
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR DUNAWAY

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DECLARATION OF COVENANTS AND RESTRICTIONS FOR
DUNAWAY

THIS DECLARATION made this _____ day of _____, 1990, by MOUNTAIN PROPERTIES, INC., a Tennessee corporation (herein "Developer").

W I T N E S S E T H:

WHEREAS, Developer, as owner of certain real property located in Sequatchie County, Tennessee, as more particularly described in Exhibit "A" hereto (herein "Property"), desires to create thereon a development known as DUNAWAY (sometimes herein "Development"); and

WHEREAS, Developer desires to subject the Development to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, it is the plan of the Developer to devote the lots in the Development solely to restricted single family residential and recreational purposes; and

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

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Tennessee, DUNAWAY PROPERTY OWNERS' ASSOCIATION, a Tennessee corporation not for profit, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, the Developer subjects the real property described in Article II to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as "the Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the Property and each Lot thereof.

ARTICLE I
DEFINITIONS

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

1.01 Association. "Association" shall mean DUNAWAY PROPERTY OWNERS' ASSOCIATION, a Tennessee corporation not for profit.

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

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

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

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

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

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

1.08 Developer. "Developer" shall mean Mountain Properties, Inc., a Tennessee corporation and its successors and assigns.

1.09 Dwelling Unit. "Dwelling Unit" shall mean any building situated upon the Properties designated and intended for use and occupancy by a single family.

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

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

1.12 Land. "Land" shall mean the real property described in Article II hereof.

1.13 Lot or Lots. "Lot" or "Lots" shall mean any improved or unimproved plat of land shown as a Lot upon any recorded final subdivision map of any part of the Properties, with the exception of Common Properties.

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

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

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

1.17 Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of a deed of trust, as well as a holder of a Mortgage.

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

1.19 Property or Properties. "Property" or "Properties" shall mean the Land which is subject to this Declaration.

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

ARTICLE II PROPERTIES, COMMON PROPERTIES AND IMPROVEMENTS THEREON

2.01 Land. The real property which is, and shall be held, transferred, sold, conveyed, leased and occupied, subject to these Covenants, is located in Sequatchie County, Tennessee and is more particularly described in Exhibit "A" hereto and additions or amendments thereto. Additionally, any easements on any real property retained by or granted to the Developer or the Association for the purpose of erecting entrance signs or street lights shall also be considered Land and subject to these covenants.

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

2.03 Common Properties and Improvements Thereon. The only initial Common Properties shall be the streets and such street lights, street signs, and entrance signs as Developer shall choose, in its sole discretion, to erect at the Development. The Association may add additional Common Properties from time to time as it sees fit.

ARTICLE III PURPOSES, USES AND RESTRICTIONS

3.01 Common Properties The Common Properties shall be used to benefit the residents of DUNAWAY and to enhance the appearance of the Development.

3.02 Residential Use.

A. All of the Lots in the Development shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling, the plans for which (including the location of the dwelling unit upon the Lot) must be submitted to and approved by the Board in accordance with Article IV of this Declaration. With the Board's prior written approval, garages may be permitted.

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

C. No Lot may be used as a means of service to business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a part of the Property, unless specifically consented to by the Board in writing.

3.03 No Multi-Family Residences or Business. No residence shall be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and no residence shall be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes.

es, or for trucks or other equipment inconsistent with ordinary residential uses.

3.04 Rearrangement of Lot Lines. Not more than one dwelling unit shall be erected or maintained on any one Lot. This will not prevent the use of one or more Lots or parts of Lots as a single building plot of ground, providing that the division or rearrangement of boundary lines of subdivision Lots shall not increase the total number of Lots in said subdivision, and that the same shall conform to zoning laws and subdivision regulations in effect thereon. Two or more Lots may be combined to form one Lot; however, the assessments provided for herein will continue to be based upon the number of original Lots purchased.

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

3.06 Completion of Construction. Any residence being erected on a Lot shall be completed within twelve (12) months from the date of the pouring of the footings for said residence. In the construction of a residence upon a Lot, the builder shall keep all debris cleared from the street or streets bounding the Lot; and, before any residence is occupied, all debris must be removed from the entire Lot.

