

**BY-LAWS**  
**OF**  
**MOUNTAIN HARBOUR PROPERTY OWNERS ASSOCIATION, INC.**  
Effective July 2, 1990

**Article I: Name, Purpose and Applicability**

**1.1 Name.** The name of this association shall be Mountain Harbour Property Owners Association, Inc. (the "Association").

**1.2 Purpose.** The purpose of the Association shall be to administer, manage and operate the Mountain Harbour Property Owners Association, Inc. concerning the Mountain Harbour Golf & Yacht Club development (herein referred to as the "Property"), in Hiwassee Township, Clay County, North Carolina described in "Land Use Covenants, Conditions, and Restrictions for Mountain Harbour Golf & Yacht Club (herein referred to as the "Covenants"), as may be amended from time to time. The Association shall not engage in any activities other than those directly related to administration of the Property and the Land Use Covenants and the property owners' responsibilities with respect to the same.

**1.3 Applicability.** These By-Laws are applicable to the Property as such property is described in Exhibit A attached to the Land Use Covenants, recorded in Book 150 Page 80 of the Clay County Registry, and additions to the Property as are added pursuant to the Covenants. These By-Laws are binding on all present or future owners of any parcel of such property. The provisions of the Covenants regarding the governing and administration of the Association are incorporated herein by reference.

**Article II: Definitions**

The definitions of words contained in the Land Use Covenants shall apply to those words and terms as used in these By-Laws.

**Article III: Offices, Registered Agent, Seal, Fiscal Year**

**3.1 Principal Office, Registered Office.** The principal office of the Association shall be located at Mountain Harbour Golf & Yacht Club, One Hundred Mountain Harbour Drive, Clay County, North Carolina and the initial registered office of the Association shall be Courthouse Square, P.O. Box 146, Hayesville, North Carolina 28904.

**3.2 Registered Agent.** The initial Registered Agent for the members for matters incident to the Property and the initial Registered Agent for the Association is Richard K. Walker. The individual serving as Registered Agent may be removed from office and replaced at any time by a vote of the Board of Directors of the Association.

**3.3 Other Offices.** The Association may have other offices at such other places within the State of North Carolina as the Board of Directors may from time to time determine or as the affairs of the Association may require.

**3.4 Seal.** The seal of the Association shall contain the name of the Association, the word "Seal", and such other words and figures as desired by the Board of Directors. When obtained, the seal shall be impressed in the margin of the minutes of the initial meeting of the Board of Directors.

**3.5 Fiscal Year.** The fiscal year of the Association shall be the calendar year.

## Article IV: Membership

**4.1 Qualification.** Membership in the Association shall be confined to and consist of the owners of parcels of the Property and their assignees, as provided in the Covenants. Membership shall be appurtenant to and inseparable from the ownership. No owner shall be required to pay any consideration whatsoever for his membership, but shall be liable for assessments made pursuant to the Covenants. Membership in the Association shall inure automatically to owners upon acquisition of the fee simple title, whether encumbered or not, to any one or more parcels. The date of registration of the conveyance in the Clay County Registry of the parcel in question shall govern the date of ownership of each particular parcel. "Members" shall be both Class 'A' and Class 'B' as provided for in the Land Use Covenants.

**4.2 Place of Meetings.** All meetings of the membership shall be held in the County of Clay, North Carolina, at such place as is convenient to the members as may be designated by the Board of Directors.

**4.3 Annual Meetings.** The first Annual Meeting of the members shall be held either (a) at the date and hour designated by the Declarant of the Covenants (the "Declarant"), or (b) at 9:00 A.M. on the first Saturday next following or coincidental with the expiration of thirty (30) days from the day the first (1st) parcel is conveyed by Declarant or (c) at March 31, 1991, whichever shall occur first. Thereafter, the Annual Meetings shall be held on the last Saturday, in March of each year at 9:00 A.M., in the principal office of the Association.

**4.4 Substitute Annual Meetings.** If an Annual Meeting shall not be held on the day designated by these ByLaws, a substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6 immediately below. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

**4.5 Special Meetings.** After the first Annual Meeting of the Members, Special Meetings of the Members may be called at any time by the President, Board of Directors, or pursuant to the written request of the owners of not less than twenty (20%) percent of the votes of the Membership, by written notice to all parcel owners. Business to be acted upon at all Special Meetings shall be confined to the objects stated in the notice of such meeting.

