IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.,	)	
Plaintiff,	)	
vs.	)	
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN, ELIZABETH WARTHMAN, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & G EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DAVID NORCROSS, and MICHELLE NORCROSS,	)	No. CV-2354
Defendants.	)	

MOTION FOR SUMMARY JUDGMENT

Comes now the Plaintiff, Lone Mountain Shores Owners Association, Inc. ("LMSOA"), by and through counsel, pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, and moves this Honorable Court for an Order granting summary judgment in favor of LMSOA against the named Defendants. As stated in detail in LMSOA's Memorandum of Law in Support of Motion for Summary Judgment, LMSOA asserts that there is no genuine issue of material fact in this matter, and it is entitled to a permanent injunction as a matter of law against the named Defendants, preventing them from using their properties as short-term rentals. In support of its motion for summary judgment, LMSOA relies upon and incorporates by reference the recent opinion of the

Tennessee Supreme Court in the case of *Pandharipande v. FSD Corporation*, 2023 Tenn. LEXIS 61, No. M2020-01174-SC-R11-CV (Tenn. 2023). A true and accurate copy of the *FSD Corporation* decision is attached hereto as **Exhibit A**. Additionally, LMSOA relies upon and incorporates the following:

1. The pertinent portions of the Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores, filed with the Claiborne County Register of Deeds in 1999, and the pertinent provisions of all amendments thereto, including the 2013 Amended Covenants, attached to this motion as **Collective Exhibit B;**

2. The Responses of Defendants Henry Bennafield and Janice Bennafield to Plaintiff's First Request for Admissions, attached hereto as **Exhibit C**;

3. The Responses of Defendant Bella Golden to Plaintiff's First Request for Admissions, attached hereto as **Exhibit D**;

4. The Responses of Defendants James Daws and Denise Daws to Plaintiff's First Request for Admissions, attached hereto as **Exhibit E**;

5. The Responses of Defendants Vic Warthman and Elizabeth Warthman to Plaintiff's First Request for Admissions, attached hereto as **Exhibit F**;

6. The Responses of Defendant Ed Lund to Plaintiff's First Request for Admissions, attached hereto as **Exhibit G**;

7. The Responses of Defendant Lake Front Rendezvous, LLC, to Plaintiff's First Request for Admissions, attached hereto as **Exhibit H**;

8. The Responses of Defendant M & G Eaglesnest, LLC, to Plaintiff's First Request for Admissions, attached hereto as **Exhibit I**;

9. The Responses of Defendant B & M Storage, LLC, to Plaintiff's First Request for Admissions, attached hereto as **Exhibit J**;

10. The Responses of Defendants Michael Sislow and Brandy Sislow to Plaintiff's First Request for Admissions, attached hereto as **Exhibit K**;

11. The Responses of Defendant Jason Jordan to Plaintiff's First Request for Admissions, attached hereto as **Exhibit L**;

12. The Responses of Defendant 836 JACKSBLUFF, LLC, to Plaintiff's First Request for Admissions, attached hereto as **Exhibit M**;

13. The Responses of Defendants Fred Maess and Kathy Wambold to Plaintiff's First Request for Admissions, attached hereto as **Exhibit N**;

14. The Responses of Defendant James Scruggs to Plaintiff's First Request for Admissions, attached hereto as **Exhibit O**;

15. The Responses of Defendants David Norcross and Michelle Norcross to Plaintiff's First Request for Admissions, attached hereto as **Exhibit P**;

16. The Affidavit of Sabrina Izbrand, attached hereto as **Exhibit Q**;

17. Plaintiff's Statement of Material Facts, filed contemporaneously with this Motion for Summary Judgment;

18. Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment, filed contemporaneously with this Motion for Summary Judgment.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests this Court enter an Order granting Plaintiff's Motion for Summary Judgment on its claim for a permanent injunction against Defendants in this matter as requested in the Second Amended Sworn Complaint for Permanent Injunction.

Respectfully submitted this 9th day of November 2023.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

LEWIS THOMASON, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901
phawkins@lewisthomason.com
(865) 546-4646
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all parties at interest in this cause as follows:

☐ By placing postage prepaid envelope in United States Mail Service, addressed to:

Ryan Sarr, Esq.
Trammell, Adkins & Ward, P.C.
1900 N. Winston Road, Suite 600
Knoxville, TN 37919

☒ By e-mail, addressed to:

Ryan Sarr, Esq.
ryansarr@tawpc.com

This 9th day of November 2023.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

9070482

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
February 22, 2023 Session

PRATIK PANDHARIPANDE, M.D. v. FSD CORPORATION

Appeal by Permission from the Court of Appeals
Chancery Court for DeKalb County
No. 2019-CV-60 Jonathan L. Young, Judge

