

AMENDED DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
and  
BY-LAWS

MOUNTAIN HARBOUR PROPERTY  
OWNERS ASSOCIATION  
2021

Table of Contents

**ARTICLE I DEFINITIONS**.....4

Section 1. "Association".....4

Section 2. "Designated Common Area(s)".....4

Section 3. "Declaration".....4

Section 4. "Improvements".....4

Section 5. "Lot" or "Lots".....4

Section 6. "Member".....4

Section 7. "Owner".....5

Section 8. "Person".....5

Section 9. "Property".....5

Section 10. "Subdivision Plat".....5

**ARTICLE II THE PROPERTY**.....5

Section 1. Property Subject to Declaration.....5

Section 2. Roads and Utilities.....5

**ARTICLE III THE ASSOCIATION**.....5

Section 1. Members.....5

Section 2. Voting Rights.....5

Section 3. Secured Parties.....5

Section 4. Voting.....5

Section 5. Proxies.....6

Section 6. Quorum.....6

Section 7. Rules and Regulations.....6

**ARTICLE IV PROPERTY RIGHTS AND EASEMENTS**.....6

Section 1. Owner's Easements of Enjoyment Over the Designated Common Area(s).....6

Section 2. Easements for Utilities and Related Purposes.....6

Section 3. General Easement.....6

Section 4. Easements for Entrance Improvements.....6

Section 5. Security Information Center.....7

**ARTICLE V MAINTENANCE AND REPAIR**.....7

Section 1. Association Responsibilities.....7

Section 2. Individual Lot Owners.....7

**ARTICLE VI COMMON FENCES**.....7

Common Fences.....7

**ARTICLE VII ASSESSMENTS**.....7

Section 1. Creation of the Lien and Personal Obligation of Assessments.....7

Section 2. Annual Assessments.....7

Section 3. Special Assessments.....8

Section 4. Emergency Assessments.....9

Section 5. Non-Payment of Assessments.....9

Section 6. Acceleration of Installments.....10

Section 7. Priority of Lien.....10

Section 8. Subordination and Deed of Trust/Mortgage Protection.....10

Section 9. Additional Default.....10

**ARTICLE VIII ARCHITECTURAL CONTROL**.....11

Section 1. Architectural Control Committee.....11

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation.....11

**ARTICLE IX CONSTRUCTION OF RESIDENCE.....12**

Section 1. Completion Of Construction.....12

Section 2. Subordination and Mortgage Protection.....12

**ARTICLE X RESTRICTIVE COVENANTS.....13**

Section 1. Residential Use.....13

Section 2. Uses, Prohibited Uses and Nuisances.....13

**ARTICLE XI MISCELLANEOUS.....16**

Section 1. Duration and Amendment.....16

Section 2. Enforcement.....16

Section 3. Hold Harmless and Owner's Responsibility.....16

Section 4. Disclaimer.....17

Section 5. Casualty and Liability Insurance.....17

Section 6. Interest and Late Charges.....17

Section 7. Notices.....17

Section 8. Headings.....17

Section 9. Severability.....17

Section 10. Waiver.....17

Section 11. Gender, Etc.....17

**ARTICLE XII SECURITY.....17**

**EXHIBIT A PROPERTY DESCRIPTION.....19**

**EXHIBIT B BYLAWS OF MOUNTAIN HARBOUR PROPERTY OWNERS ASSOCIATION, INC.....23**

**AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
MOUNTAIN HARBOUR PROPERTY OWNERS ASSOCIATION**

**THIS AMENDED DECLARATION** is made, published and declared this \_\_\_ day of \_\_\_\_\_, 2021, by and among (1) Mountain Harbour Property Owners Association, Inc. ("The Association"), and (2) any and all persons, companies or other entities presently owning or hereinafter acquiring any of the hereinafter described real property.

**AMENDED DECLARATION** approved by Member Vote in \_\_\_\_\_, 2020.

**WHEREAS**, it is to the benefit, interest and advantage of the Association, and each and every person or other entity which may hereafter acquire any interest in any of the aforescribed real property described in Exhibit "A" that certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of all of the same be established, fixed, set forth and declared as covenants running with the land;

**NOW, THEREFORE**, in consideration of the premises, the Association does hereby publish and declare (1) that all, and each and every part of, said real property shown in Exhibit "A" is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and otherwise held and used subject to (a) the following covenants, conditions, restrictions, uses, limitations and obligations and (b) all easements, conditions, restrictions, etc., as set out in the Subdivision Plat as listed in Exhibit "A" all of which are hereby declared and agreed to be in furtherance of a plan for the development and improvement of said real property, (2) that said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the land, the Association and any person or legal entity acquiring or owning any interest in any portion of said real property or any improvements thereon, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

**ARTICLE I DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

**Section 1. "Association"** shall mean and refer to Mountain Harbour Property Owners Association, Inc., a non-profit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns. The Association's Charter and Bylaws are attached hereto and marked Exhibits "B" and "C" respectively and are hereby made a part hereof.

**Section 2. "Designated Common Area(s)"** shall mean all land designated as Designated Common Area(s) on said Plat or any revisions thereof.

**Section 3. "Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereafter, as this Declaration may, from time to time, be amended in accordance with its terms.

**Section 4. "Improvements"** shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots.

**Section 5. "Lot" or "Lots"** shall mean and refer to the plots of land designated on any Subdivision Plat which includes any portion of the Property.

"S Lots" shall mean lots which are restricted to septic field lines. No other construction is allowed on those lots. "S Lots" are often separated from the main lot by the right of way which is used for utilities as well as the ingress and egress of property owners. "S Lots" must be owned by the same person(s) as the main lot, as they are inseparable. DeKalb county tax assessor may issue a separate parcel number and tax bill for each lot, but they are considered as one parcel for deeds and property transfers.

**Section 6. "Member"** shall mean and refer to every Person who holds membership in the Association.

**Section 7. "Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation. The purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

**Section 8. "Person"** means an individual, firm, company, corporation, partnership, Association, trust or other legal entity or any combination thereof.

**Section 9. "Property"** shall mean all of that certain real property hereinabove described, both in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association and this Declaration.

**Section 10. "Subdivision Plat"** shall mean the original recorded plat of any subdivision created with the boundaries of the property referred to in Exhibit "A", and any amendments or revisions thereto, and the recorded plats of any additional property which is later incorporated into and made subject to this Declaration.

## ARTICLE II THE PROPERTY

**Section 1. Property Subject to Declaration.** The Property shall be held and used subject to this Declaration.

**Section 2. Roads and Utilities.** The roads within the Property are public property. Pipes, lines, cables, other means of utility service, etc., shall also be public, with exception to sewer.

## ARTICLE III THE ASSOCIATION

**Section 1. Members.** Every Person or entity who is a record owner of a fee or an undivided fee interest of any Lot shall be a Member of the Association provided. However, anyone who holds such interest merely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

**Section 2. Voting Rights.** The voting rights of the Membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned. If you comply with **ARTICLE VII ASSESSMENTS Section 2 Annual Assessments** Part (d) and pay one lot dues you will only have one vote.

**Section 3. Secured Parties.** No individual or legal entity holding titling to a Lot as security for any debt or obligation shall be considered an owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any questions or matter affecting the administration of the Association.

**Section 4. Voting.** At every meeting of the Members, each of the Members shall have the right to cast his/her vote on each question. Subject to the rights set forth in this Declaration, the vote of the Members representing fifty-one (51%) percent majority of the total votes cast; with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute, the Association's Charter or By-Laws, or this Declaration, a different vote is required. In such case, such express provision shall govern and control. The vote of any membership which is owned by more than one person may be exercised by any of them present at any meeting unless an objection or protest by a co-owner of such membership is noted at such meeting. In the event all of the co-owners of any such membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

**Section 5. Proxies.** A Member may appoint any other Member, the Board or any other person permitted by law or by the By-Laws, as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the By-Laws.