**4.6 Notices of Meetings, Waiver.** Written or printed notice stating the time and place of the meeting shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any Membership meeting, either personally or by mail, by or at the direction of the President, the Secretary or other person calling the meeting, to each Member entitled to vote at such meeting. Notice shall be deemed given upon deposit in an official depository of the United States Postal Service in an envelope properly addressed to each parcel owner at the address of such owner, with sufficient postage affixed thereto. In the case of a Special Meeting, the notice of meeting shall state specifically the purpose or purposes for which the meeting is called; however, in the case of an Annual or Substitute Annual Meeting, the notice of meeting need not state specifically the business to be transacted thereat. Any member may waive the necessity of formal notice to him by signing a written waiver either before or after the meeting, and upon execution of such waiver the Member shall not be entitled thereafter to object to the meeting being

held or matters being passed upon at the meeting because of lack of notice thereof. Where allowed by the Covenants, Members may vote on issues by Mail Referendum as provided in the Covenants.

**4.7 Quorum.** Except as otherwise provided in these By-Laws, the presence in person or by proxy shall be as provided in Section 11-5 of the Land Use Covenants as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association (other than a matter subject to a Mail referendum), the presence at the meeting of Members or proxies or Mail Referendum Ballots entitled to cast fifty percent (50%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not forthcoming at the first meeting, a second meeting may be called subject to the giving of proper notice, and there shall be no quorum requirement for such meeting. Unless otherwise provided, any reference hereafter to "votes cast at duly called meeting" shall be construed to be subject to the quorum requirements established by this Section and any other requirements for such "duly called meeting" which may be established by the By-Laws of the Association.

**4.8 Voting Rights and Membership.** Membership in the Association and the voting rights of each member of the Association shall be as set forth in the Articles of Incorporation and Article XI of the Covenants.

**4.9 Duty of Members to Inform Association of Current Address.** Each Member shall have the affirmative duty and obligation to inform the Association in writing of any change of ownership of the Property, the Member's current address, and any failure of the Member to receive any information from the Association at the correct address of the Member. No Member may be excused from his obligations established in these Covenants nor challenge a Referendum if the Association mailed an assessment bill, statement, Referendum ballot or notice of Referendum to the last address of said Member which is recorded on the books of the Association and for which the Association has not received the Member's current address or notice of change of ownership from the Member.

**4.10 Notice of Referendum Ballot by Mail.** Any notice or Referendum ballot required to be sent or given to any Member under the provisions of this Declaration shall be sufficient if mailed with the proper postage affixed, to the last known address of the person or entity who appears as owner in the Association's records as established pursuant to the Covenants. Unless otherwise specified, a period of thirty (30) days between the date of mailing and the date of action shall be a sufficient and reasonable period of notice or period in which to return a Mail Referendum ballot.

**4.11 Notice and Referendum Ballots to Predecessor in Title.** Any person who becomes a Member following the first day in the calendar month in which notice or Referendum ballots are mailed or given to property owners is not entitled to additional notice or a Referendum ballot if notice or Referendum ballot was given or mailed to his predecessor in title.

**4.12 Notice of Mail Ballot to Co-Owners.** Notice of Referendum ballot to one (1) of two (2) or more coowners of any units of property within the Property shall constitute sending of proper notice or Referendum ballot to all co-owners of said unit. Similarly, the sending of notice or a ballot to a life tenant shall constitute proper notice or Referendum ballot to all remaindermen and holders of other future interests.

**4.13 Proxies.** Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy shall be valid after ten (10) years from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. All of the above provisions concerning the voting by coowners shall apply to votes cast for any one parcel by two or more proxy holders. Proxies shall not be required for any action which is subject to a Mail Referendum, in which case the votes of all Members polled

shall be made by specially provided ballots mailed to the Association.

**4.14 Majority Vote.** The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a higher percentage vote is required by the Covenants, these By-laws or by law.

**4.15 Actions without Meeting.** Any action which may be taken at a meeting of the Membership may be taken without a meeting if a consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association. Referendums may also be held as provided for in the Covenants.

## Article V: Board of Directors

**5.1 General Powers.** The business and affairs of the Association shall be managed by the Board of Directors or by such committees as the Board may establish pursuant to Article VI of these By-Laws.

**5.2 Number, Term and Qualification.** The Board of Directors shall consist of three (3), five (5), seven (7) or nine (9) members. Initially, the Board shall consist of three (3) members with the number in subsequent years to be determined by the Members of the Board of Directors. Members of the Board need not be Property Owners, but no more than one-third (1/3) of the Board may be comprised of individuals who are not Property Owners. Each Director shall be at least eighteen (18) years of age. Any qualified Director may be reelected in office. Each Director shall hold office until his death, resignation, retirement, removal, disqualification or his successor is elected and qualified.

