

**BYLAWS
OF
MOUNTAIN BROOK
PROPERTY OWNERS ASSOCIATION, INC.**

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**BYLAWS
OF
MOUNTAIN BROOK
PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME AND MEMBERSHIP**

SECTION 1. NAME. The name of the Association shall be MOUNTAIN BROOK PROPERTY OWNERS ASSOCIATION, INC. (hereinafter sometimes referred to as the Association).

SECTION 2. MEMBERSHIP. The Association shall have two classes of members, Class A and Class B, as more fully set forth in the Declaration of Restrictive and Protective Covenants for MOUNTAIN BROOK recorded in Document Book ____, page ____, in the office of the Register of Deeds for Transylvania County, North Carolina (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the Declaration), the terms of which pertaining to membership are specifically incorporated herein by reference.

**ARTICLE IA
APPLICABILITY AND DEFINITIONS**

To the extent the words used in these Bylaws are used in the Declaration, they shall have the same meaning as set forth in the Declaration unless the context otherwise requires, however, the following definitions shall prevail:

SECTION 1. ASSOCIATION means and refers to the Association of all the owners of lots in the development known as MOUNTAIN BROOK, said Association being known as MOUNTAIN BROOK PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns.

SECTION 2. BOARD OF DIRECTORS OR BOARD means the Board of Directors of MOUNTAIN BROOK PROPERTY OWNERS ASSOCIATION, INC.

SECTION 3. BYLAWS means the Bylaws of MOUNTAIN BROOK PROPERTY OWNERS ASSOCIATION, INC., and subsequent amendments thereto.

SECTION 4. COMMON ELEMENTS, COMMON AREA, OR COMMON AREAS AND FACILITIES. means and includes all real property and all tangible personal property now or hereafter, owned by the Association or otherwise held for the common use and enjoyment of the owners including all tangible personal property required for the maintenance and operation of other property owned, maintained or operated by the Association.

SECTION 5. COMMON EXPENSES means and includes (1) all expenses incident to the administration, maintenance, repair and replacement of the common elements, and any other areas included within the area of common responsibility, after excluding therefrom any and all expenses which are the responsibility of a lot owner; (2) all expenses determined by the Association to be

common expenses which shall include the actual and estimated expenses of operating the Association, both for general and parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association; and (3) all sums lawfully assessed against each lot or unit owner by the Association.

SECTION 6. DECLARANT means MOUNTAIN BROOK PARTNERS, LLC, a North Carolina limited liability company.

SECTION 7. DECLARATION means the Declaration of Restrictive and Protective Covenants for MOUNTAIN BROOK recorded in Document Book ____, page ____, in the office of the Register of Deeds for Transylvania County, North Carolina, which establishes, defines and submits the property submitted to its provisions to all covenants, conditions, reservations and restrictions set out therein, together with all subsequent lawful supplemental declarations and amendments to said Declaration appearing of record in the office of the Register of Deeds for Transylvania County, North Carolina.

SECTION 8. DEVELOPMENT (also sometimes hereinafter referred to as the "Property" or "Properties") means and refers to the real property described in the Declaration or which has been submitted to the terms of the Declaration by any amendments or supplemental declarations thereto appearing of record in the office of the Register of Deeds in the county in which the Development is located.

SECTION 9. ELIGIBLE MORTGAGE HOLDER shall mean a holder, insurer, or guarantor of a first mortgage on a lot who has requested notice of certain matters from the Association as provided for in these Bylaws.

SECTION 10. ELIGIBLE VOTES means those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

SECTION 11. GENERAL ASSESSMENT means the assessments levied to fund expenses applicable to all members of the Association.

SECTION 12. LOT means a portion of the Properties other than the common area intended for any type of independent ownership and use as may be set out in the Declaration and as may be shown on the plats of survey referred to in the Declaration and any amendments or supplemental declarations thereto appearing of record.

SECTION 13. MAJORITY means those eligible votes, owners, or other groups as the context may indicated totaling more than fifty percent (50%) of the total eligible number.

SECTION 14. MEMBER means and refers to a person or entity entitled to membership in the Association, as provided in the Declaration and in these Bylaws.

SECTION 15. MORTGAGE means any mortgage, deed of trust, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

SECTION 16. MORTGAGEE means a beneficiary or holder of a deed of trust, as well as a mortgagee.