**Section 6. Quorum.** The presence, either in person or by proxy, of Members representing at least a fifty-one (51%) percent of the total votes entitled to be cast with respect to any question shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of the Members. If the number of Members at a meeting drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted. If two or more successive meetings are adjourned for lack of a quorum, the quorum for each successive resumed meeting shall be equal to the greater of the number of votes represented at either of the two previous adjourned meetings. In January 2005, it was established that a quorum was 25 members.

**Section 7. Rules and Regulations.** The Association may from time to time, promulgate rules and regulations for the use and enjoyment of the designated Common Area(s) and roads.

#### ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

**Section 1. Owner's Easements of Enjoyment Over the Designated Common Area(s).** Every Owner shall have a right and easement of enjoyment over and across the Designated Common Area(s), and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to this Declaration and the following specific provisions:

(a) The right of the Association, as provided in its Charter and/or By-Laws, to suspend any enjoyment rights of any member;

(b) The right of the Association, in accordance with its Charter and/or By-Laws, to improve and maintain the Designated Common Area(s);

(c) The right of the Association, but not the obligation, to protect, maintain and inspect the Designated Common Area(s).

**Section 2. Easements for Utilities and Related Purposes.** The Association is authorized and empowered to grant such licenses, easements and/or rights-of-way for water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antennae, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities and other common services to the Property as may be considered necessary, appropriate or desirable for the orderly maintenance, preservation of the health, safety, convenience and/or welfare of the Owners.

**Section 3. General Easement.** The Association hereby reserves for itself the right and easement to the use of any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot, any other Lot, or the Designated Common Area(s).

**Section 4. Easements for Entrance Improvements.** All Lots adjoining the entrance to any subdivision created within the Property shall be subject to an easement for the benefit of the Association as necessary to allow for the installation, maintenance and/or replacement of Entrance Improvements. Easements for such purposes shall be ten (10) feet inside all property lines adjacent to roads and such easements are hereby created. Said improvements shall be maintained by the Association.

#### ARTICLE V MAINTENANCE AND REPAIR

**Section 1. Association Responsibilities.** Except as otherwise stated in this Declaration, the Association shall provide and pay for all maintenance and expenses for the Designated Common Area(s), any improvements on the Designated Common Area(s), Common Fences, the entrances, the Entry Areas, drainage structures, Retention Basins, guard houses, street lights, sidewalks and road medians.

**Section 2. Individual Lot Owners.**

(a) Each Owner shall be responsible for the maintenance, painting, and proper upkeep of the Owner's Lot and all improvements thereon, including, without limitation, all areas within easements. Grass, weeds, and vegetation shall be kept neatly mowed and all debris and animal waste shall be cleared at regular intervals from each Lot so as to maintain same in a neat and attractive manner.

(b) Each Owner shall keep his residence in a condition comparable to its condition when initially constructed. In the event all of any portion of a residence is damaged or destroyed by fire or other casualty, then the Owner shall promptly rebuild, repair or reconstruct said residence in a manner which will substantially restore same to its original condition or demolish the residence, at his discretion within nine (9) months of the occurrence of the casualty.

(c) In the event the Owner of the Lot shall fail to comply with the terms and conditions of this Article in a manner reasonably satisfactory to the Board of Directors and in keeping with other Lots, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right, through agents and/or employees, to enter upon said Lot and to repair, maintain and restore the Lot and to repair, maintain, restore or demolish the improvements thereon. The costs thereof, together with interest thereon and costs of collection thereof, shall be a binding personal obligation of such Owner, as well as a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Register of DeKalb County, Tennessee. The rights and remedies given to the Association by the Article of this Declaration dealing with assessments and non-payment thereof shall apply fully to the debt obligations, including interest and costs of collection, and the lien rights created in this Section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

## ARTICLE VI COMMON FENCES

**Section 1. Common Fences.** The Association may, at its option, construct a fence along certain roads within the subdivision (the "Frontal Fence"). The Frontal Fence shall be of a design to be selected by the Association and shall be maintained by the Association and may not be changed in any manner by any Owner.

## ARTICLE VII ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the assessments provided in this Article. Said assessments shall be fixed, established and collected from time to time as herein provided. All such assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest hereon and cost of collection thereof, shall also be the personal obligation of the Owner of such Lot at the time when the assessment becomes due.

### **Section 2. Annual Assessments.**

(a) Each Member shall pay to the Association in advance an annual sum equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- 1) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any, any repayment of any debt expenses including any loans incurred by the Association and interest thereon for operating and capital improvement; and
- 2) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- 3) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- 4) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- 5) The estimated cost of repairs, maintenance and replacements of the entrance, the Frontal Fence, drainage systems, Retention Basins, the Designated Common Area(s), Welcome Center, and other items; and

6) Electricity and water of the Designated Common Area(s) and Welcome Center improvements; and,

7) Designated Common Area(s) and Welcome Center improvements.

8) Annual Gate Maintenance and Operation Assessment. The owners of Lots located in Coves IV and Pointe I (collectively referred to as “Gated Communities“ or “Gated Community Owners”) shall be responsible to pay the expenses associated with the maintenance and operation of their respective entrance gates. Owners of Lots not located in said Gated Communities shall not pay annual assessments for the expenses associated with the maintenance and operation of said entrance gates. Use of the annual gate maintenance and operation assessments collected by the Property Owners Association shall be restricted to payment of the expenses incurred in the maintenance and operation of the respective entrance gates of the Gated Communities. The Property Owners Association shall determine the amount of the annual gate maintenance and operation assessments to be levied against each Gated Community Lot at least thirty (30) days in advance of each annual assessment period. The Association shall levy separate assessments against each Gated Community, and each of the separate assessments shall only include the maintenance and operation expenses associated with the respective gate of the levied Gated Community. Notwithstanding, the Association may levy assessments at more frequent intervals should circumstances so require as provided in the By-Laws. The annual gate maintenance and operation assessment for each Gated Community Lot shall be computed by dividing the total assessment attributable to the maintenance and operation of the entrance gates by the total number of Lots located in the Gated Communities. Written notice of the annual gate maintenance and operation assessment shall be sent to every Owner in the Gated Communities. Failure to receive such notice shall not excuse payment. The due date shall be established by the Property Owners Association. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

(b) After January 1, 2004, the Board of Directors shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By-Laws. The general annual assessment for each Lot shall be computed by dividing the total assessment attributable to the Property by the total number of Lots. Written notice of the annual assessment shall be sent to every Owner subject thereto but failure to receive such notice shall not excuse payment. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

(c) Until January 1, 2003, the maximum annual assessment per lot to be paid to the Association shall be \$500.00.

