

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR CUMBERLAND COVE**  
**PROPERTY OWNERS' ASSOCIATION**

THIS DECLARATION FOR CUMBERLAND COVE is made this 6th day of August, 2002 by CUMBERLAND COVE PROPERTY OWNERS' ASSOCIATION, INC, a Tennessee Corporation (the "ASSOCIATION")

This DECLARATION includes the following exhibits:

- Exhibit A - Legal Description of the SUBJECT PROPERTY
- Exhibit B - Legal Description of the COMMON PROPERTIES
- Exhibit C - Certificate of Approval

**PREAMBLE**

The purpose of this declaration is to amend, restate, replace, and supersede the declaration approved on October 14, 1998 by the Cumberland Cove Property Owners Association.

Now, therefore, the Association hereby declares that the property described herein has been developed as a residential community which may include, but is not limited to, open spaces, greenbelts, parks, playgrounds, recreational facilities, community centers, administrative offices, emergency fire and water facilities, central potable water facilities, roads and entry features for the benefit of the community.

The Association desires to provide for the preservation of the values of the community, for the maintenance of the open spaces, greenbelts, parks, playgrounds, recreational facilities, community centers, administrative offices, roads, entry features, any other pertinent structure, and other common facilities, if any, and for services to lots and living units, which may include, but is not limited to, trash and garbage collection, security and lawn maintenance, and to this end, desires to subject the real property described in Exhibits A and B, together with common properties and additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the property and each Owner of the property.

The Association has deemed it desirable for the efficient preservation of the values of the community, for the Association to have the authority and powers for maintaining and administering the community properties and facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter created.

The Association hereby declares that the subject property, as hereinafter defined, shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens and charges set forth herein, all of which are created in the best interests of the Owners and residents of the subject property, and which shall run with the subject property and shall be binding upon all persons having and/or acquiring any right, title or interest in the subject property or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owing or holding an interest in the subject property, or any portion thereof.

**1. DEFINITIONS**

The words and phrases listed below, as used in this declaration, shall have the following meanings, unless the context otherwise requires:

1.1 **Assessments** means the amount of money which may be assessed against an Owner for the payment of the Owner's share of common expenses, and/or any other funds which an Owner may be required to pay to the Association as provided by this Declaration, the Charter or the Bylaws.

1.2 **Board** means the Board of Directors of the Association.

1.3 **Bylaws** mean the Bylaws of the Association, as amended from time to time.

1.4 **Charter** means the Charter of the Association, as amended from time to time.

1.5 **Common Expenses** means all expenses of any kind or nature whatsoever properly incurred by the Association, including, but not limited, to the following:

1.5.1 Expenses incurred in connection with the ownership maintenance, repair, improvement or operation of the common properties, or any other property to be maintained by the Association as provided in this declaration, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements and alterations.

1.5.2 Expenses of obtaining, repairing or replacing personal property owned by the Association.

1.5.3 Expenses incurred in connection with the administration and management of the Association.

1.5.4 Expenses declared to be common expenses by the provisions of this declaration or by the Charter or Bylaws.

1.6 **Common Properties** means the property described in Exhibit B attached hereto, and any other real property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the Association, or which is intended by the Association, to be owned by the Association, or which is dedicated to the Association any recorded plat of any portion of the subject property, or which is declared to be a common property by this declaration. Common properties shall be dedicated and set aside for the following uses, including but not limited to, parks, open areas greenbelts, recreational facilities, community centers, administrative offices, any other pertinent structure, roads, entranceways, playgrounds, drainage areas, emergency fire and water facilities, central potable water facilities, ingress and egress and other similar properties, provided that the foregoing shall not be deemed a representation or warranty that any or all of the foregoing types of common properties will be provided. Use of the common properties shall be restricted and devoted to the common use and enjoyment of the owners of the Subject Properties.

1.7 **Common Surplus** means the excess of all receipts of the Association over the amount of the common expenses.

1.8 **Association** means the Association, and any Person who may be assigned the rights of the Association pursuant to a written assignment executed by the then present Association and recorded in the public records of each county in which the subject property is located. In any event, any subsequent Association shall not be liable for any actions or defaults of, or obligations incurred by, any prior Association, except as same may be expressly assumed by the subsequent Association. Association means Cumberland Cove Property Owners' Association, Inc.

1.9 **Declaration** means this declaration, as it may be amended from time to time.

1.10 **Institutional Lender** means the holder of a mortgage encumbering a lot, which holder in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans, and which is not owned or controlled by the Owner of the lot encumbered. An Institutional Lender or mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an institutional Lender shall also mean the holder of any mortgage executed by or in favor of the Association, whether or not such holder would otherwise be considered an institutional lender.

1.11 **Living Unit** means any portion of a building situated upon a lot designed and intended for use and occupancy as a residence by a single family.

1.12 **Lot** means any lot shown on any recorded plat of any portion of the subject property or any other portion of the subject property that contains or is intended to contain a living unit. The term lots shall include any other improvements located upon or within the lot.

1.13 **Member** means a member of the Association, as provided in the Bylaws (Section 3.1), this declaration, and the Charter.

1.14 **Owner** means the record owner(s) of the fee title to any lot but notwithstanding any applicable theory concerning a mortgage encumbering any lot, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.15 **Person** means an individual, corporation, partnership, trust or any other legal entity.

1.16 **Roads** mean roads as shown on the recorded subdivision plat for the subject property.

1.17 **Subject Property** means all of the property which is subject to this declaration from time to time, which as of the execution and recording of this Declaration is the property described in Exhibit A attached hereto, and includes any property that is hereafter added to this declaration, and excludes any property that is hereafter withdrawn from this declaration, by an amendment.