No. M2020-01174-SC-R11-CV

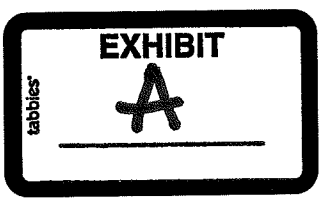
This case arises from a dispute between a property owner and his homeowners' association. The property owner, Pratik Pandharipande, purchased a home in a vacation community on a Tennessee lake, intending to use it as a short-term rental. At the time of the purchase, the property was subject to covenants requiring that the home be used for "residential and no other purposes." The covenants were amended several years later to allow leases with minimum lease terms of thirty days. Pandharipande contends that neither the original covenants nor the amendments prohibit him from leasing his property for short terms of two to twenty-eight days. His homeowners' association disagrees on both scores. We agree with Pandharipande that the original covenants requiring residential use of the property do not bar his short-term rentals, but we agree with the homeowners' association that the amendments do. The trial court granted summary judgment in favor of the homeowners' association based on both the original covenants and the amendments. The Court of Appeals affirmed. We affirm the Court of Appeals in part, reverse in part, and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 11 Appeal by Permission;
Judgment of the Court of Appeals Affirmed in Part and Reversed in Part;
Remanded to the Chancery Court

SARAH K. CAMPBELL, J., delivered the opinion of the court, in which HOLLY KIRBY, C.J., and SHARON G. LEE, JEFFREY S. BIVINS, and ROGER A. PAGE, JJ., joined.

Benjamin M. Rose, Brentwood, Tennessee, for the appellant, Pratik Pandharipande, M.D.

Gerald C. Wigger and Emmie Kinnard, Nashville, Tennessee, for the appellee, FSD Corporation.



OPINION

I.

A.

Four Seasons is a housing development on Center Hill Lake in DeKalb County, Tennessee. FSD Corporation—or FSD for short—operates the Four Seasons homeowners' association and previously owned the properties that compose Four Seasons.

In 1984, FSD executed a Declaration of Covenants, Conditions, and Restrictions to "impose . . . mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Four Seasons development." The declaration provides that the restrictions are to "run with and bind" all of the properties listed on an exhibit attached to the declaration.[1] The declaration further states that FSD was "the owner of the real property" described in that exhibit as of the date of the declaration's execution.

Article XII of the declaration imposes use restrictions on the properties. Section 1, subsection (a) of that article provides that "each Lot shall be used for residential and no other purposes." Subsection (j) further provides that "no gainful profession, occupation, trade or other nonresidential use shall be conducted in any Lot." Those subsections read in full as follows:

> (a) . . . Except as otherwise provided in this Declaration, each Lot shall be used for *residential and no other purposes*. There shall not be constructed or maintained upon any Lot [any] duplex or multi-unit structure. Except as otherwise provided in [this] Declaration, the Common Area shall be used for recreational . . . and *other purposes directly related to the single-family use [of] the lots* authorized hereunder.
>
> . . . .
>
> (j) . . . *[N]o gainful profession, occupation, trade or other nonresidential use shall be conducted in any Lot* or upon the Common Area of any portion thereof, provided that this restriction shall not prohibit consultations, conferences, or the transaction of business by telephone or other electronic devices.

[1] Other covenants applied to the properties before 1984, but the parties agree that those covenants are no longer in effect.

The term "Lot" is defined in article I to mean "a portion or portions of the Properties made subject to the terms and conditions of this Declaration and intended for any type of independent ownership for construction and *use as a residence by a single family*."

Article XIII, section 4 governs delegation of use of the properties. It provides that "[a]ny owner may delegate, in accordance with the By-Laws of the Corporation, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, *tenants*, and social invitees, subject to such rules and regulations as the Board may establish."

The declaration also establishes a process to amend the covenants and provides that amendments "may, but [are] not required to, impose . . . additional restrictions . . . on the land." Article XIII, section 2 states that amendments must be approved "by the affirmative vote (in person or by proxy) of a majority of the Class 'A' Stockholders." Class A stockholders include all record owners of any lot subject to the declaration, with the number of shares corresponding to the number of units owned. Amendments "must be recorded" with the DeKalb County Register of Deeds and "shall be effective when recorded."

The initial term of the covenants was thirty years from their recording date. After the initial term, the covenants are "automatically extended" for successive ten-year periods unless a majority of shareholders agree in writing to terminate them.

The parties dispute exactly when the 1984 covenants were recorded with the DeKalb County Register of Deeds, but they agree recording had occurred at least by 2000.[2] Neither Pandharipande nor FSD contends that the covenants have been terminated.