(d) Beginning January 1, 2021, when calculating the general annual assessment for each Lot, the definition of a Lot shall include a combination of lots where a Lot improved with a house (“House Lot”) directly adjoins and shares a common boundary with another unimproved Lot, landscaping excepted (“Vacant Lot”). A House Lot shall be combined with no more than two (2) Vacant Lots. An S Lot shall be included as a Vacant Lot if a House Lot elects to combine with Vacant Lots. The House Lot and Vacant Lots must be titled to the same owner. The Owner of the House Lot and Vacant Lot(s) must make application and be approved by the Property Owners Association for a combination of Lots for the purpose of general annual assessment. Any said application(s) that does not include a House Lot shall not be approved by the Property Owners Association for a combination of Lots for the purpose of general annual assessment. Once approved as a combination of lots, the Property Owners Association shall assess the combined Lots with one annual assessment, rather than a separate annual assessment for each Lot. If, after combination, any one of the Lots in the approved combination of Lots fails to satisfy any one of the elements necessary for combination, the Property Owners Association shall revoke the combination of Lots classification and levy a separate annual assessment for each lot. A property owner may make new application for combination of Lots to the Property Owners Association following an Owner’s sale or purchase of Lots that would require the Owner to modify or amend his or her combination Lots. Notwithstanding the foregoing rules regarding the combination of Lots effective January 1, 2021, if, on December 31, 2020, the Property Owners Association levied one annual assessment

to an owner that owned a House Lot that adjoined one or more Vacant Lots (Grandfathered Combination), then the Property Owners Association shall continue to levy one annual assessment to said owner for the lots combined as of December 31, 2020, so long as the ownership or use of the Lots in the Grandfathered Combination is not changed. If said owner(s) shall transfer any portion of ownership or change the use of one or more of the combined Lot(s) in a Grandfathered Combination, the Property Owners Association shall revoke said lot(s) that have experienced a change in ownership or use from the Grandfathered Combination, and said revoked Lots shall be subject to the regulations governing combination of Lots effective January 1, 2021.

**Section 3. Special Assessments.** In addition to the regular assessments authorized by this Article, the Association may levy a special assessment or assessments in any assessment year, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is responsible or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least ten (10) days, but not more than thirty (30) days, in advance of such meeting, which notice shall set for the purpose of the meeting. Such assessment shall be prorated among the Members on the same basis as annual assessments.

**Section 4. Emergency Assessments.** In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of the Members or the property of the Members, the Board of Directors may declare an emergency assessment in such amount and payable at such time as the Board, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be prorated among the Members on the same basis as annual assessments. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was made in good faith.

**Section 5. Non-Payment of Assessments.** Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due, shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. In order to evidence said lien, a notice of lien setting forth the amount of the indebtedness, the Owner's name, and a description of the Lot shall be recorded with the Office of the Register of Deeds of DeKalb County, Tennessee. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots; in either event, the Association may collect from the Member interest, costs and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Owner irrevocably grants the Board of Directors of the Association the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale conforms with Sections 7 and 8 of this Article. The Association is hereby authorized to take any and all courses of action available to it for collection of the assessment which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of said property for not less than twenty-one (21) days by three (3) weekly publications in some newspaper circulated in the County of DeKalb, State of Tennessee, giving notice of the time and place of such sale. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, statutory right of redemption, marital rights, homestead, and dower and all other exemptions, all of which are expressly

waived by the Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust described in Section 7 of this Article.

The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorney's fees, and sale commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust as described above; and third, to the payment of all amounts due the Association under the terms of the Declaration and the By-Laws; and the balance, if any, to the Owner whose Lot is sold, and his assigns.

Upon any default in the payment of the assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as the mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or an Owner, pursuant to any terms, provisions and covenants and conditions of the Declaration and the By-Laws, shall be deemed to be cumulative, 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 granted to such party by the Declaration and the By-Laws, at law or in equity.

**Section 6. Acceleration of Installments.** Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

**Section 7. Priority of Lien.** The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special assessments for real estate taxes on a Lot; and

(b) The liens of any deeds of trust or mortgage instruments duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Association reflecting that payments on said lien were current as of the date of recording of said deed of trust or mortgage instrument.

**Section 8. Subordination and Deed of Trust/Mortgage Protection.** Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first deed of trust or mortgage (meaning a lien with priority over all other liens) if such deed of trust or mortgage is made in good faith and for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, and shall not in such instance apply to claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Owners, including the mortgaged Lots. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Said lien, if any, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such deed of trust or mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

**Section 9. Additional Default.** Any recorded first deed of trust or mortgage secured by a Lot shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such deed of trust or mortgage (or the indebtedness secured thereby), but failure to include such a provision in any such instrument shall not affect the validity of priority thereof, and the

protection extended to the holder of such instrument (or the indebtedness secured thereby) elsewhere in this Article shall not be altered, modified or diminished by reason of such failure.

## ARTICLE VIII ARCHITECTURAL CONTROL

**Section 1. Architectural Control Committee.** The Board of Directors of the Association shall have the authority to make said appointments. The affirmative vote of a majority of the membership of the Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

**Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation.** No residence, structure or improvement of any kind or nature, or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots, nor shall any existing structure, improvement, fence or barrier upon any Lot be altered in any way which materially changes the exterior appearance thereof without the written consent of the Committee; nor shall any new use be commenced on any Lot without the written consent of the Committee. Plans and specifications of all such improvements and uses shall be submitted to and may be retained by the Committee. They shall be in such form and shall contain such information as may be required by the Committee, but in any event shall include, without limitation, (1) a building plan and site plan showing the floor plans, exterior elevations, color scheme, kind, shape, height, materials and location with respect to said Lot (including proposed front, rear and side setbacks) of all structures, fences or barriers, and location of all parking spaces and driveways on the Lot and the proposed surface thereof and (2) grading and landscape plans. The Association recommends that all plans and specifications be prepared by a registered and licensed professional Architect or Engineer, or professional residential housing designer. The Builder selected to construct any residence shall be approved by the Committee in its sole and absolute discretion. No residence may be constructed upon any Lot except by a Licensed General Contractor.

The Committee may promulgate rules governing the forms and content of plans to be submitted for approval or requiring specific improvements on the Lots, including, without limitation, the exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Committee at any time, and no inclusion in, or omission from or amendment of any such rule or statement shall be deemed to bind the Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Committee's discretion as to any such matter; however, no change of policy shall affect the finality of any approval granted prior to such change. Any form, document or other information published by the Committee on its website shall supersede any prior rule promulgated and published by the Committee on its website, publications, minutes or registered covenants, conditions or restrictions.

Approval for use on any Lot of any plans or specifications shall not be deemed a waiver by the Committee of its discretion to disapprove such plans, specifications, features or elements as are subsequently submitted for use on any other Lot. Approval of any such plans and specifications relating to any Lot shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, improvements, fences or barriers on and uses of the Lot in question.

In the event the Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof the same shall be deemed to have been approved as submitted and no further action shall be required.

If any structure, improvement, fence or barrier shall be altered, erected, placed or maintained upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Committee as required herein, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein; and upon written notice from the committee, any such structure, improvement, fence or barrier so altered, erected, placed or maintained upon any Lot, in violation hereof, shall be removed or altered, and such use shall be terminated so as to extinguish such violation.

If fifteen (15) days after the notice of such violation, the Owner of the Lot in question shall not have taken reasonable steps toward the removal, alteration or termination of the same, the Association, by its officers or directors, shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner, as well as, a continuing lien upon the Lot in question upon the recording of a notice of lien with the Office of the Register of Deeds of DeKalb County, Tennessee. The provisions of the Article of this Declaration dealing with assessments and non-payment thereof, including, without limitation, the right and remedies given to the Association therein, shall apply fully to the debt obligations, including interest and costs of collection, and the lien rights created in this section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Committee, the Committee shall, upon written request of the Owner thereof, issue a letter of compliance identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation of such letter shall be at the expense of the Owner of such Lot. Any compliance letter issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such compliance letter shall be conclusive evidence that all structures and improvements described therein and the use or uses described therein comply with all the requirements of these restrictions.

