

**MASTER DEED and  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS FOR  
MOUNTAIN PARK,  
A PLANNED UNIT DEVELOPMENT  
LOCATED IN  
PIGEON FORGE, TENNESSEE  
DEVELOPER: MOUNTAIN PARK, LLC**

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VALUE	0.00
MTG TAX	0.00
TRN TAX	0.00
REC FEE	300.00
DP FEE	2.00
REG FEE	0.00
TOTAL	302.00

**STATE OF TENNESSEE, SEVIER COUNTY  
SHERRY ROBERTSON HUSKEY  
REGISTER OF DEEDS**

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**MASTER DEED and  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND  
EASEMENTS FOR MOUNTAIN PARK**

THIS DECLARATION, made as of the 7th day of July,  
2006, by MOUNTAIN PARK, LLC, (hereinafter referred to as the "Declarant"), a  
Tennessee limited liability company.

**ARTICLE I  
STATEMENT PURPOSE AND  
IMPOSITION OF COVENANT**

Section 1.1. Imposition of Covenants. The Declarant hereby makes, declares, and establishes the following covenants, conditions, restrictions, and easements (these "Covenants") which shall affect all of the Property. From this day forward, the Property shall be held, sold and conveyed subject to the Covenants. The Covenants shall run with the land and shall be binding upon all persons or entities having any right, title, or interest in all or any part of the Property, including Declarant, and their heirs, successors, and assigns, and their tenants, employees, guests, and invitees, and these Covenants shall inure to the benefit of each Owner of the Property.

Section 1.2. Statement of Purpose. These Covenants are imposed for the benefit of Declarant and all Owners of Units located within the Property. These Covenants create specific rights and privileges which may be shared and enjoyed by all Owners and Occupants of any part of the Property. Declarant intends to create a Planned Unit Development in accordance with TCA 66-27-103, et seq.

Section 1.3. Declarant's Intent. Declarant desires to ensure the attractiveness of the Units and facilities developed within the Property; to prevent any future impairment of the Property; and to preserve, protect, and enhance the values and amenities of the Property. Declarant desires and intends to develop a quality condominium project on the Property that will include limited commercial facilities, residential facilities and recreational facilities and amenities.

Section 1.4. Expansion. Units may be developed on adjoining land in the future (the "Expansion Property"). However, the Expansion Property is not included in the description of the Property on Exhibit A to this Declaration. Declarant specifically reserves the right, but shall be under no obligation, to bring the Expansion Property within the scheme of these covenants by recording a Declaration of Annexation (as defined in Section 2.18 below). Such Declaration of Annexation may impose a series of restrictions and covenants to preserve the natural amenities of the Property, as expanded, to assure architectural harmony of the improvements, and to preserve the environmental values inherent in the Property, as expanded.

**ARTICLE II  
DEFINITIONS**

The following terms, as used in this Declaration, are defined as follows:

Section 2.1. "Act" or "Horizontal Property Act" shall mean the Tennessee Horizontal Property Act as codified in Tennessee Code Annotated Section 66-27-101 et seq,

Section 2.2. "Adjoining Land" shall mean land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration as provided in Section 11.4 below.

Section 2.3. "Mountain Park" shall mean the project created by this Declaration, consisting of the Property and all of the Improvements located on, or to be located upon, the Property (unless otherwise provided herein). Mountain Park is intended to be a Planned Unit Development of cabins for full time living or for overnight rental.

Section 2.4. "Mountain Park Documents" shall mean the basic documents creating and governing the Mountain Park, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws of the Association, and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.5. "Mountain Park Rules" shall mean the rules adopted by the Declarant and the Board of the Association as provided in Section 3.5 below.

Section 2.6. "Annexation" shall mean the process by which portions of the Expansion Property or Adjoining Land are made subject to this Declaration pursuant to Article XI below.

Section 2.7. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation or Charter of the Association which have been or will be filed with the Secretary of State to create the Association.

Section 2.8. "Assessments" shall mean annual, special, and default Assessments levied pursuant to Article IV below to meet the estimated cash requirements of the Association for the payment of expenses and capital improvements.

Section 2.9. "Association" shall mean the Mountain Park Owners Association, Inc., a nonprofit membership corporation, or any successor of the corporation by whatever name, charged with the duties and obligations set forth in this Declaration.

Section 2.10. "Board of Directors" or "Board" shall mean the Board of Directors of the Association, which is the governing body of the Association.

Section 2.11. "Building" shall mean a building or structure constructed on a Homesite or Lot.

Section 2.12. "Building Site" shall mean the building envelope or area within a Homesite or Lot where a Building or other Improvement shall be located, always subject to the prior written approval of the Design Review Committee.

Section 2.13. "Bylaws" shall mean the Bylaws of the Association, which establish the methods, and procedures of its operation, which are attached at Exhibit "E."

Section 2.14. "Unit" or "Cabin Unit" shall mean the house or cabin constructed upon the Homesite or Lot, as defined herein, and as depicted on the PUD Map.

Section 2.15. "Common Area" shall mean all of the Property, excluding the "Unit" or "Cabin Units" and "Homesites," as defined herein, but including any real property, if any, in which the Association owns an interest for the common use and enjoyment of all of the Members. Such interest owned by the Association may include, without limitation, estates in fee, for terms of years, or easements. "Common Area" shall include the term "Limited Common Area" except as otherwise provided herein. The Common Area shall remain undivided and shall not be the object of an action for partition or division.

Section 2.16. "Common Expenses" shall mean and include all expenses as defined in the Act, including, but not limited to the following:

- (a) All expenses incident to the administration, maintenance, repair and replacement of the Property, after excluding there from any and all expenses which are the responsibility of a particular Unit Owner or Commercial Unit Owner as hereinafter set forth;
- (b) Expenses determined by the Board to be Common Expenses;
- (c) Expenses in this Declaration and/or its exhibits denominated as Common Expenses; and
- (d) Any other expenses declared by the Act to be Common



Expenses.

Section 2.17. "Common Profits" (or Common Surplus) means the excess of all receipts of the Association over and above the amount of Common Expenses and not otherwise reserved or designated for a specific use.

Section 2.18. "Declarant" shall mean MOUNTAIN PARK, LLC, or its successors or assigns.

Section 2.19. "Declaration of Annexation" shall mean a declaration prepared and recorded in accordance with the provisions of Article XI below to incorporate Expansion Property or Adjoining Land within the property governed by this Declaration.

Section 2.20. "Design Guidelines" shall mean the guidelines and rules published and amended and, supplemented from time to time by the Design Review Committee.

Section 2.21. "Design Review Committee" or "Committee" shall mean the committee formed pursuant to Article VI below to maintain the quality and architectural harmony of Improvements in Mountain Park.

Section 2.22. "Expansion Property" shall mean such additional real property now or hereafter owned by Declarant as Declarant shall make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

Section 2.23. "Homesite" or "Lot" shall mean a parcel of land designated as a homesite or lot on any Plat of Mountain Park and does not include the space surrounding the homesite and the roads, lanes or easements.

Section 2.24. "Improvement(s)" shall mean all Buildings and structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, Recreational Facilities, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude, which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes and improvements.

Section 2.25. "Maintenance Fund" shall mean the fund created by Assessments and fees levied pursuant to Article IV below to provide the Association with the fund required to carry out its duties under this Declaration.

Section 2.26. "Manager" shall mean such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws.

Section 2.27. "Member" shall mean any person or entity holding membership in the Association.

Section 2.28. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation. "First Mortgage" means any Mortgage, which is not subject to any lien or encumbrance except liens for taxes or other liens, which are given priority by statute.

Section 2.29. "Mortgagee" shall mean a beneficiary of a Mortgage as well as a named mortgagee. "First Mortgagee" means any person named as a Mortgagee under a Mortgage, or any successor to the interest of any such person under a Mortgage, which Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens, which are given priority by statute.

Section 2.30. "Open Space" shall mean all real property designated as open space on any plat of the Mountain Park that is to remain unplatted, natural open space after completion of all platting by Declarant, as amended from time to time.

Section 2.31. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Cabin Unit or Commercial Unit or homesite or lot but shall not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

Section 2.32. "Plat" shall mean any plat maps affecting the Property filed in the office of the Sevier County Register, Sevier County, Tennessee, as such maps may be amended from time to time.

Section 2.33. "Project" shall mean the Mountain Park.

Section 2.34. "Property" shall mean and include the Property initially subjected to this Declaration and any additional real property from time to time made subject to these Covenants pursuant to the provisions of this Declaration.

Section 2.35. "PUD Map" shall mean the PUD Maps filed as an Exhibit "D" to this Declaration.

Section 2.36. "Recreational Facilities" shall mean the recreational facilities or amenities located on the Property from time to time, including, but not limited to, the pool and bathrooms if constructed.

Section 2.37. "Limited Common Area" means and includes those common areas which are designated by Declarant to be reserved for the use of a certain number of Units to the exclusion of the other units such as special balconies, stairways, patio(s), and sanitary services common to the cabin units or houses.

Section 2.38. "Exhibits" shall mean the Exhibits attached to this Declaration, as they may be amended from time to time.

Section 2.39. "Long-Term Leases" shall mean one or more leases or agreements, which are attached as Exhibits or shall be added by Amendments to the Exhibits and to which the Association and each and every Unit Owner or Commercial Unit Owner shall be bound.

Section 2.40. "Occupant" shall mean any person or persons residing in or occupying a Unit or Commercial Unit.

Section 2.41. "Rules and Regulations" shall mean the rules and regulations governing the use of the Homesites, Cabin Units, Common Areas, and Limited Common Areas, the conduct of all Owners, Members, guests, tenants, invitees and occupants, as promulgated by the Declarant or the Association.

Section 2.42. "Unit" shall include both Cabin Units and Homesites.

**ARTICLE III**  
**THE ASSOCIATION**

Section 3.1. Dedication of Common Area The administration of the affairs of the Mountain Park and the maintenance, repair, replacement and operation of the Common Areas, the enforcement of the Rules and Regulations, By-Laws and those acts required of the Association by the Declaration and/or the By-Laws and/or the Act shall be by the Board. After completion of construction, all of the Property, except the Cabin Units, the Homesites, and other specifically excluded areas shall be Common Area. Declarant may hereafter deed to the Association certain parts of the Property as Common Area intended for common use by the Owners in the Mountain Park. The designated areas are dedicated hereby to the common use and enjoyment of Owners, and their family, tenants, employees, guests and invitees, and not to the use of the general public.

Section 3.2. Association's Responsibility for Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Area dedicated under Section 3.1 above and all Improvements on the Common Area (including furnishings and equipment related thereto), and shall keep it in good, clean, and attractive, condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 3.3. Membership. Every Owner, by virtue of being an Owner, and for so long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning each Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which members may or may not be Owners. Each Unit shall be allocated one vote as provided in Exhibit "C." The vote for any Unit shall be exercised as the Owners of the Unit among themselves determine, and the Owners shall file a Voter Designation Form (supplied by the Association) with the Secretary of the Association prior to any meeting. In the absence of the filing of such designation, the vote allocated to the Unit shall be suspended. The owners of a Unit, which is leased under a Long Term Lease, may assign their voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. Notwithstanding anything contained herein to the contrary, only one person or entity shall be permitted to exercise the vote assigned to any Unit.

Section 3.4. Classes of Membership and Voting Rights. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to a specific number of votes based on the actual subdivision (as opposed to the permitted density) figured as follows:

(i) one vote for each Home Site, according to the Plat recorded in the office of the Sevier County Register, Sevier County, Tennessee:

(ii) one vote for each Condominium Unit as shown on the Condominium Map recorded in the office of the Sevier County Register, Sevier County, Tennessee, if any portion of the project is developed as a condominium.

The ownership interests enumerated in paragraphs (i) through (ii) above are sometimes referred to as "Voting Units" in this Declaration. The number of votes allocated to the Owner of a Project Parcel shall decrease accordingly as each Voting Unit, as applicable, is

transferred by the Owner of the Project Parcel to individual Owners. When more than one person holds an interest in any Voting Unit, all such persons shall be Members. The vote

for such Voting Unit shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such advice, the vote allocated to the Voting Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Voting Unit, may assign his voting right to his tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

Class B: The Class B Member(s) shall be Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale and who is designated as a successor Declarant in a recorded instrument executed by Declarant. Class B Members shall be entitled to three votes for each Voting Unit owned. The Class B membership shall terminate on either of the following dates, whichever occurs earlier:

3.4.1. January 1, 2014; or

the date on which Declarant voluntarily relinquishes its Class B membership as evidenced by a notice recorded in the office of the Sevier County Register, Sevier County, Tennessee.