Pandharipande did not purchase his property in Four Seasons until 2015. The property was conveyed to him via warranty deed.[3] Pandharipande admitted both in his complaint and during summary judgment proceedings that, "assuming they are valid," the 1984 covenants "applied to [his] [p]roperty on the date [he] acquired [it]." He purchased the property "with the intent to lease [it] on a short-term basis" and soon began doing just

---

[2] Pandharipande asserts that the 1984 covenants were not recorded until 2000 based on stamps that appear on the first page of the covenants. FSD says that the covenants were recorded on March 29, 1984, based on a stamp that appears near the end of the document. But FSD took a different position earlier in the litigation. In its answer to Pandharipande's complaint, FSD "[a]dmitted, upon information and belief" that the covenants were not recorded until 2000. And when Pandharipande asserted, on two different occasions, that it was undisputed that the covenants were not recorded until sixteen years after 1984, FSD agreed that this fact was undisputed. FSD also pointed out, however, that the covenants were recorded "before [Pandharipande's] purchase of the property."

[3] The warranty deed is not in the record on appeal. FSD attached to its brief in this Court a copy of a document purporting to be the warranty deed and asked that we take judicial notice of the document. We find it unnecessary to do so.

that. With the assistance of a property-management company, Pandharipande leased his property to third parties for rental terms ranging from two to twenty-eight days.

In 2018, a majority of FSD's shareholders voted to amend the covenants. In relevant part, the 2018 amendments provide that shareholders "shall be allowed" to lease their properties but also impose certain requirements and restrictions on any leases. One of those restrictions is that "[t]he length of [a] lease must be for a minimum of [thirty] consecutive days." The amendments contain a grandfather clause that allows "[a]ny owner engaged in leasing or subleasing activities as of the date of th[e] amendment . . . to continue leasing or subleasing activities until the expiration of the term of said lease or said lot is sold or conveyed to a third party." FSD recorded the amendments with the Dekalb County Register of Deeds on July 24, 2018.

B.

Notwithstanding the amendments, Pandharipande continued to lease his property for terms of fewer than thirty days. In March 2019, FSD's counsel sent Pandharipande a letter notifying him that he was violating the 2018 amendments.

Pandharipande responded by suing FSD in June 2019. His complaint sought a declaratory judgment that the 2018 amendments did not prohibit him from using his property as a short-term rental. He also sought an injunction prohibiting FSD from "taking any other action implying or expressly conveying" that Pandharipande was in violation of the 2018 amendments or "any other restrictive covenant."

FSD counterclaimed for declaratory and injunctive relief. The counterclaim sought a judgment declaring that Pandharipande's short-term rentals violated Four Seasons' governing documents and an injunction prohibiting him from continuing to lease his property on a short-term basis. FSD asserted that Pandharipande's short-term leases violated the 2018 amendments, but it did not argue at that time that they also violated the original 1984 covenants. In fact, in its answer to Pandharipande's complaint, FSD admitted "[u]pon information and belief . . . that no restrictive covenants prevented [Pandharipande] from leasing his property on a short-term basis at the time he purchased it."

In October 2019, while discovery was ongoing, Pandharipande moved for summary judgment. He argued that the 2018 amendments did not prohibit his short-term rentals for two reasons. First, he claimed that his short-term leases were allowed under the grandfather clause. Second, he contended that Tennessee law prohibits retroactive amendments that place additional restrictions on property rights. Although FSD's counterclaim had alleged only that Pandharipande's short-term rentals violated the 2018 amendments, FSD asserted in response to the motion for summary judgment that the rentals violated the 1984 covenants as well. In support of this argument, FSD cited the Court of Appeals' decision in *Shields Mountain Property Owners Ass'n v. Teffeteller*, No. E2005-00871-COA-R3-

CV, 2006 WL 408050 (Tenn. Ct. App. Feb. 22, 2006), which held that a covenant containing a residential-use restriction prohibited short-term rentals.

The trial court denied Pandharipande's motion for summary judgment at the hearing but reserved its ruling for forty-five days to allow FSD to move for summary judgment, which FSD did in April 2020. FSD again relied on *Teffeteller* in arguing that the residential-use requirement in the 1984 covenants prohibited Pandharipande from using his property as a short-term rental. FSD additionally argued that short-term rentals violate the 2018 amendments. In response, Pandharipande sought to distinguish *Teffeteller* and further contended that *Teffeteller*'s reasoning had been rejected by courts in other States. He also asserted that FSD should be estopped from relying on *Teffeteller* both because FSD's counterclaim alleges only a violation of the 2018 amendments and because FSD had allowed short-term rentals in the past. As for the 2018 amendments, Pandharipande reiterated the arguments he made in support of his own motion for summary judgment.