**5.3 Nominations.** Nominations for election to the Board of Directors shall be made by a Nominating Committee consisting of a Chairman, who shall be a Member of the Board, and at least two (2) Members of the Association. The Nominating Committee shall be appointed by the Board prior to each Annual Meeting of the Members to serve from the close of such Annual Meeting until the close of the next Annual Meeting, and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall, in its direction, determine; however, in no event shall the nominations be less than the number of vacancies. Nominations may be made also from the floor at the Annual Membership Meeting. Notwithstanding the preceding four sentences, during the period of time in which the Class "B" Member shall have greater than fifty percent of the votes, all nominations shall be made by the Class "B" Member.

**5.4 Election of Directors.** At the first Annual Membership Meeting, the Members shall elect three (3) Directors. Each Director shall serve for a term of one (1) year. At the second Annual Meeting and each Annual Meeting thereafter, Directors shall be elected to serve for a term of one (1) year. All Directors shall serve until their successors are elected and qualified. If any Member so demands or if the presiding officer so directs, the election of Directors shall be by ballot. Otherwise, the election shall be by voice vote. When voting to elect Directors, each Member shall be entitled to as many votes as equal the number of votes to which he is ordinarily entitled, based on his ownership of one or more of the various classifications of property, multiplied by the number of Directors to be elected. All votes must be based on whole numbers and not fractions thereof.

**5.5 Removal.** Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association at any Annual or Special Meeting of the Membership, provided the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Directors are so

removed, their successors as Directors may be elected by the Membership at the same meeting to fill the unexpired terms of the Directors so removed.

**5.6 Vacancies.** A vacancy occurring in the Board may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining Director; however, a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an Annual or Substitute Annual Meeting, or at a Special Meeting of Members called for that purpose, or by unanimous consent of the Members without meeting. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

**5.7 Chairman.** There may be a Chairman of the Board elected by the Directors from their number at any meeting of the Board. The Chairman shall preside at all meetings of the Board and perform such other duties as may be directed by the Board. In the absence of the Chairman, the President shall preside at all meetings of the Board.

**5.8 Compensation.** No Member of the Board shall receive any compensation from the Association for acting as such; provided, however, each Director, upon approval of the Board, shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board compensating a Director for unusual and extraordinary services rendered; further provided, each Director, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation.

**5.9 Loans to Directors and Officers.** No loans shall be made by the Association to its Directors or Officers.

**5.10 Liability of Directors.** The liability and indemnification of the Directors is addressed in Article X of the Land Use Covenants, Conditions & Restrictions and Creation and Functions of the Mountain Harbour Property Owners Association, Inc., the provisions of which are incorporated by reference. To the extent permitted by law, each Director shall be indemnified by the Association with respect to any liability and expenses of litigation arising out of his lawful activities within the scope of his duties as a Director.

**5.11 Meetings of Directors.**

(a) **Regular Meetings.** Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(b) **Special Meetings.** Special Meetings shall be held when called by the President of the Association or by any Director after not less than three (3) nor more than thirty (30) days written notice to each Director.

(c) **Notices of Special Meetings.** The notice provided for herein may be waived by written instrument signed by those Directors who do not receive such notice. Except to the extent otherwise required by law, the purpose of a Directors' Special Meeting need not be stated in the notice. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting unless such Director gives written statement at the meeting to the person presiding, objecting to the transaction of any business because the meeting is not called lawfully.

(d) **Approved Meeting Place.** All Directors meetings shall be held in the County of Clay, State of North Carolina, unless a majority of the Directors then in office agree in writing to hold a meeting or meetings at another location.

(e) **Quorum.** A majority of the Directors then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

**5.12 Action without Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as if taken at a meeting of the Directors. Such written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

**5.13 Presumption of Assent.** A Director of the Association who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent otherwise is entered in the minutes of the meeting, or unless he shall file his written dissent to such action with the person acting as Secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

**5.14 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of Mountain Harbour Property Owners Association, Inc. except such powers and duties as by law, the Covenants, or Articles of Incorporation may not be delegated by the parcel owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of each Property;
- (b) Determination of the funds required for operation, administration, maintenance and other affairs of the Association and collection of the Common Expenses from the parcel owners, as provided in the Covenants. These By-Laws are binding on all present or future owners of any parcel of such property. The provisions of the Covenants regarding the governing and administration of the Association are incorporated herein by reference.
- (c) Employment and dismissal of personnel necessary for the efficient operation and maintenance of the Mountain Harbour Property Owners Association, Inc.;
- (d) Adoption of Rules and Regulations covering the details of the operation and use of the Property;
- (e) Opening of bank accounts on behalf of the Association and designating the signatures required therefor;
- (f) Purchasing parcels at foreclosure or other judicial sales in the name of the Association or its designee;
- (g) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of Directors), or otherwise dealing with units acquired by the Association or its designee;
- (h) Obtaining insurance for the Property pursuant to the Covenants.
- (i) Keeping detailed, accurate records in chronological order for the receipts and expenditures affecting the Property, specifying and identifying the maintenance and repair expenses of the Property and any other expenses incurred. Such records and the vouchers accrediting the entries thereupon shall be available for examination by all of the parcel owners, or their duly authorized agents or attorneys at convenient hours on working days. All books and records shall be kept in accordance with generally accepted accounting principles, and an outside audit shall be made at least once a year.
- (j) Keeping a complete record of the minutes of all meetings of the Directors and Membership in a minute book in which shall be inserted written records of actions taken by the Directors and Members by consent without meeting; and

(k) Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed.