1.18 **Living Unit Owner** means the record holder(s) of the fee title to a living unit.

1.19 **Guests and Renters** using the Common Properties will be subject to the same restrictions as owners.

1.20 **Members Voting** means all Members of record will be provided ballots if they are current in the payment of Assessment Fees.

## **2. COMMON PROPERTIES, DUTIES AND OBLIGATIONS OF THE ASSOCIATION.**

2.1 **By Any Person.** Any Person may convey title to any property within the subject property owned by such Person, or any easement or interest therein, to the Association as a Common Property, but the Association shall not be required to accept any such conveyance, and no such conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the Association, unless the Board expressly accepts the conveyance by executing the deed or other instrument of conveyance or by recording a written acceptance of such conveyance in the public records of the county in which the property conveyed is located.

2.2 **Right to Grant Permits, Licenses and Easements.** The Association has the right to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance of operation of the project.

2.3 **Use and Benefit.** All Common Properties shall be held and dedicated as open spaces, greenbelts, parks, playgrounds, recreational facilities, for drainage purposes and for ingress and egress by the Association for the use and benefit of the Association, the Owners and residents of the subject property, and their respective guests, renters, and invitees, the holders of any mortgage encumbering any lots from time to time, and any other persons authorized by the Association, and for all proper and reasonable purposes and uses for which the Common Properties are reasonably intended, subject to the terms of this declaration, subject to the terms of any easement, restriction, reservation or limitation or record affecting the Common Property or contained in the deed or instrument conveying the Common Property to the Association, and subject to any rules and regulations adopted by the Association. An easement and right for such use is hereby created in favor of all Owners, appurtenant to the title to their Lots.

2.4 **Grant and Modification of Easements.** The Association shall have the right to grant, modify or terminate easements over, under, upon and/or across any property owned by the Association, and shall have the further right to modify, relocate or terminate existing easements in favor of the Association.

2.5 **Additions Alterations or Improvements.** The Association shall have the right to make additions, alterations or improvements to the Common Properties, and to purchase any personal property as it deems necessary or desirable from time to time, provided

however that the approval of a majority of the votes cast of the Members voting, shall be required if any recreational facility, community centers, administrative offices, or any other structure is removed or substantially and adversely affected. For additions, alteration or improvements, or any purchases of personal property exceeding a sum equal to one sixth (1/6) of the total annual assessments, in a fiscal year, for common expenses payable by all of the Owners, the approval of a majority of the votes cast of the members voting, shall be required. The foregoing approval shall in no event be required with respect to expenses incurred in connection with the maintenance or repair of existing Common Properties, or personal property associated therewith. Personal property and Common Property may be replaced, as necessary, at the discretion of the Board. However, Member approval is required if the net cost ( the difference in price between the replacement property and the value of the replaced property) exceeds one sixth (1/6) of one years annual assessments, except Member approval is not needed if the replacement property has similar features, functions, and specifications. The cost and expense of any such additions, alterations or improvements to the common properties, or the purchase of any personal property, shall be a Common Expense.

2.6 **Utilities.** The Association shall pay for all utility services for the Common Properties, or for any other property to be maintained by the Association, as a Common Expense.

2.7 **Taxes.** The Association shall pay all real and personal property taxes and assessments for any property owned by the Association as a Common Expense.

2.8 **Insurance** The Association shall purchase insurance as a Common Expense, as follows:

2.8.1 **Hazard Insurance.** protecting against loss or damage by fire and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering 100% of the current replacement cost of all Common Properties and property owned by the Association, excluding land foundations, excavations and other items normally excluded from insurance coverage, or such reduced coverage as is approved by a majority of the votes of the Members. The Association shall not use hazard insurance proceeds for any purpose other than repair, replacement or reconstruction of any damaged or destroyed property without the approval of a majority of the votes of the Members.

2.8.2 **Comprehensive General Liability Insurance** protecting the Association from claims for bodily injury, death or property damage providing for coverage of at least \$1,000,000 for any single occurrence. Notwithstanding the foregoing, if the Board determines that it is impossible or unduly expensive to obtain \$1,000,000 of general liability insurance, then the BOARD may obtain a lower amount of general liability insurance, provided any lower amount is approved by a majority of the votes of the Members.

2.8.3 **Blanket Fidelity Bonds** for anyone who handles or is responsible for funds held or administered by the Association, covering the maximum funds that will be in the custody or control of the Association or any managing agency, which coverage shall be at least the sum of three (3) months assessments on all living units plus reserve funds.

2.8.4 **Such other insurance** as may be desired by the Association, such as flood insurance, errors and omissions insurance, workman's compensation insurance, or any other insurance.

2.8.5 **All insurance purchased** by the Association must include a provision requiring at least ten (10) days written notice to the Association before the insurance can be cancelled or the coverage reduced for any reason.

2.9 **Default.** Any Owner, Member or Institutional Lender may pay for any utilities, taxes or assessments, or insurance premiums which are not paid by the Association when due, or may secure new insurance upon the lapse of an insurance policy, and shall be owed immediate reimbursement therefore from the Association, plus interest and any costs of collection, including attorney's fees.

2.10 **Damage or Destruction.** In the event any improvement (other than landscaping) within any Common Property is damaged or destroyed due to fire, flood, wind or other casualty or reason, the Association shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged improvement to the condition the improvement was in immediately prior to such damage or destruction, unless otherwise approved by a majority of the votes of the Members. If any landscaping within any common property or any other property maintained by the Association is damaged or destroyed, the Association shall only be obligated to make such repairs to the landscaping as is determined by the Board in its discretion. Any excess cost of repairing any improvement over insurance proceeds payable on account of any damage or destruction shall be a Common Expense, and the Association shall have the right to make a Special Assessment for any such expense.