3.07 Maximum Square Footage. No dwelling house shall be erected or permitted to remain in the Development unless it has no more than 1,500 square feet of enclosed living area on the first floor, exclusive of open porches or screened porches, carports or garages. In the case of any question as to whether an unacceptable number of square feet of enclosed living area have been provided, the decision of the Board shall be final.

3.08 Building Requirements. The exterior front and side elevations of all buildings shall be either wood (horizontal boards, vertical board and batten, or similar), or stone or other natural materials. The use of bricks shall not be permitted. All exterior material shall be specifically approved by the Board as provided in Section 4.01.

3.09 No Fences, Walls, etc. Except with the prior written approval of the Board, no fences or walls shall be erected on any Lot, nor shall hedges, shrubs or other plantings be used to designate or mark the Lot boundaries. No chainlink or barbed wire fences will be approved.

3.10 Driveways. Each residence constructed upon a Lot in said subdivision must be served by an all-weather graded gravel quality driveway. Driveways shall not be paved.

3.11 Signs. No sign of any kind shall be displayed to the public view from any Lot without the prior written consent of the Board.

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

3.13 Unsightly Conditions. All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). Tree limbs, rocks and other debris must be kept out of the streets. In the event that an Owner of a Lot in the Development fails, of his own volition, to maintain his Lot in a neat and orderly condition, the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the cost of such work to the Owner.

3.14 Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development.

3.15 No Detached Buildings. There shall be no detached buildings, other than a single family dwelling, without the prior written consent of the Board.

3.16 Sewage Disposal. Before any dwelling on a Lot shall be occupied, a septic tank, or sewage disposal system constructed in accordance with the requirements of the Tennessee State Board of Health and Sequatchie County Health Department, shall be installed. All sewage from the premises shall be turned into such sewage disposal facility, and the same shall be continuously maintained in proper state of sanitation. The effluence from such septic tank or sewage disposal system shall not be permitted to discharge into a stream, storm sewer, open ditch or drain unless first it has been passed through an absorption field approved by the public health authority.

3.17 Permitted Entrances. In order to implement and effect insect, reptile and woods fire control, and to maintain unsightly Lots, the Board, or its duly appointed agent, may enter upon any Lot on which a dwelling residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the Board for such plan), such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Board detracts from the overall beauty, setting and safety of the Property or Lots.

Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. The Board and its agents may likewise enter upon a Lot to remove any trash which has collected on said Lot without such entrance and removal being deemed a trespass. The provisions of this section shall not be construed as an obligation on the part of the Board and its agents to mow, clear, cut or prune any Lots or to provide garbage or trash removal services.

3.18 Tree Removal. No trees or shrubs shall be removed prior to obtaining approval of plans as set forth in Section 4.01(B). The majority of the trees may not be removed from any Lot except in the area of the Lot upon which the house and driveway are to be constructed. Except for view enhancement, excessive removal of trees will be deemed to be a nuisance to the adjoining neighbors and will mar the beauty of the Development.

3.19 No Antennas. No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure on the Property or any Lot within the Development without the prior written consent of the Board; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. Notwithstanding the foregoing, the provisions of this section shall not prohibit the Developer from installing equipment necessary for a master antenna system, security system, cable television, mobile radio system or other similar systems within the Development.

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

3.21 Set-backs. As one prerequisite to obtaining the advance approval required under Article IV of this Declaration, no building shall be located on any Lot so that any portion of its exterior, including porches, decks or patios, is any closer than 50 feet from the high water mark of Lake Dunaway, 60 feet from the boundary of any platted road and 25 feet from any side Lot line; provided, however, where the dimensions of a Lot make the required set-back unfeasible or impractical, the Board may, upon application of the Owner of such Lot, grant a waiver of such requirement when it finds that the overall purpose of these Covenants would be best effected.

3.22 Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner and Developer (with respect to improved Property owned by Developer) shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire or other casualty. Variations and waivers of this provision may be made only upon the Board establishing that the overall purpose of these Covenants would be best effected by allowing

such a variation. Variations to this section are to be strictly construed and the allowance of a variance by the Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners.