Any agent of the Committee, may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions of this Declaration, and no such persons shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

## **ARTICLE IX CONSTRUCTION OF RESIDENCE**

**Section 1. Completion of Construction.** Once construction of a residence is commenced, the particular Owner shall proceed diligently therewith and complete construction within eighteen (18) months after said commencement and driveway to be completed twelve (12) months after home completion.

If said construction is not completed within said eighteen (18) months, then the Owner shall owe to the Association a penalty equal to twenty percent (20%) of the original price of the Lot. Said amount shall be payable within thirty (30) days after the end of said eighteen (18) months and shall increase by an additional penalty of one percent (1%) of said price for each additional thirty (30) days it remains unpaid. Said penalties, together with costs of collection thereof, shall be a binding personal obligation of such Owner, as well as, a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Register of Deeds of DeKalb County, Tennessee. The rights and remedies given to the Association by the Articles of this Declaration dealing with assessments and non-payment thereof shall apply fully to the debt obligations, including costs of collection, and the lien rights created in this Section for the benefit of the Association.

The terms and conditions of this Section, including, without limitation, the time periods set forth for completion of construction, shall apply fully to any subsequent purchasers or any Lot.

**Section 2. Subordination and Mortgage Protection.** The subordination and mortgage protection provisions of the Article of this Declaration dealing with assessments and non-payment thereof shall be fully applicable to all the rights and remedies of the Association created by this Article.

## **ARTICLE X RESTRICTIVE COVENANTS**

**Section 1. Residential Use.** No Lot shall be used except for single-family private residential dwelling.

**Section 2. Uses, Prohibited Uses and Nuisances.** In order to provide for a congenial occupation of the residences to be built on the Lots and for the protection of the values of the entire development, the Lots and the residences to be constructed shall be governed by the following provisions:

(a) The Property is hereby restricted to single-family private residential dwellings for residential use only. Each lot shall have only one dwelling. All buildings or structures placed upon the Property shall be site-built and of new construction, and no buildings or structures shall be moved from other locations onto the Property, unless approved by the Committee. No business activity of any kind whatsoever shall be conducted in any building or on any portion of the Property (except for home offices which do not generate any traffic to or from the property, such as from visitors, clients, customers or delivery vehicles).

(1) Weekend Rentals are not permitted. Long Term Rentals of 1 year or more are permitted with the Property Owner (Landlord) taking full responsibility for the Renters adhering to all CCR's and By-Laws. Landlord shall secure a signed CCR document that the Renters have read and agree to the CCR's. A copy of this signed document shall be forwarded to the current Secretary of the MHPOA prior to renting the property. Note: All current renters that meet the Long-Term Rental Criteria shall be grandfathered in based on a signed CCR forwarded to the current Secretary of the MHPOA.

(b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Subdivision Plat.

(c) No structures of a temporary character, trailers, tents, shacks, garages, barns or other out-buildings shall be used on any portion of said Property at any time as a residence, either temporarily or permanently, unless approved by the Committee.

(d) All buildings erected on any Lot shall have wood frame, or vinyl clad windows on sides facing a street, or other type windows as approved by the committee.

(e) Unless approved by the Committee, each residence must have a fully enclosed garage for not less than two (2) nor more than four (4) cars. Basement garages may be approved if the Lot and dwelling are of suitable size and character. No garage door may be left open to a street for an extended period of time.

(f) Each residence may have a traditional mailbox structure and may have outdoor post lights located at sidewalk from driveway, all of which must be approved by the Committee. The treatment and construction of all driveway entrances must be approved by the Committee.

(g) All private fences must be constructed of (1) brick, stucco, Dryvit (or other EIFS system) and/or wrought iron, (2) wood planks shadow box style no more than 8" in width, or (3) Kentucky fences consisting of wood or vinyl posts and three (3) wood or vinyl rails. In accordance with Article IX hereof, all fences must be approved by the Committee. No fence, hedge or other separating device shall be constructed beyond the front house line, nor on corner lots beyond the side house line. All fences, regardless of location, shall be no more than eight (8') feet tall. Notwithstanding all of the foregoing provisions of this paragraph (g), the Committee shall have the right to grant approval for such variations, waivers or exceptions to any or all of the above restrictions related to fences as it, in its sole discretion, shall deem proper.

(h) No obnoxious or offensive activity or excessive noise shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance.

(i) Unless approved by the Committee, no animals of any kind shall be raised, bred or kept on any of the Lots, except dogs, cats or caged birds provided that such dogs, cats and birds are not kept, bred, or maintained for any commercial purpose. Any dogs kept outside shall not be allowed to be noisy, bothersome or a nuisance. No pens or runs are allowed.

(j) Operation of vehicles not approved for public roads is discouraged on community roads. If someone chooses to operate such a vehicle, they do at their own risk.

(k) No signs whatsoever (except normal mailbox signage), unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any residents thereof.

(l) No exterior television or radio antennas, nor any satellite dishes with a diameter in excess of twenty (20) inches (the location of which shall be approved by the Committee) shall be placed, allowed or maintained upon the Property or any improvements to be located upon the Property.

(m) No clothesline may be used or maintained on any Lot.

(n) No building material of any kind shall be placed or stored upon any Lot until the Owner is ready to commence improvements. Building materials shall be stored only within the property lines of the particular Lot involved.

(o) Excluding mail boxes, approved post lights, natural or approved vegetation, no obstruction shall be allowed within ten (10') feet of any right-of-way, except on property or easements owned by the Association or unless approved by the Committee.

(p) All equipment, air conditioning units, electrical transformers, garbage cans and service yards shall be kept screened by adequate planting or fencing so as to completely conceal them from view of all streets and neighboring Lots. Further, any and all of the foregoing items, along with any basketball goals or other playground or sports equipment shall be located and placed no closer to any street than the front of the house. Basketball goals shall not be attached to the front of any house. "Front of the house" as used in this Declaration shall mean that part of the structure of the house farthest away from the street but facing such street. Corner lots must comply with this restriction as to both streets. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(q) The construction of all swimming pools shall be approved by the Committee. All swimming pools shall be fenced in a manner to comply with applicable law and regulations and to prohibit easy access by small children. All such fences must be in full compliance with the fence restrictions hereinbefore set forth. No above-ground pools shall be allowed.

(r) No tennis court fence shall be erected on any Lot unless the construction, size and materials are approved by the Committee. In the event wire fencing is approved, it must, at a minimum, be coated with green or black vinyl or a similar material of like color.

(s) No wagons, trailers or recreation or commercial vehicles, including, without limitation, boats, boat trailers, horse trailers, motorcycles, trucks, motor homes, camping trailers, or similar type items shall be kept other than in a garage. No automobile or other vehicle shall be continuously, habitually or regularly parked on any street or right-of-way or in any yard.

(t) For all areas of Mountain Harbour other than Coves IV and Mountain Harbour Pointe I, the minimum heated livable area of any residence, excluding garages, porches, storage rooms, workshops, etc., shall be 1800 square feet for a single-story dwelling. A two-story dwelling shall contain a minimum of 1800 square feet of heated living space, with a minimum of 1400 square feet on the first-floor excluding basements, garages, porches, overhangs, etc. For Mountain Harbour Coves IV and Mountain Harbour Pointe I, the minimum heated livable area of any residence, excluding garages, porches, storage rooms, workshops, etc., shall be 2400 square feet (except for Lots 2 and 3 in Cove IV which can be 1800 square feet). A two story dwelling in Coves IV and Pointe I shall contain a minimum of 2400 square feet of heated living space (1800 square feet for lots 2 and 3 in Coves IV), with a minimum of 1400 square feet on the first floor excluding basements, garages, porches overhangs, etc.

