for a period or periods of six (6) months.

Section 15. A perpetual easement is reserved five (5) feet wide on each side of all Lot lines for drainage and utilities. No structure of any kind except fencing shall be erected or maintained upon or over said easement, provided; however, that if a Lot is divided and joined to another Lot for the purpose of creating a larger Lot, this easement shall terminate as to the interior Lot lines of the Lots so combined. No structure shall be built closer to any Lot line than twenty (20) feet in the case of a front Lot line, or ten (10) feet in the case of a side or rear Lot line.

Section 16. No unfinished block or concrete shall be exposed to the exterior above ground level.

Notwithstanding any other provision contained herein, the Developer or the Association shall have the right to permit variances to the foregoing restrictions (including, but not limited to, setback provisions) upon written request by any Owner if the Developer in its sole and absolute discretion or the Association makes a determination that because the topography of a particular Lot or because of other

circumstances beyond the control of such Owner and not created by the actions of such Owner, a strict enforcement of a particular restriction would create a substantial hardship on such Owner; provided, however, that in no event shall any variance be granted permitting any use of the Property or any activity on the Property which is otherwise prohibited by these restrictions.

Notwithstanding anything contained herein to the contrary, in no event shall the Developer, or any firm, person, corporation, or other entity which is a subsidiary or affiliated with the Developer, be in any manner, held liable or responsible, either directly or indirectly, for any violation of these covenants and restrictions by any other person or entity.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person, firm, association, corporation, or other legal entity who is a record owner or co-owner, as defined herein, of the fee simple title to any Lot which is subject by this Declaration to assessment by the Association, shall be a Member of the Association, provided that any person, firm, association, corporation or legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited to mortgagees or trustees under deeds of trust) shall not be a member of this Association.

Section 2. Voting Rights. Members of the Association, as defined in Section 1 of Article IV shall be entitled to one (1) vote for each Lot owned to be exercised in person or by proxy. When more than one person holds the fee simple title to any Lot as co-owners (including but not limited to tenants by the entirety, joint tenants or tenants in common) the vote for such Lot shall be exercised as the co-owners among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Section 3. Voting Class. Two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Developer. Class A Members shall be entitled to one (1) vote for each Lot owned to be exercised as provided in Section 2, above. The Class B Member shall be the Developer.

Class B. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier, whereupon the Developer shall become a Class A member and shall be entitled to one (1) vote for each Lot owned and shall have all other rights and entitlements of Class A Members when the total of the votes outstanding in the Class A membership equals the total of the votes outstanding in the Class B membership; provided, however, in the event Developer elects to extend the development of Brothers' Cove beyond the Property, whether by adding additional acreage now part of the Tract, or by way of the addition of later-acquired real property, the voting rights of Class A and Class B memberships shall continue in the 1:3 ratio until such time as the

total of the votes outstanding in the Class A membership equals the total of the votes outstanding in the Class B membership.

ARTICLE V MEMBERS' EASEMENT

Section 1. Members' Easement of Enjoyment. Subject to the provisions of this Declaration and the rules and regulations of the Association, every Member shall have a right and easement of enjoyment in and to the Roadways and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Roadways. The Developer may retain the legal title to the Roadways until such time as it has completed initial improvements thereon and until such time as, in the judgment of the Developer, the Association is able to maintain the same.

ARTICLE VI COVENANT FOR MAINTENANCE AND CAPITAL Improvement Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments The Developer covenants for itself, its successors and assigns that no contract will be made for the sale of any Lot and no deed conveying a Lot shall be delivered unless the same shall include provisions obligating the purchaser or grantee and his, her or its heirs, executors, administrators, successors and assigns to pay to the Association (1) Annual Assessments for charges and (2) Special Assessments for capital improvements upon the Roadways, such assessments to be fixed, established and collected from time to time as herein provided. Each person who accepts a deed for a Lot or accepts title as an heir or devisee shall be deemed to have consented to make such payments and to have agreed to all the terms and provisions of this Declaration whether or not the above mentioned provision was included in the contract or deed or other instrument by which he, she or it acquired title. The Annual and Special Assessments together with such interest and costs of collection thereof, as hereinafter provided shall be a charge and shall constitute a continuing lien upon the land against which each assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the person or persons or entity who was the owner of such property at the time when the assessment fell due. In the case of co-ownership of a Lot all of such co-owners of the Lot shall be jointly and severally liable.