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

3.24 Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of these Restrictive Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, or any person who at the time of the violation is an Owner of any one or more of the Lots to which provisions of these Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, and the said Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. In the event of a violation which may be minor in character, a waiver thereof may be made by the Board. Further, the Board may grant variances of the restrictions set forth in these Covenants, if such variances do not, in the sole discretion of the Board, adversely affect the purposes sought to be obtained hereby.

By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots (subject to rights of variances reserved by the Board), it shall not be incumbent upon the Board to enforce the provisions of these Covenants or to prosecute any violation thereof.

ARTICLE IV ARCHITECTURAL CONTROL

4.01 Architectural and Design Review.

A. In order to preserve, to the extent possible, the natural beauty of the Property and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the development, and to promote and protect the value of the Property, the Board shall create a body of rules and regulations covering details of dwelling placements, which shall be available for all Owners or prospective Owners of Lots.

B. No building, fences, walls, pools, structures of any type, shall be erected, placed, added to, or altered and no trees or shrubs shall be cut or removed and no grading shall be commenced until the proposed building plans and specifications (including

height, and composition of roof, siding, or other exterior materials and finish), plot plan (showing the proposed location of such building or structure, drives and parking areas), drainage plan, landscape plan or construction schedule, as the case may be, shall have been submitted to the Board for approval at least thirty (30) days prior to the proposed date of construction. The Board shall give written approval or disapproval of the plans within 30 days of submission. However, if written approval or disapproval is not given within 30 days of submission, the plans shall be deemed to have been approved. The Board may, by written notice given from time to time to the Owners of Lots, exempt certain matters of a non-essential nature from the review requirements subject to the terms and conditions and for the time periods established by the Board. In the event of the completion of any dwelling unit on any Lot, without any proceedings having been instituted in the courts of Sequatchie County, Tennessee to enjoin the construction thereof, the said dwelling shall be conclusively presumed to have had such approval.

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

D. The Board may establish an Architectural Review Committee in accordance with the Bylaws to oversee architectural and design review and to make recommendations to the Board.

4.02 Approval Standards. Approval of any proposed building plan, location, specifications or construction schedule submitted under Section 4.01 will be withheld unless such plans, location and specifications comply with the provisions of Article III of this Declaration and unless such construction schedule complies with the provisions of Section 4.03. Approval of the plans and specifications by the Board or an architectural committee is for the mutual benefit of all Owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each Owner shall be individually responsible for the technical aspects of the plans and specifications.

4.03 Exterior Completion. The exterior of all Dwelling Units and other construction must be completed within six (6) months after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities.

ARTICLE V ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of these covenants and pay to the Association annual assessments and special assessments for the purposes set forth in Section 5.04 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more Owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Lot. The annual and special assessments, together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Lot and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Lots are combined into a single Lot by an Owner, the assessments will continue to be based upon the number of original Lots purchased.

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

5.03 Amount of Annual Assessment. The amount of the annual assessments shall be set by the Board unless three-fourths (3/4ths) of the Lot Owners, excluding the Developer, who are in attendance or represented at the annual or any special meeting of the Association vote to increase or decrease the said annual assessment set by the Board.

5.04 Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 5.03 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the assent of three-fourths (3/4ths) of the vote of the Lot Owners, excluding the Lots owned by Developer, who are in attendance or represented at a duly called meeting of the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting.

5.05 Property Subject to Assessment. Only land within the Properties which has been subdivided into Lots, and the plats thereof filed for public record, shall constitute a Lot for purposes of these assessments.

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

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

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

5.07 Date of Commencement of Annual Assessments.

A. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement.

B. The amount of the first annual assessment on a Lot shall be based pro rata upon the balance of the calendar year and shall become due and payable on the closing of the Lot. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

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

5.08 Lien. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Lot and the improvements thereon as security for the payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Lot. The lien shall become effective

on a Lot immediately upon the closing of that Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Failure by the Owner or Owners to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

5.09 Sale or Mortgage of Lot. Whenever any Lot may be sold or mortgaged by the Owner thereof, which sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request of the Owner of such Lot, shall furnish to the proposed purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Lot; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Lot and the Association under this Declaration. Such statement shall be executed by any officer of the Association, and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction, and the Association shall be bound by such statement.