Notwithstanding the provisions above, the Class B membership shall not terminate if, within 120 days prior to January 1, 2014, Expansion Property is incorporated into the Property, and as a result, the number of votes of the Class B Members, determined on the basis of three votes per Class B Voting Unit, is greater than the number of votes held by the Class A Members. In such event, the Class B Memberships shall continue to have three (3) votes for each member for 3 years thereafter or until the date on which Declarant voluntarily relinquishes its Class B membership as evidenced by a notice recorded in the office of the Sevier County Register, Sevier County, Tennessee. From and after the termination of the Class B membership, the Declarant and any designated successor Declarant shall be entitled to one vote for each Voting Unit owned. At such time, Declarant shall call a meeting of Owners, as provided by the Bylaws for special meetings, to advise the membership of the termination of Class B status and to transfer control of the Association by the Owners.

Section 3.5. Compliance with Documents. The Association, the Declarant and each Owner shall abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Mountain Park Documents.

Section 3.6. Rules and Regulations. The Association, from time to time and subject to the provisions of the Mountain Park Documents, may adopt, amend and repeal rules and regulations, to be known as "Mountain Park Rules," governing, among other things and without limitation, the use of Open Space. Initial Rules and Regulations governing the use of the Property shall be promulgated by the Declarant on behalf of the Association. Additional and amended Rules and Regulations may be adopted or repealed by the Board of Directors of the Association, provided such Rules and Regulations may not adversely affect the rights of Declarant or Declarant's affiliates. All Rules and Regulations shall be available upon request from the Secretary of the Association or as the Board directs.

Section 3.7. Management. The Association may employ or contract for the services of a Manager or Management Company. The following provisions shall apply to any management contract: (a) no such employment shall be by a contract having a term of more than three years; and (b) each such contract shall be subject to cancellation by the Association on 90 days or less prior notice without cause and without payment of a termination fee. The Manager shall not have the authority to make expenditures for additions or improvements chargeable against the Maintenance Fund except upon specific prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.8. Board of Directors. The Board shall be constituted as provided in the Association's Bylaws attached hereto as Exhibit "E". The initial Board of Directors shall

be elected by Declarant and the Directors shall serve until replaced by Declarant, or their successors are elected and qualify to serve. The first "Board of Directors" which is elected by the Members shall be elected at a meeting of the Members called by Declarant for the purpose of Declarant turning over control of the Association to the Members. Thereafter, the Members shall elect the Directors at the Annual Meeting of Members. Declarant shall call the meeting of Members for the purpose of turning over control of the Association to the Members no later than January 1, 2014.

Section 3.9. Ownership of Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, may accept any real or personal property, leasehold, or other property interests within the Mountain Park and conveyed to the Association.

Section 3.10. Parking Areas. With the exception of roads dedicated to the public, the Association shall be responsible for the maintenance of all Parking Areas within the Mountain Park. Such maintenance will include periodic maintenance of the surface and regular snow, ice, and trash removal, provided however, the Board shall determine the extent to which snow or ice is removed from any Parking Area or Driveway. The Board shall cooperate with the applicable traffic and fire control officials, to post public and private drives, roads and streets with traffic control, fire lane, and parking regulation signs.

Section 3.11. Books and Records: The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Mountain Park Documents, and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 3.12. Successor to Declarant The Association shall succeed to all of the rights, duties and responsibilities of Declarant under this Declaration upon the conveyance of the last Unit from the Declarant, PROVIDED HOWEVER, the Association shall not succeed to any rights of Declarant regarding any portion of the Expansion Property which has not then been annexed to the Property or the right to add additional property to the project as provided for herein. The Association may delegate any of such rights, duties or responsibilities to any committee or entity which it may choose to form.

Section 3.13. Implied Rights and Obligations. The Association may exercise any other right or privilege given to it expressly by the Mountain Park Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege. The Association shall perform all of the duties and obligations imposed on it expressly by the Mountain Park Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Mountain Park Documents or reasonably necessary to satisfy any such duty or obligation.

#### **ARTICLE IV** **COVENANT FOR MAINTENANCE ASSESSMENT**

Section 4.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association: (1) annual Assessments or charges as provided in this Declaration for the purpose of funding the Maintenance Fund; (2) special Assessments for capital improvements and other purposes as stated in this Declaration, such annual and special Assessments to be fixed, established, and collected from time to time as provided below; and (3) default Assessments which may be assessed against an Owner's Unit pursuant to the Mountain Park Documents for failure to perform an obligation under the Mountain Park Documents or because the Association has incurred an expense on behalf of the Owner under the Mountain Park Documents. The annual, special, and default Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Unit and shall be a

continuing lien upon the Unit against which each such Assessment is made until paid. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time when the Assessment fell due.

Section 4.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Mountain Park and for the improvement and maintenance of the Common Area and Limited Common Area, Including, but not limited to, the payment of taxes, utilities and insurance on the Common Area and Limited Common Area, and repair, replacement, and additions to any Improvements on the Common Area and Limited Common Area, reserve accounts, the cost of labor, equipment, materials, management, and supervision, and the salary or fee of the Manager, and for other expenses deemed necessary by the Board.

Section 4.3. Calculation and Apportionment of Annual Assessments. The Board of Directors shall prepare a budget by December 1 of each year estimating its net cash flow requirements for the next year and an estimate of the Assessments to be charged each Owner, and the Board shall distribute the proposed budget to the Owners. On or before February 1 of the succeeding year, the Board shall approve the budget in final form, and shall determine, levy, and assess the Association's annual Assessments for that year, which assessment shall be retroactive to January 1. Each budget shall include funds for establishing and maintaining reserves for periodic repairs, replacement, and maintenance of any improvements on the Open Space which must be replaced on a periodic basis, and for taxes, capital improvements, deficiencies from the prior year's Maintenance Fund, and other purposes, and shall include any expected income and surpluses from the prior year's Maintenance Fund. The Initial Budget shall be prepared by Declarant and is attached to this Declaration as Exhibit "F," and each Unit shall be assessed its share of the Common Expenses based on the allocations contained therein.

Section 4.4. Special Assessments. In addition to the annual Assessments authorized by Section 4.1 above, the Board of Directors may levy in any fiscal year one or more special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement, including the necessary fixtures and personal property related thereto, to make up any shortfall in the current year's budget or to cover any additional expense the Board deems necessary for the maintenance or management of the Project. Notice of the amount and due dates for such special Assessments must be sent to each Owner (or Project Association as provided in this Declaration) at least 30 days prior to the due date. There is hereby assessed, and designated a Special Assessment, a \$250.00 origination fee which shall be paid by each Owner purchasing a Unit from Declarant at the time the Owner purchases his Unit. This origination fee shall be paid to the Association and used by the Association to pay the Common Expenses.

Section 4.5. Uniform Rate of Assessment. Both annual and special Assessments shall be fixed in the Annual Budget for each Unit. The Rate of Assessment for each Homesite shall be the same. The Rate of Assessment for each one-bedroom Unit shall be the same; the Rate of Assessment for each two-bedroom Unit shall be the same; the Rate of Assessment for each three-bedroom Unit shall be the same; the Rate of Assessment for each five-bedroom Unit shall be the same; and the Rate of Assessment for each six-bedroom Unit and Units with greater than six bedrooms shall be the same. The Recreational Facilities, if developed by Declarant, are conceived to enhance the Project, and accordingly will not be assessed under this Declaration unless Declarant in its sole discretion subjects such facilities to an obligation for Assessments. The right to consent to the assessment shall not succeed to the Association except by written instrument signed by Declarant and shall not succeed along with the rights received by the Association pursuant to Section 3.10.

Section 4.6. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments shall commence as to each Unit on the first day following the conveyance of the Unit to an Owner. The first annual Assessment shall be prorated according to the number of days remaining in the calendar year. The annual Assessments shall commence for Units contained in each phase of Expansion Property or Adjoining

Land annexed to the Property on the first day of the month following the recording of the Declaration of Annexation incorporating them into the Property, and shall be prorated according to the number of days remaining in the calendar year. Assessments shall be collected on a periodic basis as the Board of Directors may determine from time to time, but until the Board directs otherwise, Assessments shall be payable monthly in advance on the first day of each calendar month.

Section 4.7. Default Assessments. All monetary fines assessed against an Owner pursuant to the Mountain Park Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Mountain Park Documents, shall be a default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

Section 4.8. Effect of Nonpayment of Assessment: Lien Remedies of Association. Any Assessment installment, whether pertaining to annual, special, or default Assessments, which is not paid within 30 days of its due date shall be delinquent. In the event that an Assessment installment becomes delinquent, the Association, in its sole discretion, may take or all of the following actions:

4.8.1. assess a late charge of at least \$100.00 per delinquency;

4.8.2. assess an interest charge from the date of delinquency at the rate per annum of four points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board of Directors;

4.8.3. suspend the voting rights of the Owner during any period of delinquency;

4.8.4. accelerate all remaining Assessment Installments for the fiscal year in question so that unpaid Assessment for the remainder of the fiscal year shall be due and payable at once.

4.8.5. bring an action at law against any Owner personally obligated to pay the delinquent installments;

4.8.6. file a statement of lien with respect to the Unit, and foreclose as set forth in more detail below.

The Association may file a statement of lien by recording with the Register's Office of Sevier County, Tennessee, a written statement with respect to the Unit, setting forth the name of the Owner, the legal description of the Unit, the name of the Association, and the amount of delinquent Assessments then owing, which statement shall be duly signed and acknowledged by the President or a Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Unit by mail to the address of the Unit or at such other address as the Association may have in its records for the Owner. Thirty days following the mailing of such notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of deeds of trust under the statutes of the State of Tennessee. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs, and attorneys' fees and expenses with respect to the action. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of the Unit. The remedies herein provided shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

Section 4.9. Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments thereon and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Unit except as

provided in Section 4.10 below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall be personal and shall not terminate upon termination of such successor's fee simple interest in the Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Section 4.13 below.

Section 4.10. Subordination Of the Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Tennessee, including the right and equity of redemption, which rights are hereby waived. No sale or transfer shall relieve a Unit from liability for any Assessments or from the lien thereof. However, sale or transfer of any Unit pursuant to a decree of foreclosure or by a trustee's foreclosure, or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a First Mortgage shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Units as a common expense at the direction of the Board of Directors. The Owner of the Unit shall not be relieved from personal liability for the delinquent assessments, however. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made after the sale or transfer.

Section 4.11. Notice Of Action. Any First Mortgagee who makes a prior written request to the Secretary of the Association and furnishes its name and address and the legal description of the Unit in which it has an interest to the Secretary shall be entitled to timely written notice of any delinquency in payment of an annual, special, or default Assessment levied against the Unit encumbered by its First Mortgage, or of any other default by the Owner under the Mountain Park Documents, which has continued for a period of 60 days or more. In addition, any such First Mortgagee shall be entitled to cure such delinquency and obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 4.12. Exempt Property. The following portions of the Property shall be exempt from the Assessments, charges, and liens created under this Declaration:

- 4.12.1. all properties to the extent of any easement or other interest therein dedicated and accepted by The City of Pigeon Forge, Tennessee or Sevier County, Tennessee, and devoted to public use;
- 4.12.2. all utility lines and easements;
- 4.12.3. the Open Space and all Common Areas; and
- 4.12.4. the Recreational Facilities.

Section 4.13. Statement of Status of Assessments. Upon ten days' written notice to the Treasurer of the Association or the Manager and payment of a reasonable fee set by the Association from time to time, any Owner, prospective purchaser, or Mortgagee of a Unit shall be furnished a statement of the account for such Unit setting forth:

- 4.13.1. the amount of any unpaid Assessments (whether annual, special, or default Assessments), interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;
- 4.13.2. the amount of the current periodic installments of the annual Assessment and the date through which they are paid,



and

4.13.3. any other information deemed proper by the Association.