2.11 **Maintenance of Common Properties and Other Property.** The Association shall maintain all Common Properties and property owned by the Association, and all improvements thereon, in good condition at all times. If pursuant to any easement, the Association is to maintain any improvement within any property, then the Association shall maintain such improvement in good condition at all times. Without limitation, the Association shall have the right to assume the obligation to operate and/or maintain any walls or fences on or near the boundaries of the Subject Property, and, including, but not limited to, any pavement, recreation building, waste removal, landscaping, sprinkler systems, pool, sidewalks, paths, signs, utilities, entrance features or other improvements, in or near any public or private road right-of-ways within or contiguous to the subject property. The Association, as determined by the Board, may establish a reserve for future maintenance, repairs, and replacements. If any property owned by any governmental authority benefits the Owner, the Association may maintain such property (subject to any requirements imposed by such governmental authority) if the Association determines such maintenance would be in the best interests of the Owners.

2.12 **Mortgage and Sale of Common Properties** The Association shall not encumber, sell or transfer any common property owned by the Association without the approval of a majority of the votes cast of the Members voting. If ingress or egress to any lot is through any common property, any conveyance or encumbrance of such common property shall be subject to an appurtenant easement for ingress and egress in favor of the Owner(s) of such lots unless alternative ingress and egress is provided to the Owner(S).

### 3. **PROPERTY RIGHTS IN THE COMMON PROPERTY.**

3.1 **Members' Easements of Enjoyment.** Subject to the provisions of Paragraph 3.2, every Member subject to assessments as provided in Article 5, shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

3.2 **Use of Common Properties for Drainage.** Some of the Common Properties may be used for drainage and the temporary retention of storm water run-off from the subject property and other contiguous property, as well as for open space, recreation, rights of ingress and egress and other related activities. No structure, planting or other material shall be placed or permitted to remain in the common properties that might impair or interfere with the drainage or temporary retention of storm water run-off of the subject property or other contiguous property.

3.2.1 As provided above, the obligation to maintain the common property for drainage purposes shall be an obligation of the Association unless and until the area is transferred to a governmental authority for maintenance and control thereof at which time the Association shall relinquish control and each Member of the Association shall be required to make payments as established by the governmental authority.

3.2.2 In the event the Association is dissolved or otherwise ceases to exist, then in such event the Association shall have the right to assign, transfer and deliver over to a governmental authority or to any other like organization the powers herein reserved to the Association.

3.3 **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

3.3.1 The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lenders' right hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees for maintenance of the properties by the Members, and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder, shall be fully restored.

3.3.2 The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure.

3.3.3 The right of the Association, as provided in its Charter and Bylaws to suspend the voting rights of any Property Owner for any period during which any Assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

3.3.4 The right of the Association to charge reasonable admission and other fees for the maintenance of the common properties.

3.3.5 The drainage and temporary retention of storm water run-off uses of the common properties referred to in Paragraph 3.2, and elsewhere herein.

3.4 **Utility and Other Easements.** There is reserved unto the Association the right to grant easements for the installation and maintenance of public utilities and temporary roads on the common properties in addition to those already reserved. No such grant shall require the removal or relocation of any improvements existing on the common properties on the date of the grant.

4. **ASSOCIATION.** In order to provide for the administration of the subject property and this declaration, the Association has been organized under the Laws of the State of Tennessee.

4.1 **Charter.** A copy of the Charter was previously filed in the Public Records of Cumberland and Putnam Counties. No amendment to the Charter shall be deemed an amendment to this declaration and this declaration shall not prohibit or restrict amendments to the Charter, except as specifically provided herein.

4.2 **Bylaws.** A copy of the Bylaws is recorded in the Public Records of Cumberland and Putnam Counties. No amendment to the Bylaws shall be deemed an amendment to this Declaration, and this Declaration shall not prohibit or restrict amendments to the Bylaws, except as specifically provided herein.

4.3 **Powers of the Association.** The Association shall have all the powers indicated or incidental to those contained in its Charter and Bylaws. In addition, the Association shall have the power to enforce this Declaration and shall have all powers granted to it by this Declaration. By this Declaration, the Subject Property is hereby submitted to the jurisdiction of the Association.

4.4 **Approval or Disapproval of Matters.** Whenever the decision, consent or approval of the Owners is required upon any matter, whether or not the subject of a Association meeting, such decision shall be made in accordance with the Charter and Bylaws, except as otherwise provided herein, and shall be deemed given upon the affirmative vote of a majority of the votes cast by Owners, unless a greater voting requirement is required by this Declaration, or the Bylaws, as to the matter being voted upon.

4.5 **Acts of the Association.** Unless the approval or action of the Members and/or a certain specific percentage of the Board is specifically required by this declaration, the Charter or Bylaws, or by

applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board, without the consent of the Members, and the Board may so approve an act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken, such action or approval may be conditioned in any manner the Association deems appropriate, or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

4.6 **Management and Service Contracts.** The Association shall have the right to contract for professional management or services on such terms and conditions as the Board deems desirable in its sole discretion, provided, however, that any such contract shall not exceed three (3) years and shall be terminable by either party without cause and without payment of a termination or penalty fee on ninety (90) days or less written notice.

4.7 **Membership.** The Members of the Association shall be as provided by the Bylaws (Section 3.1).

4.8 **Members' Voting Rights.** The votes of the Members shall be established and exercised as provided in the Covenants and Bylaws.