The trial court granted FSD's motion for summary judgment. Citing *Teffeteller*, the court concluded that the "plain language" of the 1984 covenants—specifically, the provision stating that "each Lot shall be used for residential and no other purposes"—prohibited Pandharipande from using his property as a short-term rental and that Pandharipande therefore was in violation of those covenants when he began renting his property in 2015. The court also rejected Pandharipande's estoppel argument. After noting that "no evidence [had been] offered that the [2018 amendments] w[ere] not properly promulgated," the court further held that the amendments prohibited Pandharipande's short-term rentals after they were recorded on July 24, 2018.

Pandharipande appealed and argued that the trial court had erred both by denying his motion for summary judgment and by granting FSD's motion. The Court of Appeals affirmed the trial court in all respects. *Pandharipande v. FSD Corp.*, No. M2020-01174-COA-R3-CV, 2022 WL 1280438, at *12 (Tenn. Ct. App. Apr. 29, 2022), *perm. app. granted*, (Tenn. Oct. 21, 2022). The court concluded that the 1984 covenants were "in effect when [Pandharipande] purchased [his] [p]roperty in July 2015" and prohibited Pandharipande from using his property for short-term rentals because that use was non-residential under *Teffeteller*. *Id.* at *6–7.

The Court of Appeals noted it was "undisputed" that a majority of FSD's stockholders approved the 2018 amendments and that the amendments were "duly recorded." *Id.* at *7. And it held that, once they became effective on July 23, 2018, the amendments prohibited Pandharipande from leasing his property for periods of fewer than thirty days. *Id.* at *12. The court rejected Pandharipande's argument that the amendments were impermissibly retroactive. *Id.* at *11. Although the court acknowledged that amendments to restrictive covenants are subject to review under the arbitrary-and-capricious standard, it found "no basis" for concluding that the 2018 amendments were arbitrary or capricious. *Id.*

Pandharipande filed an application for permission to appeal to this Court, which we granted. Our order granting review asked the parties to address whether there are genuine issues of material fact regarding the applicability of the 1984 covenants that should have precluded summary judgment. Specifically, we asked the parties to address "the date on which the 1984 Declaration first was recorded, the ownership on that date of the property which Pratik Pandharipande purchased in July 2015, and whether any of the conveyances in Pratik Pandharipande's chain of title exhibited an intent on the part of the grantor to impose the 1984 Declaration as a servitude."

II.

"We review a trial court's ruling on a motion for summary judgment de novo, without a presumption of correctness." *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). A trial court may grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. A disputed fact is material if it "must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Tatham v. Bridgestone Ams. Holding, Inc.*, 473 S.W.3d 734, 749 (Tenn. 2015) (quoting *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). "[D]isputes of material fact are 'genuine'—and therefore preclude the entry of summary judgment—only if the evidence produced at the summary judgment stage 'is such that a reasonable jury could return a verdict for the nonmoving party.'" *Rye*, 477 S.W.3d at 251 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The interpretation of "restrictive covenants, like [the interpretation of] other written contracts, is a question of law" that we review de novo. *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 480–81 (Tenn. 2012); *see also BSG, LLC v. Check Velocity, Inc.*, 395 S.W.3d 90, 92 (Tenn. 2012) ("The interpretation of a written contract is a question of law, which we review de novo.").

III.

We first address whether there are genuine issues of material fact that preclude summary judgment. We then turn to the dispositive legal issues in this case—whether either the 1984 covenants or the 2018 amendments prohibit Pandharipande's short-term rentals.

A.

Our order granting review asked the parties to address whether there are any genuine issues of material fact regarding the applicability of the 1984 covenants to Pandharipande's property. Because the provisions of those covenants that are at issue here limit the use of

the property, they are properly understood as restrictive covenants. *Phillips v. Hatfield*, 624 S.W.3d 464, 473 (Tenn. 2021) (explaining that a covenant that "limits the uses that can be made by an owner or occupier of land" is called a "restrictive covenant" or, less often, a "negative easement"). As we explained in *Phillips*, a restrictive covenant runs with the land—that is, it "passes automatically with the land when ownership or possession changes, whether or not the successor consents"—when "it is intended to do so, has been effectively created, is not invalid for certain reasons, and has not terminated in certain ways." *Id.* And "a person cannot restrict the use of another's land simply by recording restrictive covenants that purport to apply to that land." *Id.* at 475. Rather, as a general matter, the restrictive covenant must be created by the owner of the property. *Id.*

The parties' briefs focused primarily on the recording date of the 1984 covenants and failed to fully address who owned the property on that date or whether the conveyances in Pandharipande's chain of title exhibited an intent to impose a servitude.

In his brief, Pandharipande says it is undisputed that the 1984 covenants were not recorded until 2000. Alternatively, he argues that the recording date of the covenants is a genuine issue of material fact that should have precluded the trial court from granting FSD's summary judgment motion. Pandharipande concedes that "he had knowledge of the 1984 [covenants] before purchasing the [p]roperty," but he also contends that there was no evidence in the record to establish the chain of title to the property.