SECTION 17. MORTGAGOR means the trustor of a deed of trust, as well as a mortgagor.

SECTION 18. OCCUPANT means any person or persons in possession of a lot or any part thereof.

SECTION 19. OWNER means and refers to one or more persons or entities, including the Declarant, who hold the record title to any lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the owner.

SECTION 20. PARCEL (deleted)

SECTION 21. PERSON means an individual, firm, corporation, partnership, association, trustee, or other legal entity.

SECTION 22. PROPERTY OR PROPERTIES means and refers to the real property described in the Declaration or which has been submitted to the terms of the Declaration by any subsequent amendment or supplement declaration thereto appearing of record in the office of the Register of Deeds in the county in which the Development is located.

SECTION 23. SUBSEQUENT AMENDMENT OR SUPPLEMENTAL DECLARATION means and refers to an amendment to the Declaration which adds additional property to that covered by the Declaration. Such subsequent amendment or supplemental declaration may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that amendment to the provisions of this Declaration.

ARTICLE II ASSOCIATION: MEETINGS, QUORUM, VOTING, AND PROXIES

SECTION 1. PLACE OF MEETINGS. Meetings of the Association shall be held in the principal office of the Association, or at such other suitable place convenient to the members.

SECTION 2. ANNUAL MEETING OF MEMBERS. The annual meeting of the Members of the Association shall be held at an hour to be fixed by the President on the second Tuesday in January of each year for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

SECTION 3. SPECIAL MEETINGS OF MEMBERS. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon the receipt by the Secretary of a petition signed by voting members representing at least ten percent (10%) of the total votes of the Association entitled to be cast on any issue proposed to be considered at the proposed special meeting demanding that such a meeting be held and describing the purpose or purposes for which it is to be held,

and in the event that such a petition is received by the Secretary, the special meeting requested by such petition must be held within thirty (30) days after the Secretary's receipt thereof.

SECTION 4. NOTICE OF MEETING. Not less than ten (10) or more than sixty (60) days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

In the case of a special meeting only those matters that are within the purpose or purposes described in the notice of meeting may be acted upon at such meeting.

SECTION 5. WAIVER OF NOTICE. A member may waive any notice required by the Bylaws before or after the date and time stated in the notice. The notice shall be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

A member's attendance at a meeting waives such member's objection to a lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or conducting business at the meeting, and such member's attendance at a meeting also waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter before it is voted upon.

SECTION 6. QUORUM. A quorum is present throughout any meeting of the Association if persons entitled to cast ten percent (10%) of the votes which may be cast for election of the Board of Directors are present in person or by proxy at the beginning of the meeting.

In the event that business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce a quorum by fifty percent (50%) from that required in the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

In the event of any adjournment of a meeting to a later date by the affirmative vote of a majority of those present in person or by proxy as hereinabove provided for, the announcement of the person presiding over such meeting of the time and place of the recessed meeting shall be sufficient notice of the time and place of such meeting.

SECTION 7. ORGANIZATION. The President, or, in the President's absence, the Vice President, shall preside over all meetings of members and the Secretary of the Association shall act as Secretary at all meetings of the members; provided, however, in the Secretary's absence the President may appoint a Secretary for the meeting of the members.

SECTION 8. VOTING. The voting rights of the members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

The vote of the owners of a majority of the lots at a meeting of members at which a quorum is

present shall be the act of the members on that matter, unless the vote of a greater number is required by law, or by the Articles of Incorporation or other provisions of the Bylaws of the Association.

Cumulative voting shall not be allowed.

If only one of the multiple owners of a lot is present at a meeting of the Association, the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of the multiple owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot. No votes allocated to a lot owned by the Association may be cast.

SECTION 9. VOTING BY PROXY. Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

ARTICLE III BOARD OF DIRECTORS

SECTION 1. GOVERNING BODY AND COMPOSITION. The affairs of the Association shall be governed by a Board of Directors. Except as may be provided in Section 2 of this Article, the directors shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time.

SECTION 2. DIRECTORS DURING DECLARANT CONTROL. The directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Class B membership exists, as set forth in the Declaration, unless the Declarant shall earlier surrender this right to select directors. The directors selected by the Declarant need not be owners or residents in the Development. After the period of Declarant appointment, the majority of the directors must be members of the Association.