The information contained in such statement, when signed by the Treasurer or Manager, shall be conclusive upon the Association as to the person or persons to whom such Statement is issued and who rely on it in good faith.

Section 4.14. Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 4.15. Assessments on Units Owned by Declarant. A Unit owned by Declarant shall not be subject to assessments of any kind until Declarant transfers the Unit to a third party Owner. The Unit shall then be subject to assessment, in accordance with the terms of this Declaration, beginning the day after transfer. Until Declarant turns over control of the Association to the Members, Declarant shall be responsible for paying to the Association the amount by which the Common Expense exceeds the annual revenues of the Association, but in no event shall Declarant be responsible for payments in excess of the Assessed Fees on the unsold Units.

## **ARTICLE V** **PROPERTY RIGHTS OF OWNERSHIP**

Section 5.1. Owners: Easements of Enjoyment. Each Unit Owner, by purchasing and accepting his Unit agrees to be bound by (i) the Declaration and its Exhibits; (ii) the Charter and Bylaws of the Association; and (iii) all Rules and Regulations adopted by Declarant or the Association for the use of the Property. The Association shall have the right to deny any Unit Owner the right to use the Common Area for a period not to exceed thirty (30) days for violation of the Rules and Regulations promulgated for the use of the Property. Any occupant may use the Common Area during the time such Occupant is actually in residence in the Cabin Unit. Guests and invitees of an Occupant of a Unit may only use the Common Area with the express permission of the Board of Directors and such terms and conditions as the Board of Directors may specify in its sole discretion, including the payment of a fee for the use thereof. Except as specifically provided by this instrument, every Owner shall have a nonexclusive easement for the use and enjoyment of the Open Space and the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article.

Section 5.2. Delegation of Use. Any Owner may delegate, in accordance with the Mountain Park Documents and the provisions contained herein, his right of enjoyment in the Common Area, Open Space and facilities to his tenants, employees, family, guests or invitees.

Section 5.3. Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on any recorded plat or map affecting the Property, or any portion thereof, and to any other easements of record or of use as of the date of recordation of this Master Deed.

Section 5.4. Utility Easements. There is hereby created a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical, and a master communications system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical and telephone and other communication services to install and maintain necessary equipment on the Property and to affix and maintain electrical, communications,

and telephone wires, circuits, and conduits under the Property. No water, sewer, gas, telephone, electrical, or communications lines, systems, or facilities may be installed or relocated on the surface of the Property unless approved by Declarant. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Association, and the Declarant; shall prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, "the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 5.5. Reservation for Expansion. Declarant hereby reserves to itself and for Owners of Units in all future phases of the Mountain Park a perpetual easement and right-of-way for access over, upon, and across the Property for construction, utilities, drainage, ingress and egress, and for use of the Open Space. The location of these easements and rights-of-way must be approved and may be documented by Declarant and the Association by recorded instruments.

Section 5.6. Reservation of Easements, Exceptions and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interest of all the Owners and the Association, in order to serve all the Owners within the Mountain Park as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of the Declarant, as long as such action does not hamper the enjoyment of the Mountain Park by the Owners, as built or expanded.

Section 5.7. Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets, driveways and upon the Property in the proper performance of their duties.

Section 5.8. Maintenance Easement. An easement is hereby reserved to the Declarant, and granted to the Association, any member of the Board of Directors, and the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Units, and a right to make such use of the Units, as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Mountain Park Documents.

Section 5.9. Drainage Easement. An easement is hereby reserved to Declarant and granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Best efforts shall be made to use this easement so as not to disturb the uses of the Owners, the Association and the Declarant, as applicable, to the extent possible, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval shall not be unreasonably withheld.

Section 5.10. Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress

over, in, upon, under, and across the Open Space and the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Unit by that Owner or his family, tenants, employees, guests, or invitees.

Section 5.11. Easements Deemed Created. All conveyances of Units made after the date of this Declaration whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article V, even though no specific reference to such easements or to this Article V appears in the instrument for such conveyance.

Section 5.12. NO Partition Of Common Area. The Common Area shall be owned by the Association, and no Owner shall bring any action for partition or division of the Common Area. By acceptance of a deed or other instrument of conveyance or assignment each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association and to the Declarant if Declarant also named a party by any other party, and hereby agrees to reimburse the Association and Declarant for its costs, expenses, and reasonable attorneys' fees in defending any such action.

Section 5.13. Parking Spaces. Parking spaces shall not reserved solely for the use of any Occupant of any particular Unit, unless agreed to by all Unit Owners. Such reserve parking spaces shall be Limited Common Areas. The Occupants of each Unit or Commercial Unit shall be entitled to the use of at least two (2) parking spaces, and such additional parking spaces as may be determined by the Board of Directors. Certain parking spaces or areas of the Common Area shall be designated specifically for Registration or for customers of the Rental Office or the Commercial Units. All other spaces shall be for Unit Owners and their guests, and for the employees of the Association.

## **ARTICLE VI** **PROPERTY USE RESTRICTIONS**

Section 6.1. General Restrictions. The Property shall be used only for the purposes set forth in these Covenants, as permitted by the applicable ordinances of the City of Pigeon Forge, Sevier County, Tennessee, and the laws of the State of Tennessee and the United States, and as set forth in the Mountain Park Documents, amendments, or specific recorded covenants affecting all or any part of the Property.

Section 6.2. Use of Units and Common Elements. The following restrictions shall apply to all Units and to the Common Elements:

(a) The use of each Unit is restricted to that of a single-family residence and accessory uses as permitted herein. The term "single family residence" means a single housekeeping unit, operating on a nonprofit, noncommercial basis between its Occupants, cooking and eating with a common kitchen and dining area. Except for use as an overnight rental, no industry, business, trade, or commercial activities, shall be conducted, maintained or permitted in any part of a Unit.

(b) No immoral, improper, offensive or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States of the State of Tennessee and all ordinances, rules, and regulations of the City of Pigeon Forge. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

(c) No electrical device creating electrical overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(d) Each Unit Owner shall keep his or her Unit and Limited Common Elements appurtenant thereto, in a good state of preservation and cleanliness. No storage or trash will be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.

(e) All fixtures and equipment will be used for the purposes for which they were designed. There shall be no floor load in excess of fifty pounds per square foot, unless special arrangements are made, and an engineering determination of floor load capacity in the area of the heavy use is approved by the Association.

(f) Vehicular parking upon the Common Elements shall be regulated by the Board of Directors. Each of the parking areas located on the Property may be subject to designation of individual spaces as Limited Common Elements appurtenant to certain designated Units. Subject to the provisions of subparagraphs (g), (h), (I) and (j) of this Section, all other parking spaces shall be used by the Owners for self-service parking purposes on a "first come, first served" basis, provided, however, that no Owner shall park more than one (1) vehicle (owned or leased by such Owner, a member of his or her family or Occupant of his or her Unit) on the Common Element parking spaces without the prior written consent of the Board of Directors.

(g) Other than for temporary periods for the purpose of unloading or loading, no Owner of a Unit or any Occupant of a Unit, shall park any vehicle in any roadway or driveway area (other than in the driveway of the Cabin Unit to which the occupants of the car are residing or visiting). Such Owners and Occupants shall park the vehicle in a permitted parking space.

(h) The conversion or alteration parking spaces into living areas, storage areas, work shop areas, or any other modification or alteration of the parking space is prohibited.

(i) No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants. No Unit Owner or Occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or Occupants. No Unit Owner or Occupant shall cause noise or shall play, or suffer to be played, any musical instrument or operate or suffer to be operated a phonograph, television set or radio at such high volume or in such other manner that it shall cause unreasonable disturbances to other Unit Owners or Occupants.

(j) All dryers will have lint filters, which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens, which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept in clean, good order and repair by the Unit Owner.

(k) No Owner shall obstruct any of the Common Area nor shall any Owner store anything upon any of the Common Area without the written approval of the Board of Directors. Nothing shall be altered or constructed in or removed from the Common Area except upon the prior written consent of the Board of Directors.

(l) The Common Area shall be used only for the furnishing of the services and facilities (including recreational amenities) for which the same were designed

and are reasonably suited incident to the use and occupancy of the Units. Walkways shall be used only for pedestrian use.

Section 6.3. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-share plan.

Section 6.4. General Practices Prohibited. The following practices are prohibited at Mountain Park:

6.4.1. Allowing concrete suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;

6.4.2. Removing any rock, plant material, top soil or similar Items from any property of others;

6.4.3. Carrying firearms on the Property;

6.4.4. Use of surface water for construction; or

6.4.5. Careless disposition of cigarettes and other flammable materials.

6.4.6. There shall be no clear cutting of the trees from any Homesite. All trees shall be preserved to enhance the natural beauty of the Property and only those trees necessary for the construction of homes or other permitted structures may be removed.

Section 6.5. Motorized Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers, or similar vehicles, other than passenger automobiles or pickup or utility trucks with a capacity of one-half ton or less, or any other motorized vehicles shall be parked, stored, or in any manner kept or placed on any portion of the Property, provided however, motor homes, motor coaches and recreational vehicles may be parked in the parking areas as long as the owner (or invitee) is occupying the Cabin Unit. This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Property or for the initial construction by Declarant or the other Owners.

Section 6.6. Excavation. No excavation shall be made except in connection with Improvements approved as provided in these Covenants. For purposes of this Section, "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting), which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

Section 6.7. Electrical and Telephone Service. All electrical, gas, cable and telephone service installation will be placed underground. No above-ground storage tanks shall be allowed.

Section 6.8. Water and Sanitation. Each structure designed for occupancy or use by humans shall connect with water and sanitation facilities as shall be made available from time to time by the City of Pigeon Forge, Tennessee or any other approved person or entity.

Section 6.9. Wells. No well from which water, oil, or gas is produced shall be dug, nor shall storage tanks, reservoirs, or any installation of power, telephone, or other

utility lines (wire, pipe, or conduit) be made or operated anywhere on the Property except in connection with water wells and works operated by public agencies or duly certified public utility companies; provided, however, that the foregoing shall not prevent the drilling of or installation of additional water wells by Declarant or its assigns.

Section 6.10. Signs. No signs of any kind including, but not limited to, FOR SALE or FOR RENT signs shall be displayed to the public view on or from any portion of the Property except those signs approved by the Manager or the Board of Directors or signs of Declarant or its affiliates or assigns, or signs required by law.

Section 6.11. Animals. No animals, livestock, or poultry of any kind shall be kept, raised, or bred on any portion of the Property.

Section 6.12. Household Pets. No household pets, such as dogs and cats, shall be raised or bred on any portion of the property including, but not limited to within Owner's Cabin Unit or at large. Any household pet permitted on the property by the Board of Directors shall be under leash at all times except when the animal is inside the Unit. Overnight rental guests are prohibited from having animals and/or pets in rental units or on the Property.

Section 6.13. Drainage. No Owner shall do or permit any work, construct any Improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Property except to the extent such alteration and drainage pattern is approved in writing by the Board of Directors, and except for rights reserved to Declarant to alter or change drainage patterns.

Section 6.14. Trash. No trash, ashes, garbage or other refuse shall be thrown or dumped on any land or area within the Property. There shall be no burning or other disposal of refuse out of doors.

Section 6.15. Temporary Structures. No temporary structures shall be permitted except as may be determined to be necessary during construction and as specifically authorized by the Board of Directors. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbance.

Section 6.16. Compliance With Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

Section 6.17. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any Building.

Section 6.18. Parking and Auto Repair. No automobiles or other vehicles shall be parked upon any portion of the Property except within garages, carports, or designated parking areas. No work on automobiles or other vehicle repair shall be performed in any visible or exposed portion of the Mountain Park except in emergencies.

Section 6.19. Abandoned, Inoperable or Oversized Vehicles. Abandoned or inoperable automobiles or oversized vehicles of any kind, except as provided below, shall not be stored or parked on any portion of the Property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice has been given or posted, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be charged against the Owner. "Oversized" vehicles, for purposes of this Section, shall be vehicles which are any taller than a standard 15-passenger high-top van. All unsightly or oversized vehicles, snow removal equipment,

garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Board of Directors to be stored at a designated location or locations.

Section 6.20. Antennae. No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without the prior written consent of the Board of Directors, which consent may be withheld without any justification.