(u) Setback lines and height restrictions shall be no less than those required by applicable governmental regulations and no less than those shown on the Subdivision Plat. The Committee shall have the absolute right to control the precise site and location of any house or other structure upon all Lots. Such location shall be determined only after reasonable opportunity has been afforded to the Owner to recommend a specific site.

(v) No Lot may be further subdivided. No portion of any Lot may be conveyed except with the prior written approval of the Committee.

(w) All above-ground exterior foundation and exposed basement walls must be veneered with stucco, Dryvit (EIFS) type material, split-faced block approved by the Committee, brick or stone unless otherwise approved by the Committee.

(x) During construction of improvements and at all times thereafter, lots must be regularly cleaned and kept free of debris. Governmental erosion and sediment control guidelines shall be observed at all times.

(y) All driveways, walks and patios must be paved on or before twelve (12) months following the completion of the home or eighteen (18) months following the Visible Commencement of Operations, as defined in TCA § 66-11-101(16), to construct the home, whichever occurs first, and must be constructed of concrete or asphalt unless otherwise approved by the Committee. (Brick, interlocking pavers, exposed aggregate or stone finishes are acceptable.)

(z) Each lot may be improved with only one single-family dwelling. No out-buildings, sheds or any other structures shall be allowed, except one detached storage building stick-built on site, constructed of the same material as the residence on said lot so as to have a similar appearance. Said storage building must be located in the rear yard. Prior to construction, plans specifications for any storage building must be approved by the Committee.

(aa) The finished grading for all Lots shall be completed in conformity with the recorded plat for the Subdivision and in such manner as to retain all surface water drainage on said lot or lots in "property line swales" designed to direct the flow of all surface waters into the drainage easements as created by the overall drainage plan for the Subdivision as approved by the appropriate county authority.

(bb) No vegetable gardens shall be allowed in front or side yards.

(cc) All dwellings must have an exterior of stone, stained logs, stucco, painted wood lap siding, brick or brick veneer, or a combination thereof. No vinyl siding or sheet material siding shall be allowed (such as 4'x 8' plywood.) Gutters, downspouts and soffits may be made of vinyl, but must blend with the exterior of the dwelling. Limited exceptions may be allowed by the Committee for cases of exceptionally attractive designs.

(dd) All flashings on structures must be copper or metal painted to match the trim of the structure.

(ee) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors for the operation and use of the Property and promulgated among the membership by them in writing. The Board of Directors is hereby authorized to adopt such rules including the levying of appropriate fines which will then be treated as assessments.

(ff) The Association, after approval by a majority vote of the Board of Directors, shall have the right, through agents and/or employees to enforce the aforesaid restrictive covenants and to enter upon any Lot in violation thereof for such purpose. Upon written notice from the Association, any such violation shall be corrected by the Owner of the subject Lot. If fifteen (15) days after the notice of such violation, the Owner shall not have taken reasonable steps toward correction thereof, the Association, by their officers and directors, shall have the right, through agents and

employees, to enter upon such Lot and take such steps as necessary to extinguish such violation. The costs thereof shall be the binding personal obligation of such Owners, as well as, a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Register of Deeds of DeKalb County, Tennessee. The provisions of the Article of this Declaration dealing with assessments and non-payment thereof, including, without limitation, the right and remedies given to the Association therein, shall apply fully to the debt obligations including interest and costs of collection, and the lien created in this section.

(gg) No firearms shall be discharged within the Subdivision.

(hh) Designated Common Area(s) is(are) for the common enjoyment of all members of the Association and shall only be used by members and their guests exclusively. There shall be no toilet facilities placed upon any portion of any designated Common Area(s), nor shall any camping be allowed thereon, unless approved by the Committee.

## ARTICLE XI MISCELLANEOUS

**Section 1. Duration and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of the Association and the Owners of any real estate subject to this Declaration, their respective legal representatives, heirs, successors and assigns, and shall remain in effect until January 1, 2031, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Any amendment must be properly recorded to be effective.

**Section 2. Enforcement.** The Association, or any Member, shall have the right to enforce the terms and conditions of this Declaration by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

**Section 3. Hold Harmless and Owner's Responsibility.** Each Owner, recognizing that certain risks are inherent in the building of houses, and in other aspects of building and recreation, does upon taking title to a Lot, hold harmless (1) the Association, (2) any other entity managing or supervising the aforesaid activities which is owned and/or controlled or employed by the Association or by some or all of the Members, and (3) their directors, officers and employees, from any and all losses, liabilities, or damages which said owner, his family, or guests may sustain resulting from the acts, and/or missions of said entities, except for their gross negligence. Further, said owner shall be fully responsible for any and all losses or damages which might be caused by himself, his family or their invitees.

**Section 4. Disclaimer.** The Property may include some land that is filled or partially filled or that contains abandoned wells, underground springs or other characteristics which may affect its suitability for building. The Association makes no warranty or representation, express, implied or otherwise, as to the Property being undisturbed land or suitable for building, and shall not be liable for claims, losses or damages of any kind or character resulting from such conditions.

**Section 5. Casualty and Liability Insurance.** The Owner of each Lot shall carry in full force and effect casualty insurance in limits for the replacement value of Lot improvements located thereon and normal and reasonable general liability insurance. The Owner shall provide the Association a copy of the policies providing such coverage, and the policies shall contain a thirty (30) day notice of cancellation provision running to the benefit of the Association. Insurance on the Designated Common Area(s) shall be carried and paid by the Association.

**Section 6. Interest and Late Charges.** Any amount due to the Association, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors of the Association, bear interest at a rate not to

exceed the highest rate allowed under the laws of the State of Tennessee, and may, by resolution of said Board, be subject to such penalty of "late charges" as said Board may fix.

**Section 7. Notices.** Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

**Section 8. Headings.** All headings appearing herein are for convenience only and shall be disregarded in construing the substantive provisions hereof.

**Section 9. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

**Section 10. Waiver.** No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

**Section 11. Gender, Etc.** Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

**ARTICLE XII SECURITY**

The Association will strive to maintain the community as a safe, secure residential environment. However, neither the association, nor any successor of the association shall be considered insurers or guarantors of security within the property and none of them shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

All owners, tenants, guests, and invitees of any owners, as applicable, acknowledge that the association and committees established by the association, are not insurers and that each owner, tenant, guest, and invitee assumes all risk of loss or damage to persons, to units, and to the contents of units and further acknowledge that the association has made no representations or warranties, nor has any owner, tenant, guest or invitee relied upon any representations or warranties expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.

**IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by the officer duly authorized so to do.**

Mountain Harbour Property Owners Association, Inc.

By: \_\_\_\_\_,  
\_\_\_\_\_, President

**STATE OF TENNESSEE  
COUNTY OF DeKalb**

**Before me, the undersigned authority, a Notary Public in and for said County and State aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the President of Mountain Harbour Property Owners Association, Inc., the within named bargainer, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name himself as President. Witness my hand and seal at office, this \_\_\_\_\_ day of \_\_\_\_\_.**

\_\_\_\_\_  
**Notary Public**

**My Commission Expires:**

---

## EXHIBIT A PROPERTY DESCRIPTION

### Tract I

(701 Acres +/-)

BEGINNING AT A COMMON CORNER OF LOTS 56 AND 57 OF RIVERWATCH PHASE II, S/D, RECORDED IN ENVELOPE 98, REGISTERS OF DEEDS OFFICE, DEKALB CO.TN ALSO A COMMON CORNER WITH CORPS OF ENGINEERS LINE. THENCE WITH RIVERWATCH PHASE II S/D THE FOLLOWING COURSES.