## **5. ASSESSMENTS FOR COMMON EXPENSES.**

5.1 **Responsibility and Purpose.** The Owner(s) of each LOT shall be responsible for the payment of assessments for common expenses or other assessments to the Association as hereinafter provided. Said assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the subject property and in particular for the improvement, operation and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common properties including, but not limited to, the payment of taxes and insurance on the common properties, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, as well as for the purpose of payment for drainage maintenance, and where applicable, taxes assessed by a governmental entity.

5.2 **Determination of Assessments for Common Expenses.** Prior to the beginning of each fiscal year, the Board shall adopt a budget for such fiscal year that shall estimate all of the common expenses to be incurred by the Association during the fiscal year. In determining the budget for any fiscal year, the Board may take into account Common Properties, lots and additions to the subject property anticipated to be added during the fiscal year. The Board shall then establish the assessments for common expenses per lot, which shall be equal to the total amount to be assessed for common expenses pursuant to the budget, divided by the total number of lots within the subject property. The Association shall then promptly notify all Owners, in writing, of the amount, frequency, and due dates of the Assessments for Common Expense per lot. If an expenditure of funds is required by the Association in addition to funds produced by the regular assessments for Common Expenses, the Board may make special assessments for common expenses, which may include assessments to provide funds to pay for an existing or proposed deficit of the Association, or for any additions, alterations or improvements to any Common Property, or for any other purpose (Section 2.5 of this Covenant limits the Association's ability to expend funds without member approval). Special assessments for Common Property shall be levied in the same manner as hereinbefore provided for regular assessments for common expenses and shall be payable in one lump sum or as otherwise determined by the Board in its sole discretion as stated in the notice of any special Assessments for Common Expenses.

5.3 **Notice and Due Dates.** The notice to all Owners, of the regular or special assessment and due date for common expenses per lot, should be mailed first class to the last address supplied to the association by the owner(s). In no event shall any regular or special assessment for common expenses payable by any owner be due less than 30 days from the date the notification is mailed to the owner(s).

5.4 **Payment of Assessments for Common Expenses.** On or before the date each Assessment for common expenses is due, the Owner(s) of

each lot shall be required to and shall pay to the Association an amount equal to the Assessment for common expenses per Lot, multiplied by the number of lots owned by the Owner. The Association shall, upon demand at any time, furnish to any Owner liable for said Assessment a certificate in writing signed by an officer of the Association setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

5.5 **Enforcement.** If any Owner fails to pay any Assessment for common expenses when due, the Association shall have the rights set forth in Paragraph 7.1, including, but not limited to the charging and collection of interest, the recording of a Claim of Lien and the foreclosure of the same.

5.6 **Maximum Assessments.** Notwithstanding anything contained herein or to the contrary, the regular Assessment for common expenses per Lot may not be increased by more than ten (10%) percent over the prior year's regular Assessment, without the approval of a majority of the votes cast by the members voting.

## **6. MAINTENANCE AND SERVICES.**

6.1 **Exterior Maintenance.** Should an owner fail to maintain the appearance of their property, including any structure, in accordance with the general standards of the community of Cumberland Cove, the Association, acting through the Environmental Control Committee (E.C.C.), may take the following actions: 1) The Environmental Control Committee shall give the owner written notification of the deficiency(ies). The owner will be given thirty (30) days to comply or appeal to the Board. 2) After thirty (30) days, the Board will provide written notification to the owner giving the owner thirty (30) days to correct the deficiency(ies). 3) If, after the 30 day period allowed by the Board, the owner has neglected or refused to begin correcting the deficiency(ies), the Board, at the owner's expense, will take such remedial action as may be necessary (See Section 13.5 for Enforcement).

6.2 **Assessment of Cost.** The cost of such exterior maintenance shall be assessed against the lot or living unit upon which such maintenance is done and shall be added to and become part of the Assessment or charge to which the Lot or living unit is subject under Article 5 hereof and, as part of this Assessment, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article 5 hereof. Provided that, the Board, when establishing the Assessment against each lot or living unit for any assessment year as required under Article 5 hereof, may add to the Assessment the estimated cost of the exterior maintenance for that year but, thereafter, shall make such adjustment with the Owner as is necessary to reflect the actual cost hereof. There shall be included in the maintenance charges the costs of exterior painting and repairing or replacing of roofs and exterior building surfaces as may be required under paragraph 6.1 above, and of facilities located on the Common Property.

6.3 **Access at Reasonable Hours.** For the purpose solely of performing the exterior maintenance authorized by paragraph 6.1, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any living unit at reasonable hours on any day except Sunday.

6.4 **Services Provided to Lots and Living Units.** As shall be determined by the Board, services that the Association may provide to individual Lots and living units may include, but are not necessarily limited to security, such as guard patrols, and other miscellaneous services that, in the opinion of the Board, are consistent with the purposes of the Association. Costs for such services, if any, provided by the Association shall be assessed against Members as provided in Article 5. provided that, at the discretion of the Board, individual Members may contract with the Association to provide any or all such services.

6.5 **Common Property Maintenance.** As shall be determined by the BOARD, COMMON PROPERTY maintenance may include, but is not necessarily limited to, the following items:

- a. Grounds maintenance of the Common Property including mowing, fertilizing, insecticides, landscaping plant material, etc.



- b. Maintenance of recreation buildings, community centers, administrative offices, and other pertinent facilities, including air conditioning equipment.
- c. Parking lot cleaning and maintenance, if any
- d. Waste removal from the Common Property.
- e. Maintenance of perimeter feature, if any, and/or signs, if any.
- f. Maintenance of streets and roads and street-lights and signs, if any.
- g. Utilities for the Common Property including water, sewer and electricity.
- h. Taxes and insurance including real and personal property taxes for the Common Property and liability and fire insurance.
- i. Other miscellaneous items that may be included such as exterminating services, security system maintenance and fire extinguisher services.
- j. A reserve for future maintenance and repairs.