Section 6.21. Outside Burning. There shall be no exterior fires, except barbecues contained within facilities or receptacles and in areas designated and approved by the Board. No Owner shall permit any condition upon its portion of the Property which creates a fire hazard or is in violation of fire prevention regulations.

Section 6.22. Inside Burning. No inside burning is permitted, including wood and/or coal fireplaces or stoves, except for the use of the gas fireplace in each unit.

Section 6.23. Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or Improvements and except for bells or chimes on chapels, shall be placed or used on any portion of the Property.

Section 6.24. Obstructions. There shall be no obstruction of any pedestrian walkways or interference with the free use of those walkways except as may be reasonably required in connection with repairs. The Owners, their family, tenants, guests, and invitees are granted nonexclusive easements to use the pedestrian walkways within the Property. That use shall be subject to the Mountain Park Rules adopted by the Board from time to time. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of pedestrian walkways, and the Association shall have a right of entry on any part of the Property for the purposes of enforcing this Section, and any costs incurred by the Association in connection with such enforcement shall be specially assessed to the Owners or other persons responsible for the interference.

Section 6.25. Camping and Picnicking. No camping or picnicking shall be allowed within the Property except in those areas designated by the Declarant or the Association for those purposes. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

Section 6.26. Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants.

Section 6.27. Use. It shall be expressly permissible and proper for Declarant and its employees, agents, independent contractors, successors, and assigns involved in the construction of Improvements on, or the providing of utility service to, the Property or other real property owned by Declarant, to perform such activities and to maintain upon portions of the Property as they deem necessary, any facilities as may be reasonably required, convenient, necessary, or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, and sales offices. However, no activity shall be performed and no facility shall be

maintained on any portion of the Property in such a way as to unreasonably interfere with or disturb any purchaser or Owner of a Unit, or to unreasonably interfere with the use, enjoyment, or access of such Owner, its tenants, employees, guests, or business invitees, of and to its Unit.

Section 6.28. Leasing. Notwithstanding any provision herein to the contrary, the Owner of a Unit shall have the right to lease or rent such Unit, including for over-night rentals, subject to the following conditions:

6.28.1. All leases lasting fifteen (15) days or more shall be in writing and a copy of same shall be provided to the Association.

6.28.2. The lease shall be specifically subject to the Mountain Park Documents, and any failure of a tenant to comply with the Mountain Park Documents shall be a default under the lease and this Master Deed.

6.28.3. The Owner shall be liable for any violation of the Mountain Park Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

6.28.4. Any rental company renting Units must comply with the Rules and Regulations established by Declarant and Board. A lessee of a Unit may not sublease the Unit to a third party for any length of time.

6.28.5. Such rented or leased unit shall be used exclusively for residential purposes. Any renter or lessee may be removed from the Property and/or refused further entrance by the Board of Directors or its designee for noncompliance with this Declaration or the Rules and Regulations, The Unit Owner shall be liable for all damages caused by his lessee or renter and for all costs of removing said renter or lessee, which shall be a lien upon his unit.

Section 6.29. Construction Regulations of the Design Guidelines. All Owners and contractors shall comply with the construction regulations portions of the Design Guidelines. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors, and Owners' representatives on the Property at any time; the conservation of landscape materials; and fire protection.

Section 6.30. Blasting. If any blasting is to occur, the Committee and Declarant shall be informed far enough in advance to allow them to make such investigation as they deem appropriate to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Committee shall in any way release the person conducting the blasting from all liability in connection with the blasting, nor shall such approval in any way be deemed to make the Declarant or the Committee liable for any damage which may occur from blasting, and the person doing the blasting shall defend and hereby indemnifies Declarant and Committee from any such expense or liability. Declarant or the Committee may impose any reasonable restrictions, including time and date restrictions, on all blasting.

Section 6.31. Continuity of Construction. All Improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the Committee. If an Improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 12-month period, then after notice and hearing as provided in the Bylaws, the Association may impose a fine of not less than \$500 per day on the Owner of the Homesite until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control. Such charges shall be a default Assessment and lien as provided in Section 4.7 above.

Section 6.32. House Numbers. Each dwelling shall have a house number with a design and location established by the Committee.



**ARTICLE VII**  
**MAINTENANCE**

Section 7.1. Association's Responsibility. The Association shall maintain and keep the Common Area and Open Space in good repair, such maintenance to be funded as provided herein. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated within the Open Space.

Section 7.2. Owner's Responsibility. Except as provided otherwise in the Mountain Park Documents, or by written agreement with the Association, all maintenance of Units and all structures, landscaping, parking areas, and other Improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain said Unit in accordance with the community-wide standard of the Mountain Park. Each Unit Owner is required to maintain in good condition and repair his Unit, all interior surfaces and the entire interior of his Unit and to maintain and repair the fixtures and equipment therein, which includes, but is not limited to, the following, where applicable: air conditioning and heating units, including condensers and all appurtenances thereto wherever situated; hot water heaters; refrigerators, ranges and ovens and all other appliances; drains, plumbing fixtures and connections, sinks, all plumbing and water lines within the Unit; electric panels; lines outlets and fixtures within the Unit; interior doors, windows, screens and glass; all exterior doors (except the painting or other finishing of the exterior door shall be a Common Expense). Water, sewerage, disposal and waste fees, gas, common electricity, Cable T.V. or other utility charges, if applicable, shall be part of the Common Expenses if billed to the Association; however, if the individual bills are sent to each Unit Owner by the provider of such services, each such Unit Owner shall pay said bill for his Unit individually. Where a Unit is carpeted, the cost of maintaining and replacing the carpeting shall be borne by the Unit Owner of said Unit. Where there is a light fixture or fixtures attached to the exterior wall or walls of the Unit, which is switched within a single Unit, the Unit Owner thereof shall replace the bulb with the same color and bulb wattage at his cost and expense unless the Board of Directors decides to replace same as a Common Expense. Each Unit Owner is responsible for and will pay for his own telephone service as applicable.

**ARTICLE VIII**  
**INSURANCE AND FIDELITY BONDS**

Section 8.1. Hazard Insurance. The Association shall obtain insurance for all insurable Improvements on the Common Area in an amount equal to the full replacement value (i.e., 100 percent of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Common Area. Such policy shall include, if applicable, and if available at a reasonable price, a standard form of mortgagee clause, a "Demolition Cost Endorsement" or the equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, and a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent. In addition, such policy shall, if available at a reasonable cost, afford protection against at least the following:

8.1.1. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement with the standard "all-risk" endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage

8.1.2. In the event the Common Area contains a steam boiler, a broad form policy of repair, and replacement boiler and machinery insurance in the amount of at least \$100,000 per accident per location; and

8.1.3. Such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to the Mountain Park.

Section 8.2. Liability Insurance. The Association shall obtain a comprehensive

policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury, or death in connection with the operation, maintenance, use of the Common Area or Open Space within the Mountain Park, and legal liability arising out of lawsuits related to employment contracts of the Association. Such comprehensive policy of public liability insurance shall include a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurance company from denying the claim of any Owner because of the negligent acts of the Association or any other Owner, with a limit of not less than \$1,000,000 covering all claims for personal injury, including death, or property damage arising out of a single occurrence. Such comprehensive policy of public liability insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and, if applicable, elevator failure, garage keeper's liability, host liquor liability, contractual and all-written contract insurance, employers' liability insurance, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to the Mountain Park.

Section 8.3. Fidelity Insurance. The Association shall obtain fidelity bonds to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds shall be required for the Manager and its officers, employees, and agents. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 150 percent of the estimated annual operating expenses of the Mountain Park, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 8.4. Provisions Common to Hazard Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by the Association under the provisions of Sections 8.1, 8.2, and 8.3 above shall be subject to the following provisions and limitations:

8.4.1. The named insured under any such policies shall be the Association, as attorney-in-fact for the Owners, or its authorized representative. Including any trustee with which the Association may enter into any insurance trust agreement, or any successor trustee (each of which is sometimes referred to in this Section 8.4 as the "Insurance Trustee") who shall have exclusive authority to negotiate losses under such policies.

8.4.2. In no event shall the insurance coverage obtained and maintained pursuant to such Sections be brought into contribution with insurance purchased by the Owners, occupants, or their Mortgagees.

8.4.3. The policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Association or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of the Mountain Park over which the Association has no control.

8.4.4. The policies shall provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all First Mortgagees and insured's named in the policies.

8.4.5. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and any Owner and their respective agents, employees, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

8.4.6. All policies of property insurance shall provide that, notwithstanding any provisions of the policies which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the

provisions of any insurance trust agreement to which the Association may be a party or any requirement of law.

8.4.7. All policies shall be written with a company licensed to do business in Tennessee and holding a rating of B/VI or better in the financial category as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

8.4.8. If reasonably available, all casualty insurance policies shall have an inflation guard endorsement, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Sevier County, Tennessee area.

8.4.9. No policy may be canceled, invalidated, or suspended on account of the conduct of any member of the Board of Directors, officer, or employee of the Association or its duly authorized Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any Owner, or Mortgagee.

Section 8.5. Officers' and Directors' Personal Liability Insurance. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 8.6. Workers' Compensation Insurance The Association shall obtain workers' compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 8.7. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 8.8. Insurance Obtained by Owners. The individual Owners, and at their expense, shall make arrangements in regard to title insurance on their Units upon any resale, although such insurance coverage is not required. All Owners shall purchase at the Owners' expense, fire and casualty insurance for their Units in an amount equal to full replacement value (or the highest allowed if full replacement value insurance is not reasonably obtainable). Individual Owners are also responsible for public liability insurance covering their Units. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Unit as such Owner concludes to be desirable; provided, however, that none of such insurance coverage obtained by an Owner shall affect any insurance coverage obtained by the Association nor cause the diminution or termination of the coverage obtained by the Association. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners. The Association shall not be responsible for any hazard loss or damage suffered by an Owner to the Owner's Unit.

## **ARTICLE IX** **DAMAGE OR DESTRUCTION**

Section 9.1. Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article X below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute,

and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

Section 9.2. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Common Area in the Mountain Park, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article IX shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

Section 9.3. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 9.4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 4.4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners except as provided in Section 4.4, a special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

Section 9.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the special Assessments provided for in Section 4.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a special Assessment to the Association under Section 9.4 above, or, if no special Assessments were made, then in equal shares per Cabin Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 9.6. Decision Not to Rebuild. If Owners representing at least 67 percent of the total allocated votes in the Association (other than Declarant) and 67 percent of the First Mortgagees (based upon one vote for each Mortgage owned) of the Cabin Units agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 9.7. Damage or Destruction Affecting Units. In the event of damage or destruction to any of the Units, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine of not less than \$100.00 per day on the Owner of the Unit until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine

shall be a default assessment and lien against the Unit as provided in Section 4.7 above. The Association may also specifically enforce the Owner's obligation to rebuild, or seek any other remedy available to it at law or in equity.

#### **ARTICLE X** **CONDEMNATION**

Section 10.1. Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 10.2. Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty days after such taking Declarant and Owners representing at least 67 percent of the votes in the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available there for. In accordance with plans approved by the Board of Directors. If such Improvements are to be repaired or restored, the provisions in Article XI above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit, first to the Mortgagees and then to the Owners, as their Interests appear.

Section 10.3. Complete Condemnation. If all of the Mountain Park is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 10.2 above.

#### **ARTICLE XI** **EXPANSION**

Section 11.1. Reservation of Right to Expand. Declarant reserves the right, but shall not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. Declarant shall have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. The Declarant shall pay all taxes and other governmental Assessments relating to the Expansion Property until expansion.

Section 11.2. Declaration of Annexation Such expansion may be accomplished by recording a Declaration of Annexation in the records of the Register's Office for Sevier County, Tennessee, before January 1, 2014, describing the real property to be expanded, submitting it to the covenants, conditions, and restrictions contained in this Declaration, and providing for voting rights and Assessment allocations as provided in this Declaration. Such Declaration of Annexation shall not require the consent of Owners. Any such expansion shall be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Mountain Park as expanded. Such Declaration of Annexation may add, delete, or modify provisions of this Declaration as it applies to the Expansion Property added. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

Section 11.3. Incorporation of Additional Expansion Property. Real property which is not part of the Expansion Property or Adjoining Lands may be incorporated into the Property with the consent of two-thirds of the Members.

