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STATE OF NORTH CAROLINA BK. 743 PG 1231 40-00

COUNTY OF DAVIDSON

JUN 14 12 35 PM '88

DECLARATION OF RIGHTS, RESTRICTIONS,
CONDITIONS, ETC., which constitute
covenants running with certain lands of
Mountain Lake Shores Development Corp.
DAVIDSON, N.C.

This agreement is made this 14th day of JUNE, between Mountain Lake Shores Development Corporation (hereinafter called "Developer") and any and all persons, firms or corporations hereafter requiring any of the hereinafter described property.

WITNESSETH:

WHEREAS, the Developer is the owner of that certain subdivision known as Harborage/^(Phase I) as shown on a map or maps thereof recorded or to be recorded in the Davidson Public Registry. The Developer has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of the property for the protection of the property and the future owners thereof.

RESTRICTIONS

Now, therefore, in consideration of the premises, the Developer agrees with any and all person, firms or corporations hereafter acquiring any of the property hereinafter described, that the same shall be and is hereby subject to the following restrictions, conditions and covenants (hereinafter collectively referred to as "restrictions") relating to the use and occupancy thereof, which are to be construed as restrictive covenants running with the land comprising the lots hereinafter described and shall inure to the benefit of and be binding upon the heirs, -successors, and assigns of Developer and all other acquiring parties and persons.

Description of Property Restricted

The property which is made subject to the restrictions set forth herein is more particularly described as follows: Being known and designated as all of 11-64, 67
Plat
Lots ~~75, 76, 88~~ ~~XXXXXX~~ as shown on a map thereof recorded in ~~Map~~ Book
and 89 8845

27. pages 27-28 in the Davidson County Public Registry, which said Plat Book is incorporated herein by reference. ~~XXXXXXXXXXXX attached~~
~~XXXXXXXXXXXX attached~~

Section 1. Architectural Control. No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, including but not limited to color or painting on the exterior and type of exterior finish, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed by three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will be assumed and this Article will be deemed to have been fully complied with.

a) All lots shown on the recorded map or plat shall be used for residential purposes only and no building shall be erected, placed or permitted to remain on any lot, or combination of contiguous lots, except as herein provided, other than one single family dwelling.

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produced on the date that these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size.

c) Single family dwellings shall contain not less than 1,600 square feet of enclosed heated dwelling area exclusive of garage, carport, unheated storage area in non-living space.

d) No plans will be approved unless the proposed house will have the minimum required square footage of enclosed dwelling area. Other minimum requirements for each lot will normally be specified in each sales contract, and expressly stipulated in each deed. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a dwelling; provided, however, that such term does not include garages, boat sheds, terraces, decks, open porches, and the like areas; provided further, that shed-type porches, even though attached to the house, are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

Section 3.. Exterior Appearance.

b) The exterior of all houses and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency or natural calamities.

c) The owner shall provide exterior maintenance upon each lot, including, but not limited to, paint, repair, replace, and care for roofs, gutters, downspouts, exterior building, surfaces, trees, shrubs, grass, or other ground cover (including fertilizing and cutting thereof), and maintaining walks, driveways, and other exterior maintenance.

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In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors or its designated committee, said Board of Directors or its designated committee shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance and any other costs or attorney's fees caused in the enforcement of the rights under these provisions shall be added to and become a part of the assessments to which such Lot is subject. Approval by the Board of Directors or its designated committee where required shall be as provided hereafter.

The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, approval will be assumed and the related covenants shall be deemed to have been fully complied with; however, in the event the committee is not notified or requested in writing to approve any item recited in these Restrictions, then the committee may institute suit to enjoin and remove any building, wall, garage, outbuilding, or other structure located on said premises; and further, the committee may utilize any other legal or equitable remedy, and may change the direction or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements within it shall be maintained continuously by the owner of the lot except for those improvements

for which a public authority or utility company is responsible. Within these easement, no debris, piles of leaves, grass clippings, or other material may be placed or dumped in such manner that it might be washed by water drainage onto the property of any other owner.