FSD argues that "[t]he Register's stamp and certification on the last page" of the 1984 covenants "leave no doubt that" the covenants were recorded in 1984, not in 2000 as Pandharipande contends. Without acknowledging its admissions in the trial court that the covenants were not recorded until 2000, FSD urges this Court to "take judicial notice" of the 1984 recording date. FSD also contends, however, that any dispute about the recording date is immaterial because "it is undisputed that the 1984 [covenants] applied to" Pandharipande's property when he purchased it in 2015. As for the chain of title, FSD says that Pandharipande "admitted, for purposes of summary judgment, that he had notice of the 1984 [covenants] and that the [covenants] could be amended."

The parties also addressed the applicability of the 1984 covenants at oral argument. When asked about the ownership of the property at issue at the time the covenants were executed and whether the covenants appear in Pandharipande's chain of title, FSD pointed the Court to certain documents available in the DeKalb County Register of Deeds Office. But FSD acknowledged that those documents are not included in the record on appeal. FSD maintained that it was not required to prove the applicability of the 1984 covenants because Pandharipande had admitted that those covenants applied to his property when he purchased it in 2015.

During rebuttal, Pandharipande's counsel was asked whether he intended to concede that the 1984 covenants applied to Pandharipande's property when he acquired it in 2015.

Counsel responded that "if [the covenants] are legally effective, then they are the ones that likely applied to the property at issue." By "legally effective," counsel explained, he meant "appropriately promulgated and recorded at whatever time." Counsel also conceded that there were no genuine issues of material fact regarding who owned the property when the covenants came into effect. And he further conceded that the 1984 covenants were in the chain of title for the property.

Taken together, the parties' admissions in the trial court and representations to this Court in both their briefs and at oral argument make clear that there are no genuine issues of material fact regarding whether the 1984 covenants apply to Pandharipande's property.[4] Pandharipande admitted that, if the covenants are legally effective, then they applied to his property when he purchased it in 2015. And he has never argued that the covenants were not validly promulgated or not recorded until after he acquired his property. We agree with FSD that, given this admission, it was unnecessary for FSD to introduce proof regarding ownership of the property at the time the covenants were recorded or the chain of title. *See, e.g., Tenn. Dep't of Hum. Servs. v. Barbee*, 714 S.W.2d 263, 267 (Tenn. 1986) ("No evidence is necessary to establish a fact admitted, and no evidence should be permitted to refute it."). We also agree with FSD that, since it is undisputed that the 1984 covenants were recorded before Pandharipande purchased his property, any dispute regarding the precise recording date of those covenants is immaterial to the substantive legal issues before this Court.

B.

The core issue in this appeal is whether Pandharipande is prohibited from using his property for short-term rentals. FSD, pointing to both the 1984 covenants and the 2018 amendments, says "yes." Pandharipande says the opposite. We begin with the 1984 covenants and then turn to the amendments.

Our consideration of these issues is guided by several principles. First, we keep in mind that "[a] property owner's right to own, use, and enjoy private property is a fundamental right." *Phillips*, 624 S.W.3d at 474 (quoting *Hughes*, 387 S.W.3d at 474). Second, because restrictive covenants are "in derogation of the right of free use and enjoyment of property," they are "strictly construed" and should not be extended "to any activity not clearly and expressly prohibited by [their] plain terms." *Williams v. Fox*, 219 S.W.3d 319, 324 (Tenn. 2007); *see also, e.g., Phillips*, 624 S.W.3d at 475; *Hughes*, 387

[4] Pandharipande's factual concessions at oral argument were sufficiently "deliberate and clear" to constitute binding judicial admissions. *See Old Hickory Coaches, LLC v. Star Coach Rentals, Inc.*, 652 S.W.3d 802, 814 (Tenn. Ct. App. 2021) ("[J]udicial admissions of fact must be deliberate and clear, while legal conclusions are rarely considered to be binding judicial admissions." (quoting *Com. Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 336 (6th Cir. 2007))); *see also Crowe v. Coleman*, 113 F.3d 1536, 1542 (11th Cir. 1997) ("[W]aivers and concessions made in appellate oral arguments need to be unambiguous . . . .").