**7. COLLECTION OF ASSESSMENTS, DEFAULT AND ENFORCEMENT**

**7.1 Monetary Defaults and Collection of Assessments.**

7.1.1 **Late Fees.** Late Fees will be assessed as of July 1st or sixty (60) days after the assessments are mailed, whichever is later, for the assessed year. Fees will be at the rate of ten percent (10%) APR or ten dollars (\$10) whichever is greater. The late fee will be assessed each July 1st until all assessments are current.

7.1.2 **Collection.** In the event any Owner fails to pay any Assessment or other moneys due to the Association within thirty (30) days after written demand the Association may take any action deemed necessary in order to collect such assessments or moneys including, but not limited to, retaining the services of a collection agency or attorney to collect such assessments or moneys, initiating legal proceedings for the collection of such assessments or moneys, recording a claim of lien as hereinafter provided, and foreclosing same in the same fashion as mortgage liens are foreclosed, or any other appropriate action, and the Owner shall be liable to the Association for all costs and expenses incurred by the Association incident to the collection of any Assessment or other moneys owed to it, and the enforcement and/or foreclosure of any lien for same, including reasonable attorneys' fees whether or not incurred in legal proceedings, and all sums paid by the Association for taxes and on account of any mortgage lien and encumbrance in order to preserve and protect the Association's lien. The Association shall have the right to bid, provided that the amount bid complies with Section 2.5 of this Covenant, in the foreclosure sale of any lien foreclosed by it for the non-payment of any assessments or monies owed to it. If the Association becomes the Owner of any lot by reason of such foreclosure, it may offer such lot for sale, or declare the lot to be Common Property of the Association. If the Association decides to sell such lot within ninety (90) days after the foreclosure closing, it need not comply with Section 2.12; however, after the lot has been declared to be Common Property, any future sale must comply with the approval requirements of Section 2.12. The sale of any lot must be publicly advertised. All payments received by the Association on account of any assessments or moneys owed to it by any Owner, shall be first applied to payments and expenses incurred by the Association, then to any unpaid assessments or moneys owed to the Association in the inverse order that the same were due.

7.1.3 **Lien for Assessment and Moneys Owed to ASSOCIATION.** The Association shall have a lien on the lot of any Owner, for any unpaid assessments or other moneys owed to the Association by such Owner, and for Late Fees, reasonable attorneys' fees incurred by the Association incident to the collection of the assessments and other moneys, or enforcement of the lien, and for all sums advanced and paid by the Association for taxes paid on account of superior mortgages, liens or encumbrances in order to protect and preserve the Association's lien. The lien is effective from and after the recording of a claim of lien in the public records of the county in which the affected lot is located, stating the description of the lot, the name of the Owner which owns the lot, the amount due, and the due dates. The lien is in effect until all sums secured by it have been fully paid. The claim of lien must be signed and

acknowledged by an officer or agent of the Association. Upon payment in full of all sums secured by the lien, the Owner making the payment is entitled to a satisfaction of the lien (See Bylaws Section 9.3.2 for lien filling time frames).

7.1.4 **Transfer of Lot After Assessment.** The Association's lien shall not be affected by the sale or transfer of any lot, and in the event of any such sale or transfer, both the new Owner and the prior Owner shall be jointly and severally liable for all assessments, interest and other costs and expenses owed to the Association which are attributable to any lot purchased by or transferred to such new Owner.

7.1.5 **Subordination of the Lien to Mortgages.** The lien of the Association for assessments or other moneys shall be subordinate and inferior to the lien of any first mortgage recorded prior to the recording of a Claim of Lien by the Association. The sale or transfer of any lot by the foreclosure of a first mortgage or by deed in lieu thereof, shall extinguish the lien of the Association as to any Assessment, interest, expenses or other moneys owed to the Association which became due prior to such sale or transfer, unless a Claim of Lien for same was recorded prior to the recording of the mortgage, and neither the mortgagee, nor any purchaser at a foreclosure sale, nor their grantees or successors, shall be responsible for said payments but they shall be liable for any assessments due after such sale or transfer. If the Association's lien or its rights to any lien for any such assessments, interest, expenses or other moneys owed to the Association by any Owner is extinguished as aforesaid, then if the Association is in need of such funds same shall thereafter be common expenses, collectible from all Owners including such acquirer, and its successors and assigns.

7.1.6 **No Set-Offs.** No Owner shall have the right to set-off or reduce any assessments for common expenses by any claims that such Owner may have or may claim to have against the Association.

7.2 **Certificate as to Unpaid Assessments.** Within fifteen (15) days after written request by any Owner or institutional lender holding a mortgage encumbering any lot, the Association shall provide such Owner or institutional lender with a written certificate as to whether or not the Owner is in default with respect to the payment of assessments.

**8. TERM OF DECLARATION.** All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as against all Owners, their successors, heirs or assigns, regardless of how the Owners acquire title, for a period of fifty (50) years from the date of this Declaration, unless within such time, Members representing one hundred (100%) percent of the votes of the entire membership of the Association execute a written instrument declaring a termination of this declaration (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years each, until Members representing one hundred (100%) percent of the votes of the entire membership of the Association execute a written instrument declaring a termination of this declaration (as it may have been amended from time to time). Any termination of this declaration shall be effective on the date the instrument of termination is recorded in the public records of each county in which the subject property is located.