Section 2. Purpose of Assessment. The Annual Assessment levied by the Association shall be used exclusively for promoting the health, safety, pleasure, and welfare of the owners of Lots and the costs and expenses incident to the operation of the Association and Brothers Cove, including, without limitation, the maintenance and repair of the Roadways, payment of all taxes and insurance premiums, and all costs and expenses incidental to the operation and administration of the Association.

A Special Assessment may be used for the purpose of paying the cost of a capital improvement for which such Special Assessment is levied, and all expenses incidental thereto.

Section 3. Annual Assessments-Maximum Assessment. The amount of the Annual Assessment shall be fixed by vote of a majority of the members at the annual meeting for the next succeeding year. The maximum annual assessment against each Lot until January 1, 2005, shall be Two Hundred Forty Dollars (\$240).

Section 4. Special Assessments for Capital Roadway Improvements. In addition to the Annual Assessments authorized in Section 3 of this Article, the Association may levy, in any assessment year, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any Roadway construction or reconstruction, unexpected repair or replacement, or improvement of the Roadways provided that any such Special Assessment shall receive the assent of three-fourths of all of the votes eligible to be cast by all of the Members, at a meeting duly called for this purpose; written notice of which shall be sent to all Member at least thirty (30) days in advance and which notice shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum Amounts of Annual Assessments. Subject to the limitations of Section 3 of this Article, and for the successive periods therein provided, the Association may change the maximum amounts of the assessments fixed by Section 3 of this Article for any such period, provided that any such change shall have the assent by the vote in person or by proxy of three-fourths of all of the votes eligible to be cast by all of the Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, which notice shall set forth the purpose of the meeting.

Section 6. Period For Which Annual Assessments Are Made Due Dates. The period for which Annual Assessments are made shall be the twelve month period extending from January 1st through the next succeeding December 31st. The period for the first annual assessment shall begin January 1, 2004.

Each Annual Assessment shall become due upon and payable on or before the first day of March, following the commencement of such Annual Assessment period.

Upon the purchase of a Lot from the Developer, the then current Annual Assessment shall be prorated and paid by the purchaser.

Section 7. List of Assessments. Notice of Assessment Certificate as to Payment
The Board of Trustees of the Association shall cause to be prepared, at least thirty (30) days in advance of the due date of each assessment, a list of the according to the record owner thereof and the assessments applicable thereto. Written notice of the assessment shall be sent to every Owner subject thereto.

The Association shall, upon the request of any Owner liable for an assessment or of the mortgagee of the Owner's premises, furnish to such Owner or mortgagee, a certificate in writing, signed by an officer of the Association, setting forth whether or not such assessment has been paid.

Section 8. Effect of Non-Payment of Assessment: the Personal Obligations of the Owner; the Lien; Remedies of the Association. If the assessments are not paid promptly on the due date thereof as specified in Section 6 of Article, then such

assessment shall become delinquent automatically and shall, together with interest thereon at the rate of fifteen percent (15%) per annum from the due date and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the property against which it is levied, which lien shall bind such property in the hands of the then Owner, his, her, or its heirs, executors, devisees, personal representatives, successors, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his, her, their or its personal obligation for a period of six (6) years from the due date thereof, and shall not pass as a personal obligation to his her, their or its successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, specified in Section 6 of this Article, the assessment, together with interest thereon at the rate of fifteen percent (15%) per annum, may be enforced and collected by the Association by the institution of an action at law against the Owner or Owners personally obligated to pay the same, or by an action to foreclose the lien against the property, and there shall be added to the amount of such assessment and interest, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include, in addition to the assessment, interest and court costs, a reasonable attorney's fee.

In no event shall Developer be liable for any assessments for improvements, regardless of the number of Lots held or retained by Developer or the use to which such Lots are put.