(l) Any other power as may be necessary to carry out the Functions of the Association as set forth in the Covenants.

**5.15 Independent Manager.** The Board may employ or enter into a management contract with any individual or firm it deems appropriate and in the best interest of the Association concerning the routine management of the Property. The Board shall delegate to such person or firm (herein referred to in these By-Laws as "Independent Manager") such duties and responsibilities in the management of the Property as the Board deems appropriate. Nevertheless, the Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Covenants or any law. The Independent Manager's contract always shall be subject to the conditions set out in the Covenants. The Board shall have authority to fix reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Board and subject to its direction. Provided, however, if said management contract is entered into prior to the passage of control of the Association from Declarant, the Association shall not be bound either directly or indirectly unless there is a right of termination of such contract without cause, which is exercisable without penalty at any time after transfer of control upon not more than 90 days notice to the other party.

## Article VI: Committees

**6.1 Creation.** The Board, by resolutions adopted by a majority of the number of Directors then holding office, may create such committees as it deems necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Property. Each committee so created shall have such authorities and responsibilities as the Board deems appropriate and as set forth in the resolutions creating such committee. The Board shall elect the members of such committee. Each committee shall have its membership at least one (1) member of the Board.

**6.2 Neighborhood Committees.** The Board shall have the obligation to establish Neighborhood Committee upon the filing of a Supplemental Declaration or upon the designation in deeds of conveyance by Declaration calling for the establishment of a Neighborhood Committee as provided in Sections 1034, Sections 1113, and 136 of the Covenants.

Notwithstanding the Neighborhood Functions which may be delegated to a Neighborhood Committee, all Neighborhood Associations established pursuant to Sections 1035.4 of the Covenants shall operate as a part of the Association and subject to the ultimate fiduciary administration, direction, and control of the Board of Directors of the Association. All staff or management of the Association shall, within the guidance and direction of the Board of Directors of the Association, be available to support the activities of the individual Neighborhood Committee.

Each Neighborhood Committee shall be comprised of three (3) members who are nominated by the Board of Directors and elected by a majority vote of the Class A Property Owners who are located within the given Neighborhood.

**6.2 Vacancy.** Any vacancy occurring on a committee shall be filled by a majority of the number of Directors then holding office at a regular or special meeting of the Board.

**6.3 Removal.** Any member of a committee may be removed at any time with or without cause by a majority of the number of Directors then holding office.

**6.4 Minutes.** Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

**6.5 Responsibility of Directors.** The designation of committees and the delegation thereto of authority shall not operate to relieve the Board or any member thereof of any responsibility or liability imposed upon it by the By-Laws of the Association. If action taken by a committee is not considered formally thereafter by the Board, a Director may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

## Article VII: Officers

**7.1 Enumeration of Officers.** The officers of the Association shall consist of a President, Vice President, Secretary, Treasurer and such Assistant Secretaries, Assistant Treasurers and other officers that the Board may from time to time elect. Except for the President, no officer need be a member of the Board.

**7.2 Election and Term.** The officers of the Association shall be elected annually by the Board. Such elections shall be held at the first meeting of the Board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until death, resignation, removal or until a successor is elected and qualified.

**7.3 Removal.** Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

**7.4 Vacancy.** A vacancy in any office may be filled by the election by the Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaced.

**7.5 Multiple Offices.** The person holding the office of President shall not also hold the offices of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person.

**7.6 President.** The President shall be the chief executive officer of the Association and shall be the Chairman of the Board of Directors, if no other member of the Board be so designated, and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall preside also at all meetings of the Board. He shall see that the orders and resolutions of the Board are carried out; shall sign on behalf of the Association all written instruments regarding the Property and all promissory notes of the Association, if any. He shall have all powers necessary as the person responsible to carry out and perform actions of the Board or to execute authority given him by the Board.

**7.7 Vice President.** The Vice Presidents, in the order of their election unless otherwise determined by the Board, in the absence or disability of the President, shall perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board shall prescribe.

**7.8 Secretary.** The Secretary shall keep the minutes of all meetings of Members and of the Board; shall have charge of such books and papers as the Board may direct; and shall perform all duties and have such powers as the Board shall prescribe.