S.W.3d at 481; *Arthur v. Lake Tansi Vill., Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979); *Shea v. Sargent*, 499 S.W.2d 871, 872–73 (Tenn. 1973); *Turnley v. Garfinkel*, 362 S.W.2d 921, 923 (Tenn. 1962); *Lowe v. Wilson*, 250 S.W.2d 366, 367 (Tenn. 1952). "When the terms of a covenant may be construed in more than one way, courts must resolve any ambiguity against the party seeking to enforce the restriction and in a manner which advances the unrestricted use of the property." *Hughes*, 387 S.W.3d at 481 (quoting *Williams*, 219 S.W.3d at 324). Third, because a covenant is a contract, *see Hughes*, 387 S.W.3d at 480–81, we interpret it by "look[ing] to the plain meaning of the words in the document," *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006); *see also Maggart v. Almany Realtors, Inc.*, 259 S.W.3d 700, 704 (Tenn. 2008) (instructing that a "contract is interpreted according to its plain terms as written"). We also consider the entire document in which the words appear, because "one clause may modify, limit or illuminate another." *Maggart*, 259 S.W.3d at 704 (quoting *Cocke Cnty. Bd. of Hwy. Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985)). Fourth, we may conclude that the language in a covenant is ambiguous if it is "susceptible of more than one reasonable interpretation." *Memphis Hous. Auth. v. Thompson*, 38 S.W.3d 504, 512 (Tenn. 2001). But we must employ all traditional tools of interpretation before reaching that conclusion. *Cf. State v. Deberry*, 651 S.W.3d 918, 930 (Tenn. 2022) ("A court should deem statutory language ambiguous only after employing all of the traditional tools of statutory construction, including consulting dictionary definitions, examining statutory structure and context, and applying well-established canons of statutory construction.").

1.

As an initial matter, Pandharipande contends that FSD should be judicially and equitably estopped from arguing that the 1984 covenants prohibit his short-term rentals.[5] We reject those arguments.

The doctrine of judicial estoppel exists to "ensure the integrity of the judicial process." *Kershaw v. Levy*, 583 S.W.3d 544, 548 (Tenn. 2019) (quoting John S. Nichols, *Safeguarding the Truth in Court: The Doctrine of Judicial Estoppel*, 13 S.C. Law. 32, 34 (2002)). It prohibits a party from taking "a position that is directly contrary to or inconsistent with a position previously taken by the party." *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 314 (Tenn. 2009) (quoting *Guzman v. Alvares*, 205 S.W.3d 375, 382 (Tenn. 2006)). In Tennessee, however, the doctrine applies "only when a party has attempted to contradict by oath a sworn statement previously made." *Id.* at 315. And it applies only when the inconsistent sworn statement concerns an issue of fact. *Kershaw*, 583 S.W.3d at 549.

[5] Pandharipande also argues that we should reverse the Court of Appeals because it failed to address his estoppel arguments. Our conclusion that his estoppel arguments fail on the merits pretermits that issue.

Pandharipande argues that judicial estoppel applies here because FSD made inconsistent arguments to the trial court about the 1984 covenants. FSD initially stated in its answer to Pandharipande's complaint that "no restrictive covenants prevented [Pandharipande] from leasing his property on a short-term basis at the time he purchased it" in 2015. During summary judgment briefing, however, FSD argued that the 1984 covenants prohibited Pandharipande's short-term rentals.

Pandharipande's judicial estoppel argument fails for two reasons. First, none of the purportedly inconsistent statements by FSD were made under oath. They instead appeared in court filings that were signed by counsel, but not sworn or verified. Second, the statements amounted to legal conclusions about the effect of the 1984 amendments. *Cf. id.* at 545 (holding that a sworn acknowledgment that a divorce settlement was "fair and equitable" was a "context-related legal conclusion" (quoting *Cleveland v. Pol'y Mgmt. Sys. Corp.*, 526 U.S. 795, 802 (1999))). As explained above, the doctrine of judicial estoppel is triggered only by inconsistent statements regarding issues of *fact*.

The doctrine of equitable estoppel applies "[i]n those instances where no oath is involved but the party is attempting to gain an unfair advantage by maintaining inconsistent legal positions." *Cracker Barrel*, 284 S.W.3d at 315. The party asserting equitable estoppel must establish that the other party (1) engaged in conduct amounting to false representations or concealment of material facts, (2) intended or expected that the party asserting equitable estoppel would rely on that conduct, and (3) had actual or constructive knowledge of the real facts. *Osborne v. Mountain Life Ins. Co.*, 130 S.W.3d 769, 774 (Tenn. 2004). The party asserting estoppel also must prove that it (1) lacked knowledge of the real facts, (2) relied on the other party's conduct, and (3) was prejudiced. *Id.*; *see also Cracker Barrel*, 284 S.W.3d at 315; *Ryan v. Lumbermen's Mut. Cas. Co.*, 485 S.W.2d 548, 550 (Tenn. 1972) ("[T]he party to whom [the false representation or concealment] was made must have relied on or acted on it to his prejudice" (quoting 31 C.J.S. *Estoppel* § 67)). "[O]rdinarily," moreover, "misrepresentations of law, being nothing more than opinions of the person making them, cannot be the basis of an equitable estoppel." *Ryan*, 485 S.W.2d at 550–51; *see also Brumit v. Mut. Life Ins. Co. of N.Y.*, 156 S.W.2d 377, 378 (Tenn. 1941) ("An estoppel in pais must rest on a statement of fact, not on a statement of law."); 31 C.J.S. *Estoppel* § 115, Westlaw (database updated Aug. 2023) ("[F]or equitable estoppel to apply, the false representation must be one of existing material fact, and not of intention, nor may it be a conclusion from facts or a conclusion of law.").