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

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

ARTICLE VI MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING THERETO

6.01 Register of Owners and Mortgages. The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Lot to a third party, the purchaser or transferee shall notify the Association Board in writing of his interest in such Lot, together with such recording information that shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Lot. Further, the Owner shall at all times notify the Association of any Mortgage and the name of the Mortgagee on any Lot, and the recording information which shall be pertinent to identify the Mortgage and Mortgagee. The Mortgagee may, if it so desires, notify the Association of the existence of any Mortgage held by it, and upon

receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

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

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

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

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

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

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

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

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

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

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

ARTICLE VII OWNER COMPLAINTS

7.01 Scope. The procedures set forth in this Article for Owner Complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board of Directors of the Association.

7.02 Grievance Committee. There shall be established a Grievance Committee (referred to in this Article as "the Committee") to receive and consider all Owner complaints. The Committee shall be composed of the President of the Association and two other Owners appointed by and serving at the pleasure of the Board of Directors.

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

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

7.05 Hearing Before the Committee. Within ten (10) days after notice of the decision of the Committee, the complainant may, in a writing addressed to the President of the Association, request a hearing before the Committee. Such hearing shall be held within

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

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

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

7.08 Exclusive Remedy. The remedy for Owner complaints provided herein shall be exclusive of any other remedy, and no Owner shall bring suit against the Committee, the Association, the Board of Directors or any member of same in his capacity as such member without first complying with the procedures for complaints herein established.

7.09 Expenses. All expenses incurred by complainant, including, without limitation, attorneys' fees and arbitration expenses and the like, shall be the sole responsibility of complainant. All expenses of the Committee incident to such complaint shall be deemed a Common Expense of the Association.

ARTICLE VIII REMEDIES ON DEFAULT

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

8.02 Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the

Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Association to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together with interest as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or, if appropriate and not in conflict with the provisions of this Declaration or the By-laws, by an aggrieved Owner.

8.03 Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall, in addition to the relief provided for in Section 8.02, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

8.04 No Waiver. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

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

ARTICLE IX EMINENT DOMAIN

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

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

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

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

9.02 Notice to Owners and Mortgagees. Each Owner and each First Mortgagee on the records of the Association shall be given reasonable written advance notice of all final offers before acceptance, proposed conveyances, settlements and releases, contemplated by the Board, legal proceedings and final plans for restoration, and shall be given reasonable opportunity to be heard with respect to each of the same and to participate in and be represented by counsel in any litigation and all hearings, at such Owner's or Mortgagee's own expense.

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

ARTICLE X GENERAL PROVISIONS

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

10.02 Amendments. This Declaration may be amended in accordance with the following procedure:

A. An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if considered at an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting provided for in the Bylaws, and, if considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws. Notice of any meeting to consider an amendment shall also be sent to each Mortgagee listed upon the register of the Association.

B. At any such meeting, the amendment must be approved by an affirmative three-fourths (3/4ths) vote of those Owners present or represented at the meeting, and if the amendment requires the approval of the First Mortgagees under Article VI, its adoption must also be in compliance with the applicable sections of that Article.

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

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

C E R T I F I C A T E

I, _____, do hereby certify that I am the Secretary of Dunaway Property Owners' Association and that the within amendment to the Declaration of Covenants and Restrictions of Dunaway was duly adopted by the Owners of said Association and the Mortgagees, if applicable, in accordance with the provisions of Section 10.02 of said Declaration.

Witness my hand this ____ day of _____, ____.

Secretary
Dunaway Property Owners'
Association

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the Developer has executed, or caused to have executed by its duly authorized officers this Declaration on the date first above written.

MOUNTAIN PROPERTIES, INC.

By: _____
Title: _____

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Personally appeared before me, _____,
Notary Public, _____, with whom I am personally
acquainted, and who acknowledged that he/she executed the within
instrument for the purposes therein contained, and who further ac-
knowledged that he/she is the _____ of the Maker, MOUNTAIN
PROPERTIES, INC., and is authorized by the Maker to execute this
instrument on behalf of the Maker.

WITNESS my hand, at office, this ____ day of _____, 19__.

Notary Public
My Commission Expires: _____

Z2K2A135/BH