## **ARTICLE XII** **TRANSFER FEE**

Section 12.1. Transfer Fee. To provide additional funds for payment of the operating expenses of the Association, which will in turn inure to the benefit of all Owners, there is hereby imposed on all of the Property except the Recreational Facilities the following restriction and obligation:

From and after the initial conveyance of a Unit from Declarant to the initial Owner, there shall be imposed on each subsequent purchaser of a Unit the obligation to pay to the Association a transfer fee in the amount of two hundred dollars (\$200.00) paid upon transfer of the Unit on the occasion of each transfer, defined below. The transfer fee is imposed not as a penalty and not as a tax, but as a means of supplementing the Assessments provided for in this Declaration. The Board of Directors may increase the transfer fee, provided no increase may exceed 10% per year calculated from the initial recordation of this instrument.

### Section 12.2. Definitions.

12.2.1. Transfer. For the purposes of this Article, "transfer" shall be defined as any conveyance, assignment, lease, or other disposition of the ownership of a Unit, whether occurring in one transaction or a series of related transactions, and whether structured as a transfer of all right, title and interest or of the beneficial ownership. "Transfer" shall be deemed to include a transfer of the equitable interest under an installment land contract, whether or not recorded and whether or not the purchaser has fulfilled all conditions which would entitle the purchaser to receipt of a deed. "Transfer" shall also be deemed to include the transfer (as defined in this Section) of any partial ownership in the Unit when title to such property is held by a group of one or more persons. "Transfer" further includes but is not limited to (a) the conveyance of fee simple title to any Unit, (b) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Units, (c) a lease for a period of more than 10 years; (d) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, Joint venture, or other entity which, directly or indirectly, owns one or more Units; and (e) any conveyance designed primarily for the avoidance of the payment of the transfer fee provided for in this Article.

"Transfer" shall not be deemed to include (a) conveyance by gift, devise, or inheritance; (b) conveyance by the Owner to such Owner's spouse or children, or to a trust of which such persons are the beneficiaries; (c) conveyance by one joint Owner to one or more other joint Owners of the same Unit; (d) upon the dissolution of a professional corporation which is an Owner, the conveyance to the shareholders of the corporation as joint owners; (e) upon the formation of a professional corporation, the conveyance by joint owners to such professional corporation; (f) upon the admission of a new partner to a partnership which is an Owner or to a partnership formed by an Owner, the conveyance of an individual's interest in the Unit to such new partner or the conveyance upon the withdrawal of a partner from a partnership; (g) encumbrance of a Unit by a mortgage or deed of trust, or other common form of security instrument; (h) a bona fide deed conveyed from an Owner to a Mortgagee or beneficiary of a deed of trust in lieu of foreclosure; (i) the first conveyance by a Mortgagee or beneficiary of a deed of trust after such Mortgagee or beneficiary obtains title by foreclosure or by a deed in lieu of foreclosure; (j) the conveyance from the Owner to a corporation which it controls, which controls it, or which is under common control with it, or a conveyance as a result of a merger or dissolution of a corporate Owner; (k) any conveyance to the United States, or any agency or instrumentality thereof, the State of Tennessee, any county, city and county, municipality, metropolitan district or other governmental or quasi-governmental entity; (l) any conveyance to the Association; and (m) a lease for a term of ten years or less, counting initial and all renewal terms.

12.2.2. Purchaser. "Purchaser" shall be deemed to be the transferee under any deed or other instrument evidencing a transfer as defined herein.

Section 12.3. Payment and Reports. The transfer fee shall be due and payable on the date of the transfer. Within ten days after the date of the transfer, a report on forms provided by the Association must be filed with the Secretary of the Association, and the payment of the transfer fee shall be delinquent and bear interest and otherwise be treated as a default Assessment if not paid within thirty days after the transfer. If a fair market value determination of purchase or transfer price is made, then the transfer fee shall be due and payable at the date the determination of fair market value is final, and shall be delinquent if not paid within thirty days after that date, when it shall bear interest and otherwise be treated as a default Assessment. The report to be filed with the Association shall, at a minimum, describe the transfer and state the full amount of the purchase or transfer price, the names of the parties to the transfer, and the legal description of the Unit transferred. For the purpose of this Article, the date of the transfer shall be the effective date shown on the deed or other instrument evidencing the transfer, or if no date is shown, the date of its recording, or if neither appears, a date determined by the Association in its sole discretion.

Section 12.4. General Provisions. Any payment or report required to be received by the Association shall be deemed received in a timely manner if sent to the address provided for the Association by first class mail, postage prepaid, and postmarked no later than the date such payment or report is due, provided that the Association thereby actually receives such payment or report. The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Owner or Purchaser which are reasonably related to the payment of the transfer fee provided for above.

### **ARTICLE XIII** **CERTAIN RIGHTS OF DECLARANT**

Section 13.1. Rights Pertaining to Units; FNMA; Common Area; Utilities, Etc. Notwithstanding any other provisions herein, so long as the Declarant continues to own any of the Units, the following provisions shall be deemed to be in full force and effect:

(A) The Declarant shall have the right at any time to sell, transfer, lease or re-let any Unit, which the Declarant continues to own after this Declaration has been recorded, without regard to any restrictions relating to the sale, transfer, lease or form of lease of Units contained herein and without the consent or approval of the Association of any other Unit Owner being required.

(B) Notwithstanding anything in this Master Deed to the contrary, it is declared that until all Units are sold, each Unit shall be exempt from the Assessment and Maintenance Fee created herein until such time as the Unit is conveyed by the Declarant to a Grantee (Owner); provided however, that the Declarant shall be responsible for the payment of Common Expenses (annual deficiencies only) not covered by the amounts payable by other Unit Owners, but that the Declarant shall not be responsible for such payments in excess of the Assessment Fees on the unsold Units.

(C) Without limiting the foregoing, the Declarant shall have the power, but not the obligation, acting alone, at any time (and from time to time) so long as the Declarant owns at least one Unit to amend the Declaration to cause the same to conform to the requirements of a Mortgagee, or of the Federal National Mortgage Association and/or the Federal Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgages," as the same may be amended from time to time, provided, however, that Declarant shall not modify the rights of existing Mortgagees without their written approval.

(D) The Declarant shall have the right: (i) to use or grant the use or a portion of the Common Elements for the purpose of aiding in the sale or rental of Units; (ii) to use

portions of the Property for parking for prospective purchasers or lessees of Units and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the Property; (iv) to distribute audio and visual promotional material upon the Common Area; (v) to use any Unit which it owns as a sales and/or rental office, management office or laundry and maintenance facility.

(E) In order to provide the Units with, among other things, adequate and uniform water service, telephone service, sewage disposal service, utility services and television reception, the Declarant reserves the exclusive right to contract for the provision of such services and to grant easements and licenses for provision of such services. The Declarant, as agent for the Association and the Unit Owners, has entered into or may enter into arrangements, binding upon the Association and the Unit Owners, with governmental authorities or private entities for furnishing such services. The charges therefore will be Common Expenses.

(F) The Declarant reserves the right to enter into, on behalf of and as agent for the Association and the Unit Owners, agreements with other Persons for the benefit of the the Association and the Unit Owners. The provisions of any such Agreement shall bind the Association and the Unit Owners.

**Section 13.2. Disclaimer. THE DECLARANT SPECIFICALLY DISCLAIMS ANY INTENT TO HAVE MADE ANY WARRANTY OR REPRESENTATION IN CONNECTION WITH THE SUBMITTED PROPERTY (INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE) OR THE DOCUMENTS ESTABLISHING OR GOVERNING THE PLANNED UNIT DEVELOPMENT, EXCEPT THOSE WARRANTIES AND REPRESENTATIONS (IF ANY) EXPLICITLY SET FORTH HEREIN. NO PERSON SHALL BE ENTITLED TO RELY UPON ANY WARRANTY OR REPRESENTATION NOT EXPLICITLY SET FORTH HEREIN, STATEMENTS (IF ANY) AS TO COMMON EXPENSES, TAXES, ASSESSMENTS OR OTHER CHARGES MADE BY THE DECLARANT OR ANY REPRESENTATIVE THEREOF ARE ESTIMATES ONLY AND NO WARRANTY, GUARANTEE OR REPRESENTATION IS MADE THAT THE ACTUAL AMOUNT OF SUCH COMMON EXPENSES, ASSESSMENTS OR OTHER CHARGES WILL CONFORM WITH SUCH ESTIMATES.** The Buildings and the other improvements located in the Mountain Park, if any, have been constructed substantially in accordance with the representations made in the Exhibits. Such representations specify the full extent of the Declarant's liability and responsibility for the materials and methods utilized in the construction of the building and the other improvements located in the Mountain Park.

#### **ARTICLE XIV** **PROVISIONS RESPECTING CONSTRUCTION LENDER**

Section 14.1. Construction Mortgage. Notwithstanding anything to the contrary contained in this Declaration, until the satisfaction of record of any construction mortgage, deed of trust or similar instrument granting a security interest given by Declarant upon the Property as presently constituted or upon any subsequent phase to secure a loan with which to develop the improvements for the Property or any subsequent phase, such as would be commonly classified as a construction loan mortgage ordered of trust (hereinafter referred to as the "Construction Mortgage"), the following provisions shall be a part of this Declaration and shall supersede any inconsistent provisions contained heretofore in this Declaration.

(A) No amendment shall be made to this Declaration or to the By-Laws of the Association, which would alter the rights of a Construction Mortgagee or in any way affect the security of the Construction Mortgagee without its joinder and written consent to such amendment.

(B) If Construction Mortgagee either assumes possession of any portion of the Property or Common Elements upon which said Construction Mortgage is a lien or acquires title to unsold Submitted Property upon foreclosure of the Construction Mortgage, by purchase of the unsold Submitted Property upon foreclosure sale, or by deed in lieu of



foreclosure, Construction Mortgage and its successors and assigns shall have and enjoy all of the rights, privileges and exemptions granted to Declarant by this Declaration and/or by the By-Laws.

**ARTICLE XV**  
**FHLMC REQUIREMENTS**

Section 15.1. FHLMC Approval Requirements. Unless at least 67 percent of the First Mortgagees (based on one vote for each First Mortgage owned) and Owners representing at least 67 percent of the total allocated votes in the Association have given their prior written approval, the Association shall not be entitled to:

15.1.1. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Area (provided that the granting of easements for public utilities or for other public purposes consistent with the Intended use of such Common Area shall not be deemed a transfer within the meaning of this clause);

15.1.2. Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner;

15.1.3. Fail to maintain fire and extended coverage on insurable common property in an amount not less than 100 percent of current replacement cost; or

15.1.4. Use hazard insurance proceeds for losses to common property for other than the repair, replacement, or reconstruction of such common property.

Section 15.2. Mortgagees' Rights. First Mortgagees of Cabin Units, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or Improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

**ARTICLE XVI**  
**DESIGN REVIEW COMMITTEE**

Section 16.1. Membership. There is hereby established a Design Review Committee which shall be responsible for the establishment and administration of Design Guidelines to carry out the purposes and intent of this Declaration. The Committee shall be composed of three persons, who need not be Members of the Association. All of the members of the Committee shall be appointed, removed, and replaced by Declarant in its sole discretion, until such time as the Class B membership is terminated, and at that time the Board of Directors shall succeed to Declarant's right to appoint, remove, or replace the members of the Committee.

Section 16.2. Purpose. The Committee shall review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines adopted and established from time to time by the Committee.

16.2.1. The Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Building Site, height, grade and finished ground elevation and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

16.2.2. No Improvement on the Property shall be erected, placed or

altered on any Homesite, Building Site, or Project Parcel nor shall any construction be commenced until plans for such Improvement shall have been approved by the Committee; provided, however, that improvements and alterations which are completely within a Building may be undertaken without such approval.

16.2.3. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties subject to appeal as provided in the Bylaws.

Section 16.3. Organization and Operation of Committee.

16.3.1. Term. The term of office of each member of the Committee, subject to Section 16.1, shall be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 16.1.

16.3.2. Chairman. So long as Declarant appoints the Committee, Declarant shall appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the chairman shall be elected annually from among the members of the Committee by majority vote of said members.