Pandharipande's equitable estoppel argument likewise fails. Pandharipande points to evidence that two FSD employees leased their properties in Four Seasons on a short-term basis before the 2018 amendments were recorded. He also points to emails between FSD's board members and minutes from FSD's board meetings which suggest that the board believed short-term rentals were permitted under the 1984 covenants. But he fails to explain how any of this evidence establishes that FSD made false representations of material fact or concealed material facts. Indeed, FSD's belief regarding the effect of the

1984 amendments is not a material fact at all; it is an opinion about a legal issue. *See Ryan*, 485 S.W.2d at 551. Nor does he explain in what way he relied on FSD's conduct or was prejudiced by that reliance.

Because Pandharipande cannot satisfy the elements of either judicial or equitable estoppel, those doctrines do not apply here, and we may consider FSD's arguments that the 1984 covenants prohibit Pandharipande's short-term rentals.

2.

Whether a restrictive covenant that limits the use of property to residential purposes prohibits short-term rentals is a question of first impression for this Court. Our Court of Appeals considered a similar question in *Teffeteller* nearly two decades ago. The restrictive covenant at issue in that case provided that "[a]ll lots shall be used for residential purposes exclusively." *Teffeteller*, 2006 WL 408050, at *1. The Court of Appeals held that this covenant prohibited short-term rentals. *Id.* at *6. The court reasoned that short-term renters did not use the property for a residential purpose because, although "they may well eat, sleep, relax, and bathe while there, they do not reside there." *Id.* at *4. They instead "use the property in the same way that people use a motel." *Id.* The court rejected as "untenable" the property owner's view that "use of the property for 'eating, sleeping, relaxing, and bathing' makes the use residential." *Id.* Accepting this argument, the court explained, "would lead to the conclusion that the use of a motel room, or a camper, or a tent during a vacation stay or even staying in a hospital room would constitute a residential use." *Id.*

Pandharipande urges us to reject *Teffeteller*. He contends that *Teffeteller*'s "underpinnings have radically changed over the last [sixteen] years" as "owner-occupied [short-term rentals] have flourished in the marketplace." Citing cases from other jurisdictions, he also asserts that courts overwhelmingly have adopted a broader reading of "residential use."

FSD, by contrast, asks us to adopt *Teffeteller*'s reasoning. FSD maintains that *Teffeteller* is not an outlier. And it argues that cases reaching the opposite conclusion either involved "ambiguous" covenants distinguishable from the one at issue here or interpreted "residential" too broadly, in a manner that sweeps in all short-term rentals.

We conclude that the "residential and no other purposes" provision in the 1984 covenants does not clearly prohibit short-term rentals. At best for FSD, the provision is ambiguous. Because any ambiguities in restrictive covenants must be resolved in favor of the property owner and in a manner that furthers unrestricted use of the property, *Hughes*, 387 S.W.3d at 481, we hold that the 1984 covenants do not prohibit Pandharipande's short-term rentals. To reach that conclusion, we examine dictionary definitions of the relevant terms, other provisions in the covenants, and case law from other jurisdictions.

a.

In arguing that the 1984 covenants prohibit short-term rentals, FSD relies primarily on the requirement that "each Lot shall be used for residential and no other purposes." Our task is to determine what that phrase means. We start by consulting dictionary definitions of the phrase's key terms: "used," "residential," and "purposes." *See Griffis v. Davidson Cnty. Metro. Gov't*, 164 S.W.3d 267, 275–76 (Tenn. 2005) (interpreting terms in a deed by relying on "[s]everal standard turn-of-the-century dictionaries" because the deed was executed in 1908); *see also Royalton Woods Homeowner Ass'n v. Soholt*, No. M2018-00596-COA-R3-CV, 2019 WL 366525, at *9 (Tenn. Ct. App. Jan. 29, 2019) (relying on the American Heritage Dictionary of the English Language to interpret the word "maintenance" in a restrictive covenant).

The definition of "used" is simple enough in this context. To "use" something means "[t]o put into service or apply for a purpose; employ." *Use*, The American Heritage Dictionary of the English Language 1966 (3d ed. 1992); *see also Use*, 19 The Oxford English Dictionary 350 (2d ed. 1989) ("The act of employing a thing for any (esp. a profitable) purpose; the fact, state, or condition of being so employed; utilization or employment for or with some aim or purpose, application or conversion to some (esp. good or useful) end.").