ARTICLE II

Section 1. Covenants, Restrictions, and Affirmative Obligations Applicable to All Residential Areas.

- a) No lot or assembly of contiguous lots shall be subdivided by sale or otherwise so as to reduce either the total lot area shown on the recorded map or plat, or the purchased assembly of contiguous lots.
- b) No residence of a temporary nature shall be erected or allowed to remain on any lot or assembly of contiguous lots, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any lot or assembly of contiguous lots either temporarily or permanently.
- c) No building shall be located on any lot near the front lot line or near the side street line than the minimum building setback line designated and shown on the recorded plat for the subdivision. No structure shall be erected on any easement shown on the recorded map or plat or upon any easement described in the Declaration of Restrictions. For the purpose of the covenant, eaves, steps, uncovered porches or terraces shall not constitute a part of any building, provided, however, this exception shall not be construed to permit encroachment upon any adjacent lot or upon an easement shown on the record map or plat or as referred to in this instrument.

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- d) Harborage reserves the right but shall not be obligated to waive in writing any violation of the front building setback line or either side lot line provided that such violation does not exceed 10% of the established or prescribed requirements and the violation thereof was unintentional.
- e) Each lot purchaser hereby grants onto Developer and/or its assigns for the purposes of installation and maintenance of poles, lines, conduits, pipes, and other equipment necessary to or useful for furnishing electric power, gas, telephone service, or other utilities including water, sanitary sewage and storm drainage services a ten foot easement over, under, and along the side lot line of each lot or assembly of contiguous lots, and a fifteen foot right-of-way over, under, and along the front property line abutting on the street right-of-way expressly for highway purposes.
- f) No rental or sublease of property will be allowed for a period of less than one (1) year. Written application shall be submitted to Harborage Homeowners Association for approval.
- g) No existing living trees on any lot which are 8" or more in diameter at ground level may be removed from any lot without prior approval from Harborage Homeowners Association.
- h) Control of Dogs. Every person owning or having possession, charge, care, custody, or control of any dog shall keep such dog exclusively upon his own premises; provided, however, that such dog may be off the premises if it be under the control of a competent person and restrained by a chain or leash or other means of adequate physical control. Pit bulls will not be allowed.

- i) No signs or bulletin boards of any description shall be displayed on any lot with the exception of signs "For Rent" or "For Sale" which signs shall not exceed two by three feet in size.
- j) No obnoxious, offensive, or illegal activity shall be carried on upon any lot or assembly of contiguous lots nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood.
- k) The throwing or dumping of trash, garbage, or waste material shall not be permitted in any area of the community including any natural streams or erosion control areas within Harborgate.
- l) There shall be no junk automobiles nor junk of any sort, nor shall there be salvage stored or placed or allowed to remain on or in any portion of Harborgate. Unlicensed automobiles including antique cars must be stored in an approved storage area or closed garage.
- m) Yard light and mailbox will be provided by Harborgate. No other mailbox or yard light or any other decoration may adorn that which is provided by Harborgate Community.
- n) Regarding additional landscaping and shrubbery, we encourage the use of all resident greenthumbs, however, we do ask that you plant in accordance with the architectural guidelines of Harborgate.
- o) It is the intent of Harborgate to maintain the serenity and beauty of the lake front property, and in doing so, no piers, docks, or floating walkways of any kind either permanent or temporary shall be permitted. No satellite dishes will be allowed.

p) No low tree branches or other type of obstructions shall be placed or permitted to remain that may obstruct the sight line approach to any street or street intersection.