16.3.3. Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

16.3.4. Voting. The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

16.3.5. Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

Section 16.4. Expenses. Except as provided below, all expenses of the Committee shall be paid by the Association. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation. Until January 1, 2008, the filing fee shall not exceed \$250 per dwelling unit, but may be subject to reasonable increase after the date as determined by the Board on recommendation from the Committee.

Section 16.5. Design Guidelines and Rules. The Committee shall adopt, establish, and publish from time to time Design Guidelines, which shall be a Mountain Park Document. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for Mountain Park and the various uses within Mountain Park. The Design Guidelines may be modified or amended from time to time by the Committee. Further, the Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Mountain Park design review process is not a substitute for compliance with Sevier County or City of Pigeon Forge building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Section 16.6. Procedures. As part of the Design Guidelines and Rules, the Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the Bylaws.

Section 16.7. Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual Committee member, shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for Sevier County, Tennessee or The City of Pigeon Forge, Tennessee. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of the Improvements. Neither the Board, the Design Review Committee, or any agent thereof, nor Declarant or any of its partners, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved, in accordance with the provisions of the Mountain Park Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the Court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 16.8. Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Board, and upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Owner is in violation of any of the terms and conditions of the Mountain Park Documents. Unless such request shall be complied with within 30 days after receipt of the request, it shall be conclusively presumed that the Owner and the Owner's Improvement are in conformance with all the terms and conditions subject to the control of the Committee.

## **ARTICLE XVII** **ENFORCEMENT OF COVENANTS**

Section 17.1. Violations Deemed a Nuisance. Every violation of this Declaration or any other of the Mountain Park Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants shall be available.

Section 17.2. Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of the Mountain Park Documents as the same may be amended from time to time.

Section 17.3. Failure to Comply. Failure to comply with the Mountain Park Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws shall be given to the delinquent party prior to commencing any legal proceedings.

Section 17.4. Who May Enforce. Any action to enforce the Mountain Park Documents may be brought by the Declarant, the Board, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner,

none of the foregoing persons or entities commences an action to enforce the Mountain Park Documents, then the aggrieved Owner may bring such an action at the Owner's expense.

Section 17.5. Remedies. In addition to the remedies set forth above in this Article XVI, any violation of the Mountain Park Documents shall give to the Board, the Manager, or the Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of the Mountain Park Documents. If the offense occurs on any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

Section 17.6. Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

Section 17.7. No Waiver. The failure of the Board of Directors, Declarant, or the Manager, or any aggrieved Owner to enforce the Mountain Park Documents shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Mountain Park Documents at any future time.

Section 17.8. No Liability. No member of the Board of Directors, the Declarant, the Manager, or any Owner shall be liable to any other Owner for the failure to enforce any of the Mountain Park Documents at any time.

Section 17.9. Recovery of Costs. If Declarant or the Association obtains legal assistance to enforce any of the provisions of the Mountain Park Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Mountain Park Documents or the restraint of violations of the Mountain Park Documents, and is the prevailing party, Declarant, and/or the Association shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees as may be incurred, or if suit is brought, in such amounts as may be determined by the court.

#### **ARTICLE XVIII** **RESOLUTION OF DISPUTES**

If any dispute or question arises between Members or between Members and the Association relating to the interpretation, performance or nonperformance, violation, or enforcement of the Mountain Park Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws if such procedures are adopted.

#### **ARTICLE XIX** **DURATION OF THESE COVENANTS AND AMENDMENT**

Section 19.1. Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until January 1, 2060. Thereafter these Covenants shall be automatically extended for five successive periods of ten years each, unless otherwise terminated or modified as provided below.

Section 19.2. Amendment. This Declaration, or any provision of It, may be terminated, extended, modified, or amended, as to the whole or any portion of the Property, upon the written consent of Declarant and Owners representing more than 60 percent of the Units in the Property, provided however, once the Declarant no longer owns any Units its consent shall not be required. Amendments made pursuant to this Section shall inure to the benefit of and be binding upon all Owners of any part of the Property, their family, tenants, guests, invitees, and employees, and their respective heirs, successors, and assigns. A certificate of a licensed abstract or title company showing record ownership of the Units shall be evidence of such ownership for the purposes of any such amendment.

**Notwithstanding the foregoing provisions of this Article, it is understood and agreed that as of the time this Declaration is dated and recorded in the public records of Sevier County, all of the improvements shown in the Exhibits may not be completed; however, said improvements shall be generally as and located as described and shown in the Exhibits and the Plats.**

Section 19.3. When Modifications Permitted. Notwithstanding the provisions of Section 19.2, no termination, extension, modification or amendment of this Declaration shall be effective in any event prior to January 1 2020, unless the written approval of Declarant is first obtained.

Section 19.4. Amendment by Declarant. Notwithstanding Section 19.2 or any other provisions of this Declaration, Declarant, acting alone, reserves to itself the sole right and power to modify and amend this Declaration by executing and recording an instrument setting forth the amendment. This right and power of the Declarant, acting alone, to amend this Declaration in whole or in part, at any time and from time to time, shall be effective only with respect to any amendments recorded on or before January 1, 2020.

Section 19.5. Notice of Amendment. Except in the case of amendments made by Declarant pursuant to Section 19.4 above, no amendment of this Declaration shall be effective unless a written notice of the proposed amendment is sent to every Owner at least thirty (30) days in advance of any action taken or purported to be taken and such Owner has been given the opportunity to vote or give its consent thereto.

Section 19.6. Effective on Recording. Any modification or amendment shall be immediately effective upon recording a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), accompanied by a certificate of a licensed abstract company or a title company as to ownership, or upon the recording of a copy of the amendment or modification together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners and certificate of a licensed or abstract title company were obtained and are on file in the office of the Association, in the office of the Sevier County Register, Sevier County, Tennessee. A licensed abstract company or a title company may be entitled, but not required, to rely on the records of the Sevier County Trustee, and/or the Association in determining ownership of the Cabin Units. In the event of a conflict between the records of the Trustee and the Association, the Association records shall control.

Section 19.7. Revocation. This Declaration shall not be revoked, except as provided in Article X regarding total condemnation, without the consent of all of the Owners in a written instrument duly recorded.

Section 19.8. Institutional Mortgage. Where an Institutional Mortgagee by some circumstance fails to be a first mortgagee, it shall nevertheless for the purposes of the Declaration and the Exhibits hereto be deemed to be an Institutional Mortgagee holding or the beneficiary of the first lien of record, superior to the lien for common expenses.

Section 19.9. Binding Effect. Each Unit Owner by virtue of acceptance of a Deed of Conveyance of the Unit and/or any portion of or interest in the Common Area and other parties by virtue of their occupancy of Units or use of the Common Area, hereby approves the provisions hereof and all covenants, terms, conditions, duties and obligations hereof and Exhibits hereto and the Act., and does agree to be bound by all the terms, conditions, duties and obligations contained herein, in the Exhibits hereto and in the Act.

Section 19.10. Partition or Division. No Unit owner shall bring or have any right to bring any action for partition or division of the Property.

**ARTICLE XX**  
**CONSTRUCTION AND ALTERATION OF**  
**IMPROVEMENTS**

Section 20.1. General. The Design Guidelines and the general instructions set forth in these Covenants shall govern the right of an Owner, developer, or other entity to construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any of the Property (except as provided in Section 6.2.2 above), and to make or create any excavation or fill on the Property, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on or over the Property.

Section 20.2. Approval Required. Except to the extent permitted in Section 6.2.2 above, any construction or reconstruction, or the refinishing or alteration of any part of the exterior of any Building or other Improvement on the Property is absolutely prohibited until and unless the Owner or developer first obtains approval from the Design Review Committee and otherwise complies with the provisions of these Covenants. All Improvements shall be constructed only in accordance with approved plans.

Section 20.3. Deemed Nuisances. Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member shall be applicable. These Covenants may be enforced as provided below.

Section 20.4. Removal of Nonconforming Improvements~ The Association, upon request of the Committee and after reasonable notice to the offender and to the Owner, may remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the Improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal.

Section 20.5. Construction Method~. Specific rules regarding construction methods, including but not limited to excavation, drainage, utility lines, loading areas, waste storage, trash removal, materials storage, and transformers and meters, shall be set forth in the Design Guidelines, and all Owners shall comply with those rules. Without limiting the generality of the foregoing, the following specific provisions shall apply:

20.5.1 There shall be no exposed block and all finishes must be of stucco or equal material.

20.5.2 There shall be no exterior sheet type siding such as T-111 or reverse board and batten. Masonite siding is prohibited in any form. Vertical or horizontal board siding will be allowed as long as it is cedar, white pine, hemlock or fir. No vinyl or aluminum siding is allowed, however soffits and guttering may be created using these materials.

20.5.3 During construction any owner/builder shall take proper steps to prevent erosion, mud or silt slides into the streets or common areas. Silt fences are to be erected if necessary to prevent erosion. Driveway construction and site preparation shall be performed by an individual or company approved by the Design Review Committee.

20.5.4 Upon completion of construction, the owner/builder shall have 10 days to complete final grading, landscaping and/or seeding of disturbed grounds.

**ARTICLE XXI**  
**PRINCIPLES OF INTERPRETATION**

Section 21.1. Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 21.2. Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Opinion Letter required by TCA 66-27-103 is attached as Exhibit G.

Section 21.3. Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

Section 21.4. Registration Of Mailing Address. Each Member shall register his mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered to or sent by mail, postage prepaid, or courier, addressed in the name of the Member at such registered mailing address.

Section 21.5. Notice. All notices or requests required shall be in writing. Notice to any Members shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by first-class mail, to the address of such Member on file in the records of the Association at the time of such mailing. In the event and Owner does not register its address, the Association may make any notices to the address found in the Sevier County Trustee's Office for that Unit. Notice to the Board, the Association, or the Manager shall be considered delivered and effective upon personal delivery, or three Clays after posting, when sent by first-class mail, to the Association, the Board, or the Manager, at such address as shall be established by the Association from time to time by notice to the Members. General notices to all Members or any classification thereof need not be certified, but may be sent regular first class mail.

Section 21.6. Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice President of the Board on behalf of the Association.

Section 21.7. Limitation of Liability. Neither the Association, nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Mountain Park Documents if the action or failure to act was made in good faith. The Association shall indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles and Bylaws of the Association.

Section 21.8. Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws; this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 21.9. Assignment. Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Register's Office for Sevier County, Tennessee.

**ARTICLE XXII**  
**MISCELLANEOUS PROVISIONS**

Section 22.1. No Exemption. No Unit Owner except the Declarant, may exempt himself from liability for his contribution toward the Common Expenses or other assessments duly made by the Association and/or the Board of Directors by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit.

Section 22.2. Property Taxes. Each Unit Owner shall pay all property taxes and other taxes assessed against his Unit and shall file any tax returns required in connection therewith. No Unit Owner shall have a right of contribution or right of adjustment against any other Unit Owner because the value of his Unit as fixed by any taxing authority may differ from that stated herein. For the purposes of property taxation, the interest of the Unit Owner of a Unit is his Unit and Common elements appurtenant thereto shall be considered a Unit.

Section 22.3. Covenants Run with Land. All provisions of this Declaration and all Exhibits hereto and amendments hereof shall be construed as covenants running with the land and of every part thereof and interest therein including, but not limited to, every unit and the appurtenances thereto and every Unit Owner and/or Occupant of the Property or any part thereof or owning any interest therein, his heirs, executors, successors, administrators and assignees shall be bound by all the provisions of this Declaration and Exhibits hereto and any amendments to the same and the Act.

Section 22.4. Invalid Word or Clause. If any of the provisions of this Declaration, of the Exhibits hereto, of the Act or any section, clause, phrase, word or the application thereof in any circumstances is held invalid, the validity of the remainder of same and of the application of any provision, action, sentence, clause, phrase or work in other circumstances shall not be affected thereby.

Section 22.5. Remedies; Attorney Fees. All remedies for non-compliance provided in the Act shall be in full force and effect. In addition thereto, should the Association find it necessary to bring an action to bring about compliance with any provision of law, the Act, this Declaration and/or the exhibits attached hereto, upon finding by the Court that the violation claimed was willful or deliberate, the Unit Owner so violating shall reimburse the Association for reasonable attorneys' fees incurred in prosecuting such action.



IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day first above written.

DECLARANT:

MOUNTAIN PARK, LLC

BY: James D. Douglas, Chief Manager  
James D. Douglas, Chief Manager

STATE OF TENNESSEE

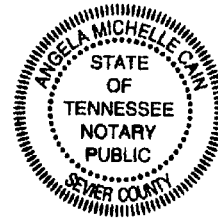
COUNTY OF SEVIER

Personally appeared before me, the undersigned authority, **James D. Douglas** (name of the individual executing the instrument), with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he executed the within instrument for the purposes therein contained and who further acknowledged that he is the Managing Member of the maker, MOUNTAIN PARK, LLC a limited liability company, or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

WITNESS my hand and official seal this the 7<sup>th</sup> day of July, 2006.

Angela Michelle Cain  
NOTARY PUBLIC

My Commission Expires: MY COMMISSION EXPIRES:  
May 18, 2010



**SCHEDULE OF EXHIBITS**

- Exhibit "A" Property Description
- Exhibit "B" Schedule of Percentage (%) of Undivided Interest in Common Area
- Exhibit "C" Unit Owners Vote Designation
- Exhibit "D" Maps Showing Location of Units
- Exhibit "E" By-Laws of Mountain Park Home Owners Association
- Exhibit "F" Estimated Operating Budget

**EXHIBIT A TO MASTER DEED**

**MOUNTAIN PARK  
CITY OF PIGEON FORGE, TENNESSEE**

**Property Description  
Mountain Park Phase 1**

SITUATED in the 5<sup>th</sup> Civil District of Sevier County, and within the corporate limits of the city of Pigeon Forge, Tennessee, and being all of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 as shown on the final site plan for **Mountain Park**, (a Planned Unit Development), as the same appears on a plat of record in the Sevier County, Tennessee, Register's Office, in Large Map Book 7, at Page 112, to which reference is here made for exact legal description.

SUBJECT to all matters of survey and all other notations appearing on plat of record in Large Map Book 24, at Page 218, Register's Office for Sevier County, Tennessee. The herein described property was formerly lots 1, 2, 4, 5, 16 and 17 of Country Oaks.

BEING part of the same property conveyed to MOUNTAIN PARK, LLC from HOWARD DAWSON and GREG IVINS by deed dated December 17, 2003, of record in Deed Book 1861, Page 265, in the Register's Office for Sevier County, Tennessee and,

BEING a part of the property conveyed to Mountain Park LLC by deed from WILLIAM E. HARMON dated April 3, 2006 and recorded in WD Book 2500, Page 10 in the Register's Office for Sevier County, Tennessee.

**EXHIBIT B TO MASTER DEED**  
**PERCENTAGE OF OWNERSHIP**  
**MOUNTAIN PARK**  
**CITY OF PIGEON FORGE, TENNESSEE**

This Planned Unit Development contains 22 Units. Each Unit owner shall be conveyed and shall own a 1/22nd Undivided Interest in the Common Area, subject to dilution if additional properties are added or annexed as provided in the Master Deed.

**EXHIBIT C TO MASTER DEED**  
**UNIT OWNER'S VOTE DESIGNATION**  
**MOUNTAIN PARK**  
**CITY OF PIGEON FORGE, TENNESSEE**

This Planned Unit Development contains 22 Units. Each Unit shall be conveyed and shall own 1 vote in the Owners Association.

**EXHIBIT D TO MASTER DEED**  
**MAP SHOWING LOCATION OF UNITS**  
**MOUNTAIN PARK**  
**CITY OF PIGEON FORGE, TENNESSEE**

This Planned Unit Development contains 22 Units. The Plat depicting the location of the Units is recorded in Map Book 417 Page 112 Sevier County Register's Office, to which reference is here made for incorporation herein the same as if copied verbatim.

The 22 Homesites designated on the Plat are Private Elements as defined by TCA 66-27-102. The land surrounding the Homesites is designated as Common Elements.

**EXHIBIT E TO MASTER DEED**

**BY-LAWS OF  
MOUNTAIN PARK HOME OWNERS ASSOCIATION  
CITY OF PIGEON FORGE, TENNESSEE**

The By-laws of Mountain Park Owners Association, inc. consisting of 11 pages is attached for incorporation herein the same as if copied verbatim.

**EXHIBIT E**  
**BY-LAWS**  
**OF**  
**MOUNTAIN PARK OWNERS ASSOCIATION, INC.**

**ARTICLE I. OFFICES**

The principal office of the corporation shall be located in the Sevier County, Tennessee. The corporation may have such other offices either within or without the State of Tennessee, as the Board of Directors may designate or as the business of the corporation may require.

**ARTICLE II. MEMBERS**

**Section 1. Annual Meeting.** The annual meeting of the Members shall be held on the third Saturday in February in each year, beginning with the year 2007, at the hour of 10:00 a.m., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Tennessee, such meeting shall be held on the next succeeding Saturday. If the election of directors shall not be held on the day designated herein for any annual meeting of the Members, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Members as soon thereafter as conveniently may be. Until that special meeting is held, the existing Board of Directors shall continue to function as such.

**Section 2. Place of Meeting.** The Board of Directors may designate any place, either within or without the State of Tennessee, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all Members entitled to vote at a meeting may designate any place, either within or without the State of Tennessee, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the corporation within the State of Tennessee.

**Section 3. Notice of Meeting.** Written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise prescribed by statute, be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or other persons calling the meeting, to each Member of record entitled to vote at such meeting.



**FIRST AMENDMENT  
TO  
MASTER DEED AND DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS FOR MOUNTAIN PARK,  
A PLANNED UNIT DEVELOPMENT**

This FIRST AMENDMENT TO MASTER DEED AND DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR MOUNTAIN PARK, A PLANNED UNIT DEVELOPMENT (this "First Amendment"), is made and executed this 2<sup>nd</sup> day of June, 2020, by Mountain Park Owners Association, a Tennessee nonprofit corporation ("Mountain Park"), and Mountain Park, LLC, a Tennessee limited liability company (the "Declarant"), in its capacity as the sole Declarant of Mountain Park pursuant to the Master Deed (as defined below) and the owner of more than sixty percent (60%) of the Units. Terms with their initial letters capitalized that are used but not otherwise defined in this First Amendment shall have the meanings given to them in the Master Deed.

**WITNESSETH:**

WHEREAS, the original Master Deed and Declaration of Covenants, Conditions, Restrictions, and Easements for Mountain Park, A Planned Unit Development, dated July 7, 2006, appears of record in Book 2569, Page 110, in the Office of the Register of Deeds for Sevier County, Tennessee (the "Master Deed"); and

WHEREAS, Section 19.2 of the Master Deed provides that it may be amended with the written consent of the Declarant and Owners representing more than sixty percent (60%) of the Units in the Property; and

WHEREAS, the members (the "Members") of Mountain Park Owners Association, Inc., a Tennessee non-profit corporation (the "Association"), holding more than sixty percent (60%) of the Units and acting by written ballot as provided in Section 48-57-108 of the Tennessee Nonprofit Corporation Act on May 26, 2020, approved an amendment to the Master Deed to provide for an exclusive management agent to be used by the Members for certain short-term rentals in the form set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby amend the Master Deed as follows:

1. The Master Deed is hereby amended to include the following new Section 6.33 at the end of Article VI thereof:

Section 6.33. Short-Term Rentals. During the period commencing on the date hereof and ending on the date that the Declarant ceases to own at least five (5) Units (the "Rental Agent Designation Period"), the exclusive agent for the provision of short-term rental management services for the Subdivision shall be Cabins USA LLC or such other reputable management company as Declarant may designate from time to time by at least thirty days' advance written notice to all of the Owners (the "Designated Rental Agent"). No Owner shall contract with or employ any third party

This instrument prepared by:  
WOOLF, McCLANE, BRIGHT, ALLEN & CARPENTER, PLLC  
900 Riverview Tower, 900 S. Gay Street, Knoxville, Tennessee 37902-1810

4538172.1

other than the Designated Rental Agent to perform short-term rental management services with respect to such Owner's Unit during the Rental Agent Designation Period. The Declarant shall notify all Owners of the termination of the Rental Agent Designation Period promptly thereafter. As used herein, the phrase "short-term rental management services" shall mean the provision of any rental management services (including, without limitation, booking, cleaning, stocking and laundry services) for the rental of one or more Units for rental periods of less than thirty (30) days.

2. The Master Deed, as amended and supplemented by this First Amendment, is to remain in full force and effect and is to be deemed superseded by this First Amendment only to the limited extent necessary to implement the terms hereof. In all other cases and for all purposes, the Master Deed, as amended and supplemented by this First Amendment, shall be construed and treated as a single instrument and to the extent that they are not inconsistent therewith, all the terms and provisions herein contained shall be defined and interpreted in conjunction with all of the terms and the provisions of the Master Deed as amended and supplemented by this First Amendment.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date set forth above.

MOUNTAIN PARK:

Mountain Park Owners Association

By: Chad McFall  
Chad McFall, President

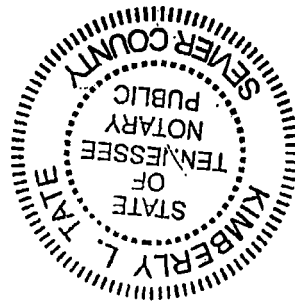
STATE OF TENNESSEE )  
COUNTY OF Sevier )

Before me, a Notary Public in and for the state and county aforesaid, personally appeared Chad McFall, 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 Park Owners Association, the within named bargainor, a corporation, and that he, being authorized so to do, executed the foregoing instrument in such capacity on behalf of such corporation for the purposes therein contained.

Witness my hand and seal, this 3rd day of June, 2020.

Kimberly L. Tate  
Notary Public

My Commission Expires:  
03-23-2022



DECLARANT:

Mountain Park, LLC

By: James D. Douglas  
James D. Douglas, Chief Manager

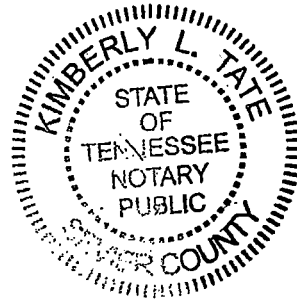
STATE OF TENNESSEE )  
COUNTY OF Sevier )

Before me, a Notary Public in and for the state and county aforesaid, personally appeared James D. Douglas, 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 Chief Manager of Mountain Park, LLC, the within named bargainer, a limited liability company, and that he, being authorized so to do, executed the foregoing instrument in such capacity on behalf of such limited liability company for the purposes therein contained.

Witness my hand and seal, this 3 day of June, 2020.

Kimberly L. Tate  
Notary Public

My Commission Expires:  
03-23-2022



BK/PG: 5551/31-34  
20018746

4 PGS : AMENDED MASTER DEED	
BATCH: 507107	
06/03/2020 - 04:08 PM	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	20.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	22.00

STATE OF TENNESSEE, SEVIER COUNTY  
CYNDI B PICKEL  
REGISTER OF DEEDS

**Section 4. Quorum.** A majority of the Members of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members. If less than a majority of the Members are represented at a meeting, a majority of the Members so represented may adjourn the meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Section 5. Manner of Action.** The act of the majority of the Members present at a meeting at which a quorum is present shall be the act of the Members.

**Section 6. Voting of Members.** Each Member entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of Members.

**Section 7. Voting by Certain Holders/Classes of Memberships.** The Master Deed of Mountain Park (referred to as the "Declaration" or the "Master Deed") establishes the right to be Members in the Association and the voting rights therein. Nothing contained herein shall controvert or alter the provisions of the Master Deed. The Association has two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to a specific number of votes based on the actual subdivision (as opposed to the permitted density) figured as follows:

- (i) one vote for each Home Site, according to the Plat recorded in the office of the Sevier County Register, Sevier County, Tennessee;
- (ii) one vote for each Condominium Unit as shown on the Condominium Map recorded in the office of the Sevier County Register, Sevier County, Tennessee, if a condominium is developed on any lot.