## **9. UNIFORM GENERAL REQUIREMENTS**

9.1 **The SUBJECT PROPERTIES.** No structures other than one single-family dwelling unit and those buildings ordinarily appurtenant thereto shall be built on any of the Subject Properties. Each of the Subject Properties shall be used solely for residential purposes, except as hereafter set forth; commercial use shall be permitted inside of any dwelling unit so long as the business activity (1) is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling unit; (2) does not involve door-to-door solicitation of residents of the Subject Properties; (3) conforms to all zoning requirements for the Subject Properties; (4) does not increase insurance premiums paid by the Association or otherwise affect the ability of the Association to obtain insurance coverage; and (5) is consistent with the residential character of the

Subject Properties and does not constitute a nuisance, hazard or an offensive use, and does not threaten the security or safety of the other residents of the Subject Properties. Except for the foregoing, no commercial activities of any kind shall be permitted or conducted upon any of the Subject Properties

9.2 **No Resubdivision.** None of the Subject Properties may be resubdivided, except by the Association. No resubdivision can result in reduced assessments to the Association. No resubdivision can result in the creation of additional lots, i.e. one large Lot cannot be divided into smaller residential lots. No resubdivision will be considered until written approval is obtained from the appropriate County.

9.3 **Prohibited Residential Structures.**

9.3.1 No travel trailer, recreational vehicle, boat, tent, storage building, garage, barn or out buildings erected on any Lot shall at any time be used as a permanent residence and no person may remain in any of the foregoing for more than thirty (30) days except with E.C.C. approval. The phrase "recreational vehicle" shall mean every licensed vehicle and conveyance designed, used or maintained primarily as a travel trailer, motor home, camper, boat and boat trailer or other similar use. No recreational vehicle shall be permitted on any lot unless the lot contains a residential dwelling. With the consent of the E.C.C., and subject to any conditions that the E.C.C. may impose in connection with its granting of any consent in its sole discretion, any lot owner may keep or construct any of the before mentioned vehicles or structures on his lot and reside in the same during such time as the Owner is diligently pursuing construction of a single-family dwelling unit upon his lot, which dwelling unit has been approved by the E.C.C. In any event such exception shall terminate when the construction of the single-family dwelling is completed.

9.3.2 No mobile home shall at any time be placed on any lot at any time. No mobile home may temporarily or permanently be used as a residence. This prohibition covers any structure transportable in one or more sections and designed to be used as a dwelling. The phrase "mobile home" shall mean and refer to the type of dwelling commonly referred to as a mobile home which is prefabricated and which is commonly kept on locations commonly referred to as mobile home parks, regardless of whether the mobile home contains any axle or wheels and regardless of whether the mobile home has been placed on a permanent building foundation. Modular and manufactured homes may be considered, on an individual basis, by the E.C.C. No variance will be allowed for mobile homes.

9.4 **Parking** No truck exceeding one-ton capacity shall be parked, within the Subject Properties overnight, unless the truck is being used in connection with the construction of a new residential dwelling unit. All other vehicles (except automobiles, SUV's, and small trucks) or equipment must be parked in a garage or hidden from view by neighbors or from the street. Vehicles parked within the Subject Properties must have a valid current registration unless such vehicles are kept inside a garage. Any vehicle parked on a Subject Property must not be a nuisance and must conform to the communities' standards for sight, sound, and smell. If a reasonable complaint is filed, by an adjacent neighbor, that a truck, piece of equipment, or other vehicle is a nuisance, then the vehicle must either be put into a garage, moved to an out of sight location, or removed from the subject property, if the complaint is upheld by the E.C.C. A special purpose variance may be requested.

9.5 **Set Backs.** No permanent structure hereafter erected upon the Subject Properties shall be closer than forty (40) feet from any property line running adjacent to a county road and no closer than twenty (20) feet from a property line on all other sides of the property. The E.C.C. may grant a variance, if a proven need arises. Written notice must be given to all adjacent neighbors that a variance has been requested and that they are invited to comment. Written approval must be received from the adjacent neighbor affected by any side or rear set back variance request before it can be approved by the E.C.C.

\*9.6 **Minimum Square Footage Requirements.** No structure shall be erected upon the Subject Properties in violation of the size restrictions contained in the recorded plat, as it may be amended from time to time. In addition to such size restrictions any living unit constructed on any lot within the Subject Properties shall have a

minimum fifteen hundred (1500) square feet of heated living space, exclusive of porches, garages, carports, patios and similar external features. A variance may be considered where the Department of Environment and Conservation recommends a smaller house. A variance may be considered on the minimum square foot requirement, where unusual circumstances exist, but no variance will be approved for houses of less than one thousand (1,000) square feet. A property owner will submit their written request for a variance to the ECC committee for consideration. \*(9.6 as amended of the declaration was submitted and filed with the respective County Clerks, October 2006: The Register of Deeds of Cumberland County, Tennessee at Book 1111, page 2176 et seq. and in the Register of Deeds of Putnam County, Tennessee at Warranty Deed Book 443, page 561, et seq.)

9.7 **Signs.** No sign of any kind shall be displayed to the public view on any single family residence lot, except signs used by a builder to advertise the property during the construction and sales period, customary "for sale" signs not exceeding two (2) feet in height and three (3) feet in width, security related signs, and any official signs of the association.

9.8 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other animals normally considered to be domestic pets may be kept. In addition, up to two (2) horses may be kept on any lot containing at least four (4) acres, but no horses may be kept on any lot containing less than four (4) acres, without the written permission of the E.C.C. In any event, no horses may be kept on any Lot unless the horse is contained in a fence or walled-in area approved by the E.C.C. , which shall be more than one hundred (100) feet from any exterior lot line. No pet should at any time be a nuisance to neighbors or the community. All pets are subject to the communities' standards for sight, sound, and smell and complaints should be addressed to the E.C.C. The E.C.C. may grant a variance for the type of pet that may be kept, but written approval, from all adjacent Property Owners, must be obtained before the variance is granted.