ARTICLE VII ROADWAYS

Section 1. Maintenance. The Developer and the Association shall be jointly responsible for arranging for the maintenance of the Roadways until such time as the same are conveyed to the Association pursuant to Section 2 of ARTICLE V.

Section 2. Owners Responsibility. Notwithstanding the provisions of Section 1 hereof, each Owner shall be responsible for providing adequate drainage along driveway connections to the Roadways and for the repair of damage to the Roadways caused by construction activities on an Owner's Lot. If an Owner fails to provide adequate drainage or fails to repair such damage within ten (10) days after receiving written notice from the Developer and/or Association of the corrective measures required, the Developer and/or Association shall have the right to install such drainage or repair such damage and the cost thereof shall be a continuing lien against that Owner's Lot until paid in full and may be enforced as an assessment pursuant to Section 8, ARTICLE V, hereof.

Section 3. No Dedication to Public Use. The Roadways shall not be dedicated to the public and nothing contained in this Declaration, whether expressed or implied, shall be construed as a dedication of the Roadways for any public use or purpose whatsoever.

**ARTICLE VIII
GENERAL PROVISIONS**

Section 1. Duration. The Covenants and Restrictions set forth in this Declaration shall run with and bind all of the land included in the Property described in Article II hereof, and shall inure to the benefit of and be enforceable by the Developer, the Association, and the Owners of any land subject to this Declaration, their respective successors, assigns, heirs, executors, administrators, and personal representatives, for a period of twenty (20) years from the date this Declaration is recorded in the office of the Register of Deeds of Sevier County, Tennessee, at the end of which period such Covenants and Restrictions shall automatically be extended for successive periods of ten (10) years each, unless at least three-fourths of the Owners of the Lots at the time of the expiration of the initial period, or any extension period, shall sign an instrument, or instruments in which they shall agree to change said Covenants and Restrictions in whole or in part, but no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to every Owner of every Lot at least ninety (90) days in advance of the action taken in authorizing said agreement.

Section 2. Enforcement. Enforcement of these Covenants and Restrictions shall be by any appropriate proceeding in law or equity in any court or administration tribunal having jurisdiction against any person or persons, firm or corporation violating or attempting to violate or circumvent any Covenant, to enjoin such violation or threatened violation, and/or to recover damages, and against the land of any Member to enforce any lien created by this Declaration in any covenant herein contained. Failure by the Association or any Owner, or Member, to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

Section 3. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be 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.

Section 4. Amendment. This Declaration may be amended at any time or times by the recordation of any instrument executed by Owners holding not less than seventy-five (75%) percent of the voting interests of the membership; provided that:

(a) So long as the Developer is the owner of any Lot or any Property affected by this Declaration, as it may then have been amended, the Developers consent to the Amendment must be endorsed in recordable form on the Amendment instrument.

(b) No Amendment shall impair any right then existing of the holder of any first mortgage or deed of trust.

Section 5. Developer's Reserved Rights. Notwithstanding any provision herein to the contrary, this Declaration shall be subject to:

(a) The right of the Developer to execute all documents and take such actions and do such acts affecting the property as, in the Developer's sole discretion, are desirable or necessary to facilitate the general plan of development, or the actual construction or development of the property.

(b) Easements of record on the date hereof of any easements which may hereafter be granted by Developer to public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduits and lines, gas pipes, sewers or water pipes, or any other utility service or drainage facility serving any Lot within the Property or any portion thereof.

Section 6. Homeowners. The persons identified as "Homeowners" in this document join herein for the purpose of acknowledging the impact of the restrictions on each signatory's respective lot, and agreeing to the provisions hereof, as if the restrictions had been placed of record prior to the sale of any Phase 2 lots.

This instrument may be executed in counterparts, which, when executed by all parties, will have the same force and effect as if all had signed the same original.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

DEVELOPER:

Randolph D. Jones

Paula J. Jones

STATE OF TENNESSEE
COUNTY OF SEVIER

Before me, the undersigned authority, personally appeared the within named bargainors, Randolph D. Jones, and Paula J. Jones, with whom I am personally acquainted and who acknowledged that they executed the foregoing instrument for the purposes therein contained.

Witness my hand, at office, this _____ day of _____, 2003.

Notary Public

My Commission Expires: _____