The ownership interests enumerated in paragraphs (i) through (ii) above are sometimes referred to as "Voting Units" in the Declaration. The number of votes allocated to the Owner of a Project Parcel shall decrease accordingly as each Voting Unit, as applicable, is transferred by the Owner of the Project Parcel to individual Owners. When more than one person holds an interest in any Voting Unit, all such persons shall be Members. The vote for such Voting Unit shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such advice, the vote allocated to the Voting Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Voting Unit, may assign his voting right to his tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any

meeting in which the tenant exercises the voting right.

*Class B:* The Class B Member(s) shall be Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale and who is designated as a successor Declarant in a recorded instrument executed by Declarant. Class B Members shall be entitled to three (3) votes for each Voting Unit owned. The Class B membership shall terminate on either of the following dates, whichever occurs earlier:

(i) January 1, 2014; or

(ii) the date on which Declarant voluntarily relinquishes its Class B membership as evidenced by a notice recorded in the office of the Sevier County Register, Sevier County, Tennessee.

Notwithstanding the provisions above, the Class B membership shall not terminate if, within 120 days prior to January 1, 2010, Expansion Property is incorporated into the Property, and as a result, the number of votes of the Class B Members, determined on the basis of three votes per Class B Voting Unit, is greater than the number of votes held by the Class A Members. In such event, the Class B Memberships shall continue to have three (3) votes for each member for 3 years thereafter or until the date on which Declarant voluntarily relinquishes its Class B membership as evidenced by a notice recorded in the office of the Sevier County Register, Sevier County, Tennessee. From and after the termination of the Class B membership, the Declarant and any designated successor Declarant shall be entitled to one vote for each Voting Unit owned. At such time, Declarant shall call a meeting of Owners, as provided by the Bylaws for special meetings, to advise the membership of the termination of Class B status and to transfer control of the Association by the Owners.

Memberships standing in the name of a corporation may be voted by such officer, agent or proxy as the By-Laws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such other corporation may determine.

Memberships held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Membership into his name. Memberships standing in the name of a trustee may be voted by him either in person or by proxy, but no trustee shall be entitled to vote without a transfer of such Memberships into his name.

Memberships standing in the name of a receiver may be voted by such receiver, and Memberships held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name of authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

**Section 8. Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing,

setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

### **ARTICLE III. BOARD OF DIRECTORS**

**Section 1. General Powers.** The business and affairs of the corporation shall be managed by its Board of Directors.

**Section 2. Number, Tenure and Qualifications.** The number of directors of the corporation shall be at least Three (3) but in no event greater than Five (5). The seats on the Board of Directors shall be designated as Seats 1, 2, 3, 4 and 5. Each director shall hold office for three years after the initial appointment, unless removed as provided herein. After the initial period, the Seats shall vacate as follows: on even years, the even numbered seats shall be up for election. On odd numbered years, the odd numbered Seats will be up for election. In this way there will be a continuity on the Board so that no Board, other than the initial Board, shall be comprised of all new Directors. Each director shall hold office as set forth above and until his successor shall have been elected and qualified. The initial Board of Directors shall be elected by Declarant and the Directors shall serve until replaced by Declarant, or their successors are elected and qualify to serve. The first "Board of Directors" which is elected by the Members shall be elected at a meeting of the Members called by Declarant for the purpose of Declarant turning over control of the Association to the Members as provided in the Declaration. Thereafter, the Directors will be elected at the annual meeting of the Members. Directors need not be residents of the State of Tennessee or Members of the corporation.

**Section 3. Regular Meetings.** A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of Members. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Tennessee, for the holding of additional regular meetings without other notice than such resolution.

**Section 4. Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within the State of Tennessee, as the place for holding any special meeting of the Board of Directors called by them.

**Section 5. Notice.** Notice of any special meeting shall be given at least two days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If

notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**Section 6. Quorum.** A majority of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

**Section 7. Manner of Action.** The act of a majority of those present at a meeting at which a quorum is present shall be the act of the Board of Directors. All action taken by the Board shall be by resolution. Any resolution signed by the directors shall be conclusive evidence that all notice provisions provided by these By-Laws are waived.

**Section 8. Action Without a Meeting.** Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting via consent in writing, setting forth the action so taken, shall be signed by all of the directors.

**Section 9. Vacancies.** Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the Board of Directors for a term of office continuing only until the next election of directors by the Members.

**Section 10. Compensation.** By resolution of the Board of Directors, each director may be paid his expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefore.

**Section 11. Presumption of Assent.** A director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after



the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

**Section 12. Conduct of the Meeting.** Roberts Rules of Order (latest edition) shall govern the conduct of the meetings of the Board of Directors.

#### **ARTICLE IV. OFFICERS**

**Section 1. Number.** The officers of the corporation shall be president, a vice-president (if the Board of Directors deem such office necessary), a secretary and a treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

**Section 2. Election and Term of Office.** The officers of the corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

**Section 3. Removal.** Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 4. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**Section 5. President.** The president shall be the principal executive officer of the corporation and, is subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. He shall, when present, preside at all meetings of the Members and of the Board of Directors. He may sign, with the secretary or any other proper officer of the corporation authorized by the Board of Directors, deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-

Laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 6. The Vice-President.** In the absence of the president or in the event of his death, resignation or refusal to act, the vice-president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-president shall perform such duties as from time to time may be assigned to him by the president or by the Board of Directors.

**Section 7. The Secretary.** The secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-laws or as required by law; (c) be custodian of the corporate records; (d) keep a register of the post office address of each Member which shall be furnished to the secretary by such Member; and (e) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

**Section 8. The Treasurer.** If required by the directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with these By-laws and in general perform all of the duties as from time to time may be assigned to him by the president or by the directors. If the Board of Directors does not elect a Treasurer, the functions of Treasurer shall be performed by the Secretary, who shall hold the title of Secretary/Treasurer.

#### **ARTICLE V. CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**Section 1. Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to

specific instances.

**Section 2. Loans.** No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**Section 3. Checks, Drafts, etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 4. Deposits.** All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

#### **ARTICLE VI. CERTIFICATES FOR MEMBERSHIP INTERESTS AND THEIR TRANSFER**

**Section 1. Certificates for Membership Interests.** There shall be no certificates issued to represent membership in the corporation.

**Section 2. Transfer Of Membership Interest.** Transfer of Membership Interests shall occur only upon a transfer of a Unit designated in the Master Deed of Mountain Park.

#### **ARTICLE VII. ACCOUNTING YEAR**

The accounting year of the corporation shall be a fiscal year and shall begin on the first day of January and end on the 31st day of December in each year.

#### **ARTICLE VIII. DIVIDENDS**

The Board of Directors may, from time to time, declare and the corporation may pay dividends to its Members in the manner and upon the terms and conditions provided by law.

#### **ARTICLE IX.**

##### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

**Section 1. Right of Indemnification and Standards of Conduct.** Every person (and heirs and legal representatives of such person) who is or was a director or officer of this corporation or is or was serving at the request of the corporation a member of any committee may in accordance with Section 2 hereof by indemnified for any liability and expense that may be incurred by him in connection with or resulting from any threatened,

pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative (whether brought by or in the right of this corporation or otherwise), or in connection with any appeal relating thereto, in which he may become involved, as a party or prospective party or otherwise, by reason of his being or having been a director or officer of this corporation or such other corporation, or by reason of any action taken or not taken in his capacity as such director or officer or as a member of any committee appointed by the Board of Directors of this corporation to act for, in the interest of, or on behalf of this corporation, whether or not he continues to be such at the time such liability or expense shall have been incurred; provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of this corporation, and in addition, with respect to any criminal action or proceeding, did not have reasonable cause to believe that his conduct was unlawful. As used in this Article, the terms "liability" and "expense" shall include, but shall not be limited to, counsel fees and disbursements and amounts of judgments, fines or penalties, and mounts paid in compromise or settlement by a director or officer. The termination of any claim, action, suit or proceeding, by judgment, order, compromise, settlement (with or without court approval) or conviction or upon a plea of guilty or of nolo contendere, or its equivalent, shall not create a presumption that a director or officer did not meet the standards of conduct set forth in this Section.

**Section 2. Determination of Right of Indemnification.** Every person (and the heirs and legal representatives of such person) referred to in Section 1 hereof who has been wholly successful on the merits or otherwise, with respect to any claim, action, suit or proceeding of the character described in Section 1 hereof, shall be entitled to indemnification as of right without any further action or approval by the Board of Directors. Except as provided in the immediately preceding sentence, any indemnification under Section 1 next above shall be made at the discretion of this corporation, but only if (a) the Board of Directors who were not parties to such claim, action, suit or proceeding, present or voting, shall find that the director or officer has met the standard of conduct set forth in Section 1 hereof, or if a quorum of disinterested directors is unobtainable, independent legal counsel shall deliver to the corporation their written opinion that such director or officer has met such standards, or (c) the holders of a majority of stock then entitled to vote for the election of directors shall determine by affirmative vote that such director or officer has met such standard.

Notwithstanding the forgoing, no director or officer who was or is a party to any action or suit who shall be adjudged to be liable for negligence or misconduct in the performance of his duty to this Corporation shall be entitled to indemnification under this Article, unless and except to the extent that the court in which such action or suit was brought shall determine

upon application that, despite the adjudication of liability and in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

**Section 3. Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding, only as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount until it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this Article IX.

**Section 4. Rights of Indemnification Cumulative.** The rights of indemnification provided in this Article IX shall be in addition to any rights to which any such director or officer or other person may otherwise be entitled under any by-law, agreement, vote of Members or otherwise, including without limitation any person who was a director, trustee, or officer of any corporation, partnership or trust which was a predecessor to the corporation (whether resulting from a merger, consolidation or sale of assets) to the extent provided in any agreement setting forth the terms of the corporation to purchase and maintain insurance on behalf of any such director or officer or other person against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, regardless of whether the corporation would have the power to indemnify him against such liability under this Article or otherwise.

**Section 5. Statement To Members.** If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the Members or by an insurance carrier pursuant to insurance maintained by the corporation, the corporation shall, not later than the next annual meeting of Members, unless such meeting is held within three (3) months from the date of such payment, and in any event, within fifteen (15) months from the date of such payment, send by first class mail to its Members of record at the time entitled to vote for the election of directors, a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

#### **ARTICLE X. RESOLUTION OF DISPUTES AND APPEALS**

**Section 1. Appeals.** Whenever a Member is dissatisfied with a decision or ruling of the Design Review Committee, pertaining to a Member's Homesite, the Member may appeal that decision or ruling to the Board of Directors. The appeal may be presented at either an annual meeting, or a specially called meeting of the Board. The Member making the appeal shall notify the President or two Directors and request that the appeal be placed

on the agenda for the annual meeting or on the agenda for a special meeting. The Member must provide all documentation and a written summary of the Member's position and reason for appeal ten (10) days prior to any said meeting. At the meeting, both the Member and the Chairman of the Design review committee may present their side of the issue. The decision of the Board of Directors on the appeal shall be final.

**Section 2. Dispute Resolution.** All disputes between Members or between a Member and the Association arising out of the Mountain Park Documents shall be resolved by the Board of Directors of the Association in the same manner as for appeals.

#### **ARTICLE XI. WAIVER OF NOTICE**

Whenever any notice is required to be given to any Member or director of the corporation under the provisions of the By-Laws or under the provisions of the Charter of Incorporation or under the provisions of the Tennessee Nonprofit Corporation Act, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

#### **ARTICLE XI. AMENDMENTS**

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board of Directors or by the Members at any regular or special meeting by a favorable vote of sixty percent of the members voting.

**EXHIBIT F TO MASTER DEED**  
**ESTIMATED OPERATING BUDGET**  
**MOUNTAIN PARK**  
**CITY OF PIGEON FORGE, TENNESSEE**

Estimated Operating Budget for Mountain Park Owners Association, Inc.

Insurance	\$ 3,030.00
Road Maintenance & Snow Removal	3,500.00
Common Area Maintenance	9,000.00
Administrative	1,000.00
Postage & Duplication	500.00
Miscellaneous Expenses	1,000.00
Reserve for future expenses	<u>0000.00</u>
Total Annual Expense	\$18,030.00

\$18,030 divided by 22 Units = \$819.55 = \$68.30 monthly

**EXHIBIT G TO MASTER DEED**  
**MOUNTAIN PARK**  
**CITY OF PIGEON FORGE, TENNESSEE**

Opinion Letter from CHARLIE R. JOHNSON is attached.