9.9 **Trash Storage.** No lot shall be used or maintained as a dumping ground for rubbish. Household garbage must be kept in sanitary containers and placed in the trash enclosures. No lot on which improvements have been constructed or erected shall be allowed to become or remain unsightly.

9.10 **Planting.** No hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street property line and the edge of a driveway.

9.11 **Tree Preservation.** In constructing any residential dwelling or other improvement on a Lot, it shall be accomplished in a manner that will minimize the destruction of trees. It is the intent of the Association to assure the maximum preservation of trees in the Subject Properties. Existing trees on the subject property will not be removed unless their removal proves to be necessary i.e. due to the location of the structure or structures. Under no circumstance can any more than fifty (50) percent of the existing trees be removed, for any reason, without Environmental Control Committee or Board approval.

9.12 **Oil Gas and Mineral Operations.** No operations with respect to oil, gas and minerals, including, without limitation, drilling, development, refining, exploration, quarrying, mining or extractions of any kind shall be permitted upon any Lot nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick, drilling rig or other structure designed for use in drilling for oil or gas shall be erected, maintained or permitted on any Lot or Parcel.

9.13 **Easements.** Easements for the installation and maintenance of public utilities and drainage facilities are reserved as noted on the recorded plat. Within these easements, or any easement granted by the Association pursuant to Paragraph 3.4, no structure, planting or other material shall be placed or permitted to remain which may damage,

impair or interfere with the installation and maintenance of utilities. The easement area of each Lot, tract or parcel and all permitted improvements within said easement areas shall be maintained continuously by the Owner of the Lot, tract, or parcel, except for those improvements for which a public authority or utility company is responsible.

9.14 **Encroachment on Lots.** In the event that any portion of any roadway, drainage way, water lines, sewer lines, utility lines, or any other structure as originally constructed by Developer or its designee, successor or assign encroaches on any Lot, it shall be deemed that the Owner of such lot has granted a perpetual easement to the Owner of the adjoining lot or the Association as the case may be, for continuing maintenance and use of such encroaching roadway, water line, sewer line, utility line or structure. The foregoing shall also apply to any replacements of any such roadway, drainage way, water lines, sewer lines, utility lines or structure if it is constructed in substantial conformance to the original. Other encroachments may be maintained as herein provided. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

9.15 **Custodial Care.** It is understood and agreed that said premises may not and shall not be used for convalescing or custodial care as a home occupation.

9.16 **Prohibition of Firearms.** No firearms may be discharged within the Subject Properties except when necessary for personal protection. In addition, no hunting is permitted within the Subject Properties.

9.17 **Burning.** Wildfire is a major concern and threat to this area. No fires are to be set and left unattended. Tennessee state law also currently requires a daily burning permit to be obtained for open burning from October 15th through May 15th. Since these dates are subject to change you must check with the State before burning. The Association office can provide the telephone number for your county. Failure to obtain such permits is punishable by law. Persons guilty of starting a wildfire may suffer criminal charges and/or be responsible for damages incurred. The Board, at the owners' expense, may take such remedial action as may be necessary.

9.18 **Additional Rules and Regulations.** The Board may establish such reasonable additional rules and regulations as may be deemed to be for the best interest of the Association and its Members, with a positive vote of at least two thirds (2/3) of the total current number of active Board members. However, a minimum of 5 positive votes is always required to pass or amend any additional rules or regulations. Such rules and regulations shall be included in the Bylaws or a published policy statement.

9.19 **Complaints.** Complaints concerning violations of the restrictions listed in Section 9 should be referred to the Environmental Control Committee for handling as specified in Section 11.4 of this Covenant.

## **10. RIGHTS OF INSTITUTIONAL LENDERS.**

10.1 **Notice of Action.** Upon written notice to the Association by any Institutional Lender holding, insuring or guaranteeing a mortgage encumbering any Lot, identifying the name and address of the institutional lender and the Lot encumbered by such mortgage, any such Institutional Lender Will be entitled to timely written notice of;

10.1.1 Any condemnation or casualty loss that affects either a material portion of the subject property or the Lot securing its mortgage.

10.1.2 Any sixty (60) day default in the payment of assessments or charges owed to the Association or in the performance of any obligation hereunder by the Owner of the lot on which it holds the mortgage.

10.1.3 A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

10.1.4 Any proposed action that requires the consent of a specified percentage of mortgage holders

10.2 **Consent of Institutional Lenders**. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s) encumbering any Lots is required by this declaration, the Charter, the Bylaws or any applicable statute or law, to any amendment of the declaration, the Charter, or the Bylaws, or to any action of the Association, or to any other matter relating to the subject property, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by such holders.) Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within thirty (30) days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by all of the directors of the Association, which affidavit, where necessary may be recorded in the public record of any county where the subject property is located, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where any institutional lender is otherwise required to specifically join in an amendment to this Declaration.

10.3 **Payment of Taxes and Insurance**. Any institutional lender may pay any taxes or assessments owed to any governmental authority by the Association which are in default, or any overdue insurance premiums required to be purchased by the Association pursuant to this declaration, or may secure new insurance upon the lapse of a policy, and shall be owed immediate reimbursement therefore from the Association plus interest at the highest rate permitted by law and any costs of collection, including attorneys' fees.

## 11. **ENVIRONMENTAL CONTROL COMMITTEE**.

11.1 **Appointment of Committee**. There shall be appointed by the Board of the Association, an Environmental Control Committee (E.C.C.), which committee shall consist of three or more members. The committee shall have the power to review and request compliance with all provisions of Article 6, Article 9, and this Article 11 of this declaration, under procedures established by and in consultation with the Board, as the Board may deem necessary.