1. N. 48°02'39" W. 321.53'

2. N. 38°55'24" W. 35.00'

3. N. 38°55'24" W. 180.00'

4. N. 55°49'17" W. 788.01'

5. N. 52°00'05" W. 415.00'

6. N. 01°04'40" W. 280'

7. S. 72°38'15" E. 500'

8. N. 59°14'26" E. 850.59'

9. N. 35°34'02" E. 100.57'

10. N. 09°52'12" E. 50'

11. S. 80°07'48" E. 65'

12. S. 76°16'53" E. 61.08'

13. N. 06°18'00" E. 195.00'

14. N. 83°42'00" W. 168.10'

15. N. 66°38'38" W. 260'

16. N. 44°04'43" W. 600'

17. N. 52°29'08" E. 664.99'

18. S. 37°30'52" E. 220'

19. S. 51°18'52" E. 290.34'

20. N. 20°38'40" E. 600'

21. N. 23°33'12" W. 90'

22. S. 75°44'42" E. 236' TO A POINT ON THE LINE OF LOT 1 OF SAID SUBDIVISION, THENCE LEAVING SAID SUBDIVISION WITH A SEVERANCE LINE OF RIVERWATCH LLC PROPERTY

23. N. 16°56'45" W. 4.18' THENCE WITH A CURVE LINE TO THE LEFT HAVING A RADIUS OF 166.21' AND A CHORD BEARING AND DISTANCE
24. N. 42°39'58" W. 144.26' THENCE WITH A STRAIGHT LINE
25. N. 68°23'12" W. 310.31' THENCE WITH A CURVE LINE TO THE LEFT HAVING A RADIUS OF 90.09' AND A CHORD BEARING AND DISTANCE
26. S. 74°04'21" W. 109.79' THENCE WITH A STRAIGHT LINE
27. S. 36°31'53" W. 32.67' THENCE WITH A CURVE LINE TO THE RIGHT HAVING A RADIUS OF 275' AND A CHORD BEARING AND DISTANCE
28. S. 63°15'57" W. 247.42' THENCE WITH A STRAIGHT LINE
29. S. 90°00'00" W. 260.75', THENCE WITH A CURVE LINE TO THE LEFT HAVING A RADIUS OF 788.28' AND A CHORD BEARING AND DISTANCE
30. S. 77°50'32" W. 332.03' THENCE WITH A STRAIGHT LINE
31. S. 65°41'04" W. 320.34'
32. S. 72°53'11" W. 373.98' THENCE WITH A CURVE LINE TO THE RIGHT HAVING A RADIUS OF 97.41' AND A CHORD BEARING AND DISTANCE
33. N. 62°20'55" W. 137.19' THENCE WITH A STRAIGHT LINE
34. N. 17°35'00" W. 80.49'
35. N. 10°55'22" E. 1037.83' TO A POINT IN THE LINE OF THE CORPS OF ENGINEERS PROPERTY, THENCE WITH THE CORPS OF ENGINEERS PROPERTY THE FOLLOWING COURSES
36. S. 59°42'47" W. 1764.65'
37. S. 79°20'49" W. 466.30'
38. N. 75°11'03" W. 639.72'
39. S. 55°07'26" W. 487.62'
40. S. 56°33'17" E. 695.37'
41. S. 81°00'05" E. 1752.67'
42. S. 72°02'59" W. 1514.52'
43. S. 35°52'06" W. 768.86'
44. S. 68°08'06" W. 630.17'
45. N. 09°33'26" W. 1402.48'
46. N. 65°25'04" W. 1210.68'
47. S. 69°18'01" W. 842.46'

48. S. 44°34'49" E. 862.74'

49. S. 09°41'53" E. 793.76'

50. N. 65°33'59" W. 1050.41' TO A POINT IN THE LINE OF GARY W. CRIPPS PROPERTY RECORDED IN BOOK 64, PAGE 511, RODC, THENCE WITH SAID PROPERTY THE FOLLOWING COURSES

51. S. 00°58'48" E. 321.16'

52. S. 05°27'05" W. 551.40' '

53. S. 15°52'42" E. 377.70'

54. S. 41°09'47" E. 272.91'

55. S. 11°45'03" W. 219.64'

56. N. 64°42'49" W. 144.84'

57. S. 88°10'50" W. 206.30'

58. S. 59°00'17" W. 608.56' TO A POINT IN THE PROPERTY LINE OF THE CORPS OF ENGINEERS PROPERTY, THENCE WITH SAID CORPS OF ENGINEERS PROPERTY THE FOLLOWING COURSES:

59. S. 29°34'46" W. 582.45'

60. S. 23°20'25" E. 1454.13'

61. N. 84°17'21" E. 617.73'

62. S. 22°56'42" E. 560.29'

63. N. 54°52'48" E. 824.58'

64. S. 00°26'24" W. 623.90'

65. N. 84°02'27" E. 651.43'

66. S. 39°49'31" E. 298.03'

67. N. 74°31'50" E. 1440.47'

68. N. 08°00'42" E. 439.21'

69. N. 71°01'24" E. 645.15'

70. N. 56°03'32" E. 1469.38'

71. N. 47°10'34" E. 545.73'

72. THENCE IN A NORTHEASTERLY DIRECTION 1436' MORE OR LESS TO THE POINT OF BEGINNING CONTAINING APPROXIMATELY 701 ACRES MORE OR LESS.

Tract II. (The Leeds)

BEGINNING A POINT LOCATED N. 10 ° 53' 08" E. 207.12' FROM THE NORTHEAST CORNER OF LOT 23 OF RIVERWATCH PHASE I, AS RECORDED IN PLAT BOOK 88, PAGE 1, REGISTERS OFFICE OF DEKALB CO., TENNESSEE, SAID POINT BEING A COMMON CORNER WITH THE CORPS OF ENGINEERS PROPERTY, AND THE PROPERTY HEREIN DESCRIBED. THENCE FROM SAID POINT OF BEGINNING WITH A SEVERANCE LINE OF RIVERWATCH LLC AND THE EXISTING GOLF COURSE PROPERTY, THE FOLLOWING COURSES:

1. N. 07°38'54" W. 435.28'
2. N. 69°12'36" W. 68.43'
3. N. 18°10'20" W. 85.10'
4. N. 19°09'09" W. 75.64'
5. S. 68°13'47" W. 123.53'
6. S. 75°57'51" W. 107.58'
7. S. 33°59'44" W. 147.44'
8. S. 42°12'14" W. 142.52'
9. N. 80°39'06" W. 69.42'
10. N. 62°38'21" W. 125.15'
11. N. 67°12'29" W. 168.04'
12. N. 85°31'20" W. 50'
13. N. 86°22'25" W. 379.56' TO A CORNER OF RIVERWATCH LLC AND THE CORPS OF ENGINEERS PROPERTY, THENCE WITH THE CORPS OF ENGINEERS PROPERTY THE FOLLOWING COURSES:
14. S. 00°06'13" W. 1634.98'
15. N. 85°19'25" E. 376.14'
16. N. 12°50'07" E. 655.19'
17. N. 37°49'14" E. 312. 07'
18. N. 68°24'58" E. 672.23' MORE OR LESS TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 29.50 ACRES, MORE OR LESS.

Tract III. Road to The Leeds.

A TRACT OF LAND 50' IN WIDTH ALONG THE CURRENT LOCATION OF THE DIRT ROAD RUNNING FROM THE SOUTH RIGHT OF WAY OF RIVERWATCH TRACE TO THE POINT DESCRIBED AS THE LAST POINT IN THE DRAIN FIELD EASEMENT HEREIN CONVEYED. SAID POINT SHALL BE IN THE EASTERN EDGE OF SAID 50' STRIP. THE GRANTEE SHALL HAVE THE RIGHT TO LOCATE THEIR PAVED ROAD AT ANY POINT ALONG THE GRADED ROAD CURRENTLY EXISTING.