SECTION 3. NUMBER OF DIRECTORS. The number of directors in the Association shall be not less than three (3) nor more than five (5), as the Board of Directors may from time to time determine by resolution. The initial Board shall consist of three (3) members but the Board shall automatically increase in number to five (5) members at such time as the Class B membership shall terminate in the manner provided for in the Declaration or at such sooner time as the Declarant in its discretion so determines.

SECTION 4. NOMINATION OF DIRECTORS. Except with respect to Directors selected by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall

make as many nominations for election to the Board of Directors as it shall in its discretion determine but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

SECTION 5. ELECTION AND TERM OF OFFICE. Notwithstanding any other provision contained herein, at the first annual meeting of the membership after the termination of the Class B membership, and at each annual meeting of the membership thereafter, all Directors shall be elected.

The initial terms of the directors shall be fixed at the time of their election as they among themselves shall determine. So long as there are three (3) directors, the term of one (1) director shall be fixed at one (1) year, the term of one (1) director shall be fixed at two (2) years, and the term of one (1) director shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of three (3) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

SECTION 6. REMOVAL OF DIRECTORS. Directors may be removed for cause or for no cause by a vote of a majority of the voting members present at a meeting called for that purpose. Any director whose removal is sought will be given notice prior to any meeting called for that purpose. A director who was elected solely by the votes of voting members other than the Declarant may be removed from office prior to the expiration of his or her term by the votes of a majority of voting members other than the Declarant.

SECTION 7. VACANCIES. Vacancies in the Board of Directors caused by any reason shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each person so elected shall serve the unexpired portion of the vacated term.

SECTION 8. VOTING PROCEDURE FOR DIRECTORS. The voting members may cast, in respect to each vacancy, the vote for the lot which they represent, as provided under the provisions of the Declaration. Votes shall be cast as provided in Section 5 above. The persons receiving the largest number of votes shall be elected.

SECTION 9. ORGANIZATION MEETINGS. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

SECTION 10. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one (1) such meeting shall be held during each fiscal year. Notice of the time and place of the meeting shall be communicated to the directors by one of the methods specified in Section 11, of this Article III, within the time period therein specified for each method of notification; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

SECTION 11. SPECIAL MEETINGS. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any

special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

SECTION 12. WAIVER OF NOTICE. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of the meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

SECTION 13. QUORUM OF BOARD OF DIRECTORS. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 14. COMPENSATION. No director shall receive any compensation from the Association for acting as such unless approved by voting members representing a majority vote of the total vote of the Association at a regular or special meeting of the Association.

SECTION 15. CONDUCT OF MEETINGS. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

SECTION 16. OPEN MEETINGS. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

SECTION 17. EXECUTIVE SESSION. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

SECTION 18. ACTION WITHOUT A FORMAL MEETING. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a

meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors. An explanation of the action taken shall be mailed to each member by first class mail, postage paid within three (3) days after the written consents of all the Board members have been obtained.

SECTION 19. POWERS. The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs, and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the Managing Agent or Manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each owner to the common expenses;
- (b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; (unless otherwise determined by the Board of Directors, the annual assessment against the proportionate share of the common expenses shall be payable annually on or before January 1 of each calendar year). All common expenses shall be assessed against all lots in the Development in accordance with the allocations set forth in the Declaration and all past due common expense assessments or installments thereof shall bear interest at the rate of eighteen percent (18%) per annum. Assessments to pay a judgment against the Association may be made only against the lots in the Development at the time the judgment is entered, in proportion to their common expense liabilities, and any common expense caused by the negligence or misconduct of any lot owner or occupant, may be assessed exclusively against that lot owner or occupant's lot. Any fine imposed by the Board of Directors against the owner or occupant of a lot pursuant to the provisions of Section 24 of this Article III of these Bylaws shall be an assessment which shall be assessed exclusively against such lot owner's or occupant's lot;
- (c) providing for the operation, care, upkeep, and maintenance of all the common areas and facilities;
- (d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the area of common responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the common area, together with those areas upon each lot the maintenance, repair or replacement of which is the responsibility and/or right of the Association in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty, or the failure of the owner of a lot to maintain it in the manner required by the Declaration.
- (i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