ARTICLE III

Section 1. Formation, Membership and Voting Rights in the Association. In order to provide a permanent fund to maintain, landscape and repair streets, (except those located within a privately owned lot), walkways, and like community area; maintain adjacent areas used by residents in a clean and orderly condition, provide a fund for those services important to the development and preservation of an attractive community, and to further maintain the privacy and general safety of the residential community which is in Harborsgate, each owner of a lot shall be a member of an pay dues and assessments of the Harborsgate Homeowners Association. Said Association has been organized for the purposes set out immediately above and each lot owner's membership therein shall become immediately effective at the time he receives title to a lot within Harborsgate.

Section 2. Membership. Every person or entity who is a record owner of a fee simple or undivided fee simple interest in any shall be a member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association.

* Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 3. Voting Rights. Members shall be entitled to two (2) votes for each lot in which they hold the interest required for membership by Section Two (2).

* When one co-owner signs a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the

other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, the votes shall be split equally among co-owners.

Section 4. Formation of Board of Directors and Association Ownership.

Ownership, accountability and responsibility, monetary and legal, for all common areas (including roads not on private lots) will occur when the residential lots of Harbortgate in the first phase ^{are} ~~are 50%~~ owned and controlled by interests other than the developing corporation. A meeting will then be called for the express purpose of electing a board of directors and creating the by-laws of the Association. Thirty days notice in advance of the charter meeting shall be given where 2/3 of all current members shall be in attendance in order to conduct business. If a quorum does not exist, then a new meeting will be scheduled for no later than 30 days after the original meeting where the new quorum will be one half the original number in attendance.

Section 5. Rights of Membership. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each owner of and becomes a lien upon the property against which such assessments are made as provided by Article V of the Covenants.

Section 6. Board of Directors Shall Have the Authority to Establish the Means Billing and Collecting Dues and Assessments. Such dues and assessments shall be billed and collected in advance on either a monthly or a quarterly basis in the discretion of the Board of Directors may establish as an alternative method for the collection of dues a bank draft plan under the terms of which members of the Corporation may, on a voluntary

basis, authorize in writing on a periodic basis drafts upon their individual bank accounts, utilizing such form of bank draft as shall be established by the Board of Directors.

Section 7. Membership Rights. The membership rights of any person whose interest in the Properties is subject to assessments under Article III, Section 3, herein above, whether or not he be personally obligated to pay such assessment, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. In the event of any abuse of the Common Properties and facilities or improper conduct thereon by any member, the Directors may call a meeting of the membership for the purpose of acting on a withdrawal of the privilege of their use by such member.

ARTICLE IV

Property Rights in the Common Properties

Section 1. Member's Easements of Enjoyment. Subject to the provisions of these Covenants and the rules and regulations of the Association, every member and every tenant of a Member 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 of every Lot.

Section 2. Member may Delegate Right of Enjoyment. Any Member may delegate, in accordance with the bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Right and Easement of Enjoyment. The right and easement of enjoyment granted to every Member, may be delegated by the Member to his tenants or contract purchasers who occupy a residence, as their principal residence in Davidson County, North Carolina.

Section 4. Recreational Facilities. Recreational facilities situated upon the Properties may be utilized by guests of Members, tenants, or contract purchasers subject to the rules and regulations established by its Board of Directors of the Association governing said use.

Section 5. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a) The right of the Association in accordance with its bylaws to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties; and
- b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures; and
- c) The right of the Association to suspend the enjoyment of rights or any Member or any tenant of any Member for any period not to exceed thirty (30) days for infraction of its published rules and regulations, it being understood that any suspension for either non-payment or any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment; and
- d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein; and
- e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members of the Association agreeing to such dedication or transfer

has been recorded; provided, however, that a simple majority of the Board of Directors may authorize and execute customary utility, cablevision, or other such easements.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The

Declarant, for each lot owned within the Properties, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments of charges, such assessments to be established and collected as hereinafter provided. The annual assessments together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and any items under the responsibility of the Association.

Section 3. Annual Assessments.