Tract IV. North Road.

A TRACT OF LAND 50 FEET IN WIDTH MEASURED PERPENDICULARLY ON THE NORTH AND EAST SIDE OF THE FOLLOWING LINE: BEGINNING AT A POINT AT THE NORTHERN COMMON CORNER OF LOTS 1 AND 2, PHASE II RIVERWATCH; THENCE N. 16°56'45" W. 4.18' THENCE WITH A CURVE LINE TO THE LEFT HAVING A RADIUS OF 166.21' AND A CHORD BEARING AND DISTANCE N. 42°39'58" W. 144.26' THENCE WITH A STRAIGHT LINE, N. 68°23'12" W. 310.31' THENCE WITH A CURVE LINE TO THE LEFT HAVING A RADIUS OF 90.09' AND A CHORD BEARING AND DISTANCE S. 74°04'21" W. 109.79', THENCE WITH A STRAIGHT LINE S. 36°31'53" W. 32.67', THENCE WITH A CURVE LINE TO THE RIGHT HAVING A RADIUS OF 275' AND A CHORD BEARING AND DISTANCE S. 63°15'57" W. 247.42', THENCE WITH A STRAIGHT LINE S. 90°00'00" W. 260.75', THENCE WITH A CURVE LINE TO THE LEFT HAVING A RADIUS OF 788.28' AND A CHORD BEARING AND DISTANCE S. 77°50'32" W. 332.03', THENCE WITH A STRAIGHT LINE S. 65°41'04" W. 320.34', S. 72°53'11" W. 373.98', THENCE WITH A CURVE LINE TO THE RIGHT HAVING A RADIUS OF 97.41' AND A CHORD BEARING AND DISTANCE N. 62°20'55" W. 137.19', THENCE WITH A STRAIGHT LINE N. 17°35'00" W. 80.49' TO A POINT.

Tract V. Hefner Tract

BEGINNING AT A SET STONE IN THE CORP OF ENGINEERS LINE NEAR AN EIGHT-INCH ELM AND A TWO-INCH IRONWOOD WITH POINTERS; THENCE S 5°30' N 562.50 FEET TO A STAKE WITH DOUBLE 12-INCH HICKORY POINTERS; THENCE S 14°10' E 378.70 FEET TO A SET STONE; THENCE S 42°03' E 269.73 FEET TO A TRIPLE HICKORY ON WEST SIDE OF OLD ROAD; THENCE S 12°04' W 219.78 FEET TO A 12-INCH DOUBLE WHITE OAK; THENCE N 64°45' W 159.50 FEET; THENCE S 88°30' W 201.40' TO A 16-INCH WHITE OAK; THENCE S 59°32' W 605.27 FEET; THENCE WITH THE CORP OF ENGINEERS LINE N 42°30' W 480.00 FEET; THENCE CONTINUING WITH THE CORP OF ENGINEERS LINE N 24°00' E 830.00 FEET; THENCE S 63°30' E 272.00 FEET TO THE POINT OF BEGINNING. BEING THE SAME PROPERTY DESCRIBED IN A CONVEYANCE FROM BILLY S. HENDRIXSON AND M.B. SILCOX DATED JULY 18, 1996 OF RECORD IN RECORD BOOK 64, PAGE 511 IN THE REGISTER'S OFFICE FOR DEKALB COUNTY, TENNESSEE.

Welcome Center

A PLAT REGISTERED IN PLAT CABINET 1, PAGE 227G, REGISTER OF DEEDS, DEKALB COUNTY, TENNESSEE, TO WHICH REFERENCE IS MADE FOR A MORE PERFECT DESCRIPTION OF THE REAL PROPERTY.

## EXHIBIT B BYLAWS OF MOUNTAIN HARBOUR PROPERTY OWNERS ASSOCIATION, INC.

### ARTICLE I GENERAL

**Section 1. Name.** The name of this corporation is MOUNTAIN HARBOUR PROPERTY OWNERS ASSOCIATION, INC. Its principal address of business shall be P.O. Box 396, Sparta, TN 38583. The corporation may have such other offices within or without the State of Tennessee as the Board of Directors may from time to time designate.

**Section 2. Applicability.** These Bylaws and each provision thereof shall be applicable to all Lots and all Members, as hereinafter defined, within the residential subdivision known as Mountain Harbour, located in DeKalb County, Tennessee (the "Property"), and within such other subdivisions or property which may become subject to the Declaration.

**Section 3. Definitions.** All of the terms of these Bylaws shall have the same meanings as set forth in the Declaration of Covenants, Conditions and Restrictions for the Mountain Harbour Subdivision (the "Declaration").

### ARTICLE II MEMBERSHIP

**Section 1. Eligibility.** Every Member in compliance with all of the requirements and conditions contained in the Declaration and these Bylaws shall be entitled to attend and vote at all meetings of the Association.

**Section 2. Voting Rights.** The voting rights of the Membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned. If you comply with **ARTICLE VII ASSESSMENTS Section 2 Annual Assessments** Part (d) and pay one lot dues you will only have one vote.

At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. Subject to the rights set forth in the Declaration, the vote of the Members representing fifty-one (51%) percent majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute, the Association's Charter, the Declaration or these Bylaws, a different vote is required, in which case such express provision shall govern and control.

The vote of any membership which is owned by more than one person may be exercised by any of them present at any meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question.

No Member shall be eligible to vote, either in person or by proxy, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

**Section 3. Proxies.** A Member may appoint any other Member, the Board or any other person permitted by law or by the By-Laws, as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the By-Laws.

**Section 4. Quorum.** The presence, either in person or by proxy, of Members representing at least fifty-one (51%) percent of the total votes entitled to be cast with respect to any question shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of the Members. If the number of Members at a meeting drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted. In January 2005 it was established that a quorum was 25 members.

A meeting may be adjourned despite the absence of a quorum. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If two or more

successive meetings are adjourned for lack of a quorum, the quorum for each successive resumed meeting shall be equal to the greater of the number of votes represented at either of the two previous adjourned meetings.

**Section 5. Place of Meeting.** Meetings of the membership shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

**Section 6. Annual Meetings.** The annual meetings of the Members of the Association shall be held at 7:00 p.m. on the third Monday in January of each year, beginning in 2003, or any other time as specified by the Board. At such meeting there shall be elected a Board of Directors by secret written ballot of the Members in accordance with the requirements of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

**Section 7. Special Meetings.** It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a written petition signed by Members representing at least twenty percent (20%) of the total number of votes outstanding. The notice of any special meeting shall state the time and place such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 8. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meetings, stating the purpose thereof as well as the time and place where it is to be held, to each Member of record, at his address as it appears on the membership book the Association, or if no such address appears, at his last known place of address, at least ten (10) days but no more than sixty (60) days prior to such meeting. Service may also be accomplished by the delivery of any such notice to the Member at his last known address by deposit in the box or slot for the United States mail. Notice by either such method shall be considered a notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

**Section 9. Action Without Meeting.** Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with any statute, the Declaration or these Bylaws, such meeting and vote may be dispensed with if all Members who would have been entitled to vote upon such action consent in writing to such action being taken.

**Section 10. Order of Business.** The order of business at all regularly scheduled meetings of the Members shall be as follows:

- (a) Roll call and certificate of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committees, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election,
- (i) Election of directors.

In the case of a special meeting, items (a) through (d) shall be applicable, and thereafter the agenda shall consist of the items specified in the notice of the meeting.