- (j) obtaining and carrying such insurance against casualties and liabilities, as may be provided for in the Declaration, and such other insurance coverage as the Board of Directors shall deem to be appropriate, including such coverage as shall be required to satisfy the requirements of Section 47F-3-113 of the North Carolina General Statutes, and reasonable liability coverage for the officers, Board of Directors, employees and agents of the Association, and paying the premium cost thereof;
- (k) paying the cost of all services rendered to the Association or its members and not chargeable to owners;
- (l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the owners. All books and records shall be kept in accordance with generally accepted accounting practices;
- (m) make available to any prospective purchaser of a lot, any owner of a lot, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any lot current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the lot, and all other books, records, and financial statements of the Association;
- (n) upon written request, furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against the lot owner's lot. The statement shall be furnished within ten (10) business days after the receipt of the request and shall be binding on the Association, the Board of Directors and every lot owner;
- (o) permit utility suppliers to use portions of the common area reasonably necessary to the ongoing development or operation of the Development;
- (p) obtaining, in addition to the insurance coverage provided for under the provisions of Subsection (j) of this Section 19 of Article III of these Bylaws, as a common expense, a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than one (1) year's assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

SECTION 20. BUDGET. Within thirty (30) days after the preparation of an annual budget pursuant to the provisions of Subsection (a) of Section 19 of Article III of these Bylaws, the Board of Directors shall provide to all of the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the lot owners to consider ratification of the budget, with such meeting to be held not less than ten (10) nor more than sixty (60) days after the mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the Association or any larger vote which may be specified in the Declaration rejects the budget. In the event that the proposed budget is rejected, the periodic budget last ratified by the lot owner shall be continued until such time as the lot owners ratify a subsequent budget proposed by the Board of Directors.

SECTION 21. MANAGEMENT AGENT.

- (a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the

Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in subparagraphs (a), (b), (f), (g) and (i) of Section 19 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager;

(b) No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

SECTION 22. BORROWING.

(a) The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the common area and facilities without the approval of the voting members of the Association; provided, that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing does not exceed five (5%) per cent of the budgeted gross expenses of the Association for that fiscal year;

(b) Portions of the common areas and facilities may be subjected to a security interest by the Association in order to secure a loan if persons entitled to cast at least eighty percent (80%) of the votes of the Association agree in writing to that action.

SECTION 23. RIGHTS OF THE ASSOCIATION. With respect to the common area or other Association responsibilities owned, and in accordance with the Articles of Incorporation and Bylaws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other associations of home owners or residents, both within and without the Development. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association.

SECTION 24. HEARING PROCEDURE. The Board shall have the power to impose reasonable fines, which shall be assessments secured by liens under Section 47F-3-116 of the North Carolina General Statutes and shall constitute a lien upon the property of the violating owner, and to suspend an owner's right to vote or to use the common elements for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a lot. In the event that any occupant of a lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of Board to do so thereafter. If it is decided that a fine shall be imposed, a fine not to exceed One Hundred Dollars (\$100.00) may be imposed for the violation and, without further hearing, for each day more than five (5) days after the date that the Board has made its decision that the violation has occurred and that a fine or other sanction should be imposed. If it is decided that suspension of privileges or services in the Development should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may

present a written request to the Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed. (b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the owner a reasonable opportunity to be heard and to present evidence. Prior to the effectiveness of any sanction hereunder, proof of notice shall be placed in minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board of Directors after the hearing shall be final.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary contained in the Declaration or Bylaws, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

SECTION 25. DECLARANT'S VETO. From the termination of the Class B membership, the Declarant shall have a veto power over all actions of the Board, as is more fully provided below. This power shall expire when the number of Class A votes other than the votes of those owners formerly owning Class B votes is equal to 88 or January 1, 2010, whichever occurs first. This veto power shall be exercisable only by Declarant, its successors and assigns. The veto shall be as follows: No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented, until and unless:

(a) Declarant shall have been given written notice of all meetings by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time which notice complies with Article III, Sections 10 and 11, of the Bylaws as to regular and special meetings of the Directors, and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting, if Declarant so desires, to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board. Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the Association and/or Board. At such meeting, Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board of Directors and to be taken by said Board, the Association, or any individual member of the Association if Board approval is necessary for said member's action. Said veto may be exercised by Declarant, its representatives, or agents at the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board or Association. This Section 25 may not be amended without the express written consent of the Declarant until Declarant no longer owns any land which is subject to the Declaration or until January 1, 2010, whichever first occurs.