- a) Until January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be Four Hundred Eighty and no/100 Dollars per lot

or \$40 per month which may be assessed on a monthly or quarterly basis.

b) From and after January 1st of the year immediately following the conveyance of the first lot to an owner, and each year thereafter, the maximum annual assessment for each lot may be increased by the Board of Directors without a vote of the membership by a percentage equal to the percentage increase of level of the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average-All Items (1967 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor (or similar statistical standards) over the preceding calendar year. Such percentage increase shall be determined by comparing the Index level for December immediately preceding the year of adjustment with the Index level for the previous December.

c) From and after January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased by an amount approved by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose.

d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Notice and Quorum for Any Action Authorized. Written notice of any meeting called for the purpose of taking any action authorized shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60) percent of all votes shall constitute a quorum. If the required quorum is not present, another

meeting may be called subject to the same notice requirement, and the ¹²⁴⁴ required quorum at the subsequent meeting will be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, the rate for each type lot to the rate for the other types must be established at the same proportion as is originally stated herein. The said assessments may be collected on a monthly or quarterly basis and shall be paid to the collection agency as directed by the Board of Directors.

Section 6. Date of Commencement of Annual Assessments. Due dates. The annual assessments provided for herein shall commence as to all annexed lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 7. Effect of Non-Payment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date to the maximum rate permitted under North Carolina General Statutes Section 24-1.1, of any successor statute governing against the owner personally obligated to pay the same, or foreclose the lien against the property and charge the costs, including

attorney's fees, to the owner. No owner may waive or otherwise escape ¹²⁴⁵ liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

General Provisions

Section 1. Duration and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Developer, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless three-fourths (3/4) of the vote at the annual meeting approves a change in the covenants and restrictions. The covenants may be amended at any time if three-fourths (3/4) of the vote at a duly called meeting of the Association approves the change. Provided, however, that no such agreement to change shall be effective unless made and recorded sixty (60) days in advance of the effective date of such changes, and unless written notice of the proposed agreement is sent to every member at least thirty (30) days in advance of any action taken.

Section 2. 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, and notice thereby given, 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. Notice to one of two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every member to notify immediately the Secretary of the Association in writing of any change of address.

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Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 4. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 5. Violation of Covenants. In the event of a violation or breach of any of the restrictions contained herein by any lot owner, or agent of such owner, the owners of lots in the neighborhood or subdivision, or any of them jointly or severally, shall have the right to proceed at law or in

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equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Company, its successors and assigns, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Company, its successors and assigns shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon such property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions of these covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

Section 6. Nothing contained herein shall be held or construed to impose any restrictions on or easements in any land of Harborsgate other than the land shown on the subdivision map hereinbefore referred to.

IN WITNESS WHEREOF, the said Harvey H. Rima and Mountain Lake Shores Development Corporation have hereunto set their hands and seals, this the 14th day of June, 1990.

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Harvey H. Rima (SEAL)
Harvey H. Rima, Individually



MOUNTAIN LAKE SHORES DEVELOPMENT CORPORATION

By: Harvey H. Rima (SEAL)
President

Attest:

Richard E. George (SEAL)
Secretary
Assistant

North Carolina—Davidson County

The foregoing (or annexed) certificate(s) of...

Leigh Buie

Notary Public (Notaries Public) is certified to be correct

this 14th day of June, 1990

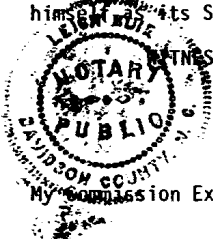
Ronald W. Callcutt, Register of Deeds

Manda Kincaid Deputy

STATE OF NORTH CAROLINA

COUNTY OF DAVIDSON

I, Leigh Buie, A Notary Public of said County and State, do hereby certify that RICHARD E. GEORGE, Secretary, personally came before me this day and acknowledged that he is Secretary of MOUNTAIN LAKE SHORES DEVELOPMENT CORPORATION, and that, by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.



WITNESS my hand and Notarial seal this the 14th day of June, 1990.

Leigh Buie (SEAL)
Notary Public