## **ARTICLE III BOARD OF DIRECTORS**

**Section 1. Number and Qualification.** The affairs of the Association shall be managed by the Board of Directors composed of natural persons, each of whom shall be of legal age.

**Section 2. Directors.** The Board of Directors shall be composed of three (3) to seven (7) persons, who will be Members of the Association.

**Section 3. Nomination.** Nomination for election of the Board of Directors of the Association shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may also be made from the floor at the annual meeting.

**Section 4. Power and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the Property and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

To provide for:

- (a) Care and upkeep of the properties charged to the care of the Association.
- (b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor and borrowing of funds, all in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of the Property and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Property, all of which shall be consistent with law and the provisions of these Bylaws and the Declaration.
- (e) Fulfillment of all duties promulgated by these Bylaws and the Declaration.

Further the Board of Directors shall have the power to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid and for any period not to exceed ninety (90) days for the infraction of its published rules and regulations.

**Section 5. Election and Term of Office.** The term of the Directors shall expire when their successors have been duly elected and are duly qualified. The term of office of each Director shall be for a period of two (2) years and until their successors shall have been elected.

**Section 6. Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director legally to constitute such meeting, provided a majority of the Board of Directors shall be present.

**Section 7. Regular Meetings.** Regular meetings of the Board of Directors may be held at such place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during

each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail or telephone, at least six (6) days prior to the day named for such meeting.

**Section 8. Special Meetings.** Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone, electronic mail, or text message, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

**Section 9. Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present and remain present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

**Section 10. Quorum.** At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 11. Action Without Meeting.** Any action of the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the Members of the Board of Directors shall individually or collectively consent in writing to such action, Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

**Section 12. Fidelity Bonds.** The Board of Directors may require that all officers and employees of the Association handling or responsible for the Association's funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

## ARTICLE IV OFFICERS

**Section 1. Designation.** The principal Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. The officers of the Association must be Members of the Association. The Directors may appoint such other officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be filled by the same person.

**Section 2. Election of Offices.** The officers of the Association shall be elected annually, on a rotating basis, at the annual Association meeting.

**Section 3. Removal of Officers.** Upon an affirmative vote of a majority of the Members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

**Section 4. President.** The President shall be the chief executive officer of the Association. In the event he is also a Member of the Board of Directors, he shall preside at all meetings of the Members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of an association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

**Section 5. Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other Member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

**Section 6. Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association; shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and shall, in general, perform all the duties incident to the office of the Secretary.

**Section 7. Treasurer.** The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects belonging to the Association in such depositories as may from time to time be designated by the Board of Directors.

**Section 8. Execution of Association Documents.** With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by both the President, and the Secretary, and all checks shall be executed on behalf of the Association by such officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

## ARTICLE V INDEMNIFICATION AND CONFLICTS

**Section 1. Liability and Indemnification of Officers and Directors.** The Association shall indemnify every officer and Director of the Association against any and all expense, including attorney's fees, reasonably incurred by or imposed upon any officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association) to which he may be made a party by reason of being or having been an officer or Director of the Association, whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association or the Property (except to the extent that such officers or Directors may also be Owners of Lots within the Property) and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director of the Association, or former officer or Director of the Association, may be entitled.

**Section 2. Conflicts Of Common or Interested Directors.** The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Association and the Property. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association (including the Developer) in which one or more of the Directors of this Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors of any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

- (a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; and
- (b) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

## ARTICLE VI EXPENSES, MAINTENANCE AND EMERGENCIES

**Section 1. Management and Common Expenses.** The Association, acting by and through its Board of Directors, shall manage, and operate the Property for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the Association's funds, the following:

- (a) The cost of such insurance as the Association may effect.
- (b) The cost of providing such legal and accounting services as may be considered necessary to the operation of the Property.
- (c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members which are deemed necessary or proper.
- (d) The cost of the maintenance or repair on any Lot in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Areas or to preserve the appearance or value of the Property or is otherwise in the interest of the general welfare of all Owners of the Lots; provided, however, that such maintenance or repair shall be undertaken in accordance with the Declaration.
- (e) All other items which are listed as responsibilities of the Association as found in the Declaration.

**Section 2. Duty to Maintain.** Except for maintenance requirements herein imposed upon the Association, the Owner of any Lot shall, at his own expense, maintain said Lot in accordance with the Declaration.

**Section 3. Emergencies.** For the purpose solely of performing any of the repairs or maintenance required or authorized by these Bylaws or the Declaration, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

## ARTICLE VII FINANCIAL ASPECTS

**Section 1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the Board of Directors.

**Section 2. Books and Accounts.** Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order of receipts and of the expenditures affecting the Property and its administration and shall specify the maintenance and repair expenses incurred. The amount of any assessment required for payment of any capital expenditures shall be credited upon the books of the Association to the "Paid-in-Surplus" account as a capital contribution by the Members.

**Section 3. Reports.** Within ninety (90) days from date of close of each fiscal year, the Association shall furnish its Members and the holders of first mortgages requesting same an annual financial statement, including the income and disbursements of the Association.

**Section 4. Inspection of Books.** The books and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members, by the institution holder of any first mortgage on any Lot, and/or their duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as Members or lenders.

## ARTICLE VIII MISCELLANEOUS

**Section 1. Notice to Board of Directors.** Any Owner who mortgages such Lot shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

**Section 2. Agent for Service of Process.** The President of the Association shall be designated as the person authorized to accept service of process in any action relating to two or more Lots or to the Common Area.

**Section 3. Notices.** Unless another type of notice is herein elsewhere specifically required, any and all notices called for in the Declaration or these Bylaws shall be given in writing.

**Section 4. Severability.** In the event any provision or provisions of these Bylaws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

**Section 5. Waiver.** No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

**Section 6. Captions.** The captions contained in these Bylaws are for convenience only and shall not in any way limit or enlarge the terms and provisions of these Bylaws.

**Section 7. Gender, Etc.** Whenever in these Bylaws the context so requires, the singular' number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

**Section 8. Conflicts.** These Bylaws are subordinate to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context of the Declaration, shall have the same meaning as in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control, and in the event of any conflict between these Bylaws and any of the law of the State of Tennessee, the provisions of said law shall control.

**Section 9. Amendments.** These Bylaws may be amended from time to time as permitted by state law as it may change from time to time. Duly adopted, per member vote, on \_\_\_\_\_.

**INCORPORATOR  
CHARTER OF  
MOUNTAIN HARBOUR PROPERTY OWNERS ASSOCIATION, INC.**

The undersigned person under the Tennessee Nonprofit Corporation Act adopts the following charter for the aforesaid corporation:

1. The name of the corporation is Mountain Harbour Property Owners Association, Inc.
2. The corporation is a mutual benefit corporation.
3. The corporation is not a religions corporation.
4. The address of the corporation's principal office is:

P. O. Box 396  
Sparta, Tennessee 38583

5. The corporation is a nonprofit corporation.
6. The corporation is organized for the principal purpose of promoting the wellbeing of and enhancing and protecting the value of the property owned by members of the corporation owning portions of the real property located in DeKalb County, Tennessee, known as Mountain Harbour Subdivision.
7. The corporation will have members. Every person or entity who is a record owner of a fee or undivided fee interest of any lot on the Property except as specified in the Restrictive Covenants shall be a member of the corporation; provided, however, that anyone who holds such interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separate from ownership of any lot. Ownership of such lot shall be the sole qualification for membership.
8. Upon dissolution, assets of the corporation shall be distributed in accordance with a plan of dissolution adopted pursuant to TCA 48-64-102.

Signature \_\_\_\_\_