SECTION 26. PROHIBITED ACTS. The Board of Directors shall not take any of the following

actions except with the written consent of a majority, or such greater percentage as may be hereinafter specified, of the total votes of the Association, other than those of the Declarant:

- (a) incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five per cent (5%) of the budgeted gross expenses of the Association for that fiscal year (must secure the approval of at least eighty percent (80%) of the total votes of the Association);
- (b) selling during any fiscal year property of the Association having an aggregate fair market value greater than five per cent (5%) of the budgeted gross expenses of the Association for that fiscal year, or any portion of the common areas (must secure the approval of at least eighty percent (80%) of the total votes of the Association in order to sell any portion of the common areas);
- (c) paying compensation to members of the Board or to the officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association;
- (d) levy special assessments which in the aggregate exceed five per cent (5%) of the budgeted gross expenses of the Association for that fiscal year; or
- (e) enter into a contract with a third person wherein the third person will furnish goods or services for the common area, together with those areas upon each lot the maintenance, repair or replacement of which is the responsibility and/or right of the Association for a term longer than one (1) year with the exception of prepaid casualty and/or liability insurance policies not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured.

ARTICLE IV **OFFICERS**

SECTION 1. OFFICERS. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

SECTION 2. ELECTION, TERM OF OFFICE AND VACANCIES. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 3. REMOVAL. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

SECTION 4. POWERS AND DUTIES. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

SECTION 5. RESIGNATION. Any officer may resign at any time by giving written notice to the

Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. AGREEMENTS, CONTRACTS, DEEDS, LEASES, CHECKS AND OTHER DOCUMENTS. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

SECTION 7. PREPARATION, EXECUTION, CERTIFICATION AND RECORDATION OF AMENDMENTS TO DECLARATION. In the event that an amendment to the Declaration has been approved by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association, the Secretary of the Board of Directors shall be responsible for preparing, executing and recording in the office of the Register of Deeds in each County in which the Development is located, a document certifying that the amendment to the Declaration set out therein has been approved by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association.

ARTICLE V **COMMITTEES**

SECTION 1. GENERAL. Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

ARTICLE VI **MISCELLANEOUS**

SECTION 1. FISCAL YEAR. The initial fiscal year of the Association shall be set by resolution of the Board of Directors.

SECTION 2. PARLIAMENTARY RULES. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these Bylaws.

SECTION 3. CONFLICTS. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

SECTION 4. BOOKS AND RECORDS.

(a) Inspection by Members. The membership register, books of account, and minutes of meetings of the members, the Board, and committees shall be made available for inspection and copying by any member of the Association or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a member at the office of the Association or at such

other place within the Development or in the township(s) in the county in which the Development is located or in the county seat of said county, as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records by the member desiring to make the inspection;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested by a member.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents at the expense of the Association.

SECTION 5. NOTICES. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid;

(a) if to a member or voting member, at the address which the member or voting member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the lot of such owner; or

(b) if to the Association, the Board of Directors, or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated by the notice in writing to the owners pursuant to this Section.

SECTION 6. AMENDMENT. These Bylaws may be amended only by the affirmative vote (in person or by proxy) or written consent of voting members representing a majority of the total votes of the Association which shall include a majority of the votes of members other than the Declarant or, where the two (2) class voting structure is still in effect, shall include a majority of each class of members.

SECTION 7. AUDIT. An audit of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's audit at the annual meeting, the owners, by a majority vote, may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first mortgage, such holder shall be entitled to receive a copy of the annual audited financial statement within ninety (90) days after the end of each fiscal year.

We, the undersigned, being all of the directors of MOUNTAIN BROOK PROPERTY OWNERS ASSOCIATION, INC., do hereby certify:

That we are entitled to exercise all the voting power of said Corporation; and

That we hereby assent to the within and foregoing Bylaws and hereby adopt the same as the Bylaws of said Corporation.

IN WITNESS WHEREOF, we have hereunto subscribed our names this _____ day of _____, 2006.