11.2 **Review by Committee**. The Committee shall review all proposed construction, modifications, or alterations to existing structures, and shall be guided by the following standards of environmental control:

a. The Uniform General Requirements included in Article 9 herein; and,

b. **Architectural Control**. No living unit, building (permanent or portable), fence, wall, addition, or modification to existing structures shall be commenced or erected, upon the Subject Properties, without prior approval of the E.C.C. Plans drawn to appropriate scale, and specification, showing the nature, kind, shape, heights, material and location of the building, addition, or modification including exterior color scheme and a plot plan, showing access and size of culvert at the street, must be submitted to and approved in writing by the E.C.C. prior to any work beginning. The harmony of the external design and location in relation to surrounding structures, topography, and vegetation will be considered by the E.C.C. Approval or disapproval of the same shall be made by the Committee and returned to the applicant within a reasonable time, not to exceed forty five (45) days after receipt of same. Disapproval of said construction may be appealed to the Board.

c. **Completion of Construction**. Once Environmental Control Committee approval has been obtained, and any required governmental permits issued, the owner has twelve (12) months to complete the exterior construction. However, if at the end of the twelve month period, construction has been continuous and is on-going, the owner will be automatically granted a six (6) month extension upon requesting the same in writing to the Environmental Control Committee.

11.3 Attorneys' Fees. In all litigation involving architectural control, environmental control, or the enforcement of these Covenants, Restrictions, or the Uniform General Requirements, the prevailing party shall be entitled to collect and shall be awarded attorneys' fees and court costs.

11.4 Enforcement and Complaint Handling. As stated in 11.1, the ECC has the power to request compliance with all provisions of Article 6, Article 9 and this Article 11 of this declaration. Complaints received by the Association that covenants in this declaration are being broken will be referred to the E.C.C. to investigate the complaint. Should the E.C.C. determine that a violation has occurred, the Owner will be give 30 days written notice to correct the violation or appeal to the Board. After the 30 day period or after the Owner's appeal has been denied, the Owner will be given written notice to correct the violation within 30 days. After this 30 day period the Board may take appropriate enforcement action (see section 13.5 for Enforcement).

12. AMENDMENT This declaration may be amended upon the approval of a majority of the votes cast, but not less than five hundred (500) affirmative votes of the Members of the Association. In order to be effective, any amendment to this Declaration must first be recorded in the public records of each county in which the subject property is located, and such amendment shall contain a certification by the President and Secretary of the Association that the amendment was duly adopted.

### 13. MISCELLANEOUS.

13.1 Conflict with Charter or Bylaws. In the event of any conflict between the Charter and the Bylaws and this Declaration, this Declaration, the Charter, and the Bylaws, in that order, shall control.

13.2 Severability. The invalidation in whole or in part of any of these covenants, conditions, reservations and restrictions, or any section subsection, sentence, clause, phrase, word or other provision of this declaration shall not affect the validity of the remaining portions which shall remain in full force and effect.

13.3 Validity. In the events any court shall hereafter determine that any provisions as originally drafted herein violate the rule against perpetuities, the period specified in this declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law.

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

13.5 Enforcement. The Board must take appropriate action to enforce its written request (see Section 11.4) to correct violations. The two options available are to impose a fine and/or initiate legal action.

13.5.1 The Board may enforce these Covenants by imposing a fine against the Owner for failing to comply with the Boards' written request to correct any violations of these Covenants or Restrictions. The Board may fine an Owner up to three (3) times for refusing to correct a violation. The amount of any potential fines must be included in the initial letter, from the Board, to the Owner. As stated in Section 11.4, the Owner must be given 30 days written notice to correct a violation. After the 30 day period expires the Owner will be sent a second (2nd) letter giving notice that a fine has been levied. The Board has the option to levy two (2) additional fines after giving 30 days advanced notice. The amount of each of the three (3) fines will be at the discretion of the Board. However, the amount of the first fine cannot exceed five percent (5%) and the second fine cannot exceed twenty percent (20%) of the absolute total of fines. The amounts of each of the three fines must be established at the beginning of the Board's term for the year, and cannot be changed. The total of the three fines cannot exceed an absolute total of \$2000 for a violation. **No fines may be imposed without the positive vote of seven (7) Members of the Board.** The Board may file a lien on any Lot of any Owner for unpaid fines (see Section Cumberland Cove POA

7.1.3).

13.5.2 Enforcement of these Covenants and Restrictions may also be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain the violation or to recover damages, and against the land to enforce any lien created by these covenants.

13.5.3 Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter. No delay, failure or omission on the part of the Association or any aggrieved Owner in exercising any right, power or remedy thereafter shall, as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, bar or effect its exercise or enforcement.

13.5.4 The Association shall have the right, whenever there shall have been built on any lot any structure which is in violation of these covenants and restrictions, to enter upon the property where such violation exists and, with a court order, summarily abate or remove the same at the expense of the Owner.

13.6 **NO RIGHT TO GIVE PERMISSION TO VIOLATE THE UNIFORM GENERAL REQUIREMENTS.** No Owner has any right, either explicit or implied, to give permission to guests, renters, nonresidents, or any other persons permission to violate or ignore any of the Uniform General Requirements, Covenants, or Restrictions. (See Section 13.5 for Enforcement.)

14. **RESERVATIONS.** The Association reserves to itself the right to levy assessments against all Owners for the purpose of operating and maintaining the Common Properties and specified easement areas and in connection therewith, reserves to itself the lien rights as provided herein.

END