Although the definition of "used" is fairly straightforward, it is unclear *whose* use of the property is relevant. In the phrase "shall be used for residential and no other purposes," the term "used" is a passive verb with no subject. Should the focus be on the property owner's use of the property or instead—in the case of a rental—on the occupant's use of the property? The text does not answer that question.

The definition of "purposes" is also reasonably clear. A "purpose" is "[t]he object toward which one strives or for which something exists; an aim or a goal." *Purpose*, The American Heritage Dictionary of the English Language 1471 (3d ed. 1992); *see also Purpose*, 12 The Oxford English Dictionary 878 (2d. ed. 1989) ("That which one sets before oneself as a thing to be done or attained; the object which one has in view."); *Purpose*, Webster's Third New International Dictionary 1847 (1981) ("something that one sets before himself as an object to be attained: an end or aim to be kept in view in any plan, measure, exertion, or operation").

Dictionary definitions of "residential" and related terms are less helpful. Those definitions point in two different directions. Some suggest that the term has a temporal element and requires a degree of permanence. Others, however, suggest that the term includes shorter stays as well.

Definitions of "residential" generally rely on and reference related terms such as "residence," "reside," or "resident." For example, the Oxford English Dictionary defines

"residential" as "[s]erving or used as a residence; in which one resides" or "[c]onnected with, pertaining or relating to, residence or residences (in general or specific sense)." *Residential*, 13 The Oxford English Dictionary 709 (2d ed. 1989). Other dictionary definitions are similar. *See, e.g.*, *Residential*, The American Heritage Dictionary of the English Language 1535 (3d ed. 1992) ("[o]f, relating to, or having residence" or "[o]f, suitable for, or limited to residences"); *Residential*, The Random House Dictionary of the English Language 1638 (2d ed. 1987) ("of or pertaining to residence or to residences" or "suited for or characterized by private residences"); *Residential*, Webster's Third New International Dictionary of the English Language 1931 (1981) ("used, serving, or designed as a residence or for occupation by residents").

Several dictionaries define the terms "residence" and "reside" in a manner that connotes permanence. The Oxford English Dictionary defines "residence" to mean "[t]he place where one resides; one's dwelling-place; the abode *of* a person (esp. one of some rank or distinction)." *Residence*, 13 The Oxford English Dictionary 707 (2d ed. 1989). The term "reside," in turn, means "[t]o dwell permanently or for a considerable time, to have one's settled or usual abode, to live, *in* or *at* a particular place." *Reside*, *id.* at 706. In the same vein, the American Heritage Dictionary defines "residence" as "[t]he place in which one lives; a dwelling" or "[t]he act or a period of residing in a place." *Residence*, The American Heritage Dictionary of the English Language 1535 (3d ed. 1992). And "reside" means "[t]o live in a place permanently or for an extended period." *Reside*, *id.* The Random House Dictionary, too, defines "residence" to mean "the place, esp. the house, in which a person lives or resides; dwelling place." *Residence*, The Random House Dictionary of the English Language 1638 (2d ed. 1987). And it likewise defines "reside" to mean "to dwell permanently or for a considerable time." *Reside*, *id.*

Some definitions of "resident," however, are broad enough to include shorter stays. Recall that Webster's Third New International Dictionary defines "residential" as "used, serving, or designed as a residence or for occupation by residents." *Residential*, Webster's Third New International Dictionary of the English Language 1931 (1981). The term "residence" is defined to mean "a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit." *Residence*, *id.* The term "resident" means "one who resides in a place: one who dwells in a place for a period of some duration—often distinguished from inhabitant." *Resident*, *id.* The term "inhabitant," however, is defined as "a person who dwells or resides *permanently* in a place as distinguished from a *transient* lodger or visitor." *Inhabitant*, *id.* at 1163 (emphasis added). If a resident is often distinguished from an inhabitant, and an inhabitant is often distinguished from a *transient* visitor, then a resident could also include a transient guest. The Oxford English Dictionary also defines "resident" to include transient guests such as hotel guests. *Resident*, 13 The Oxford English Dictionary 709 (2d ed. 1989) ("One who resides permanently in a place; sometimes *spec.* applied to inhabitants of the better class. *Also, a guest staying one or more nights at a hotel or boarding-house.*" (emphasis added)).

Even if the root words of "residential" are best understood to require a degree of permanence, definitions of "residential" itself—which, after all, is the term we are interpreting—are more flexible. The adjective "residential" describes not only nouns that serve as residences but also nouns that relate to, pertain to, or are connected with residences. One could use a property for residential purposes, then, by employing it for aims related to residences. Using a property to house short-term visitors who engage in largely the same activities as permanent residents—sleeping, eating, bathing, relaxing—would seem to satisfy this test. At the very least, it would not be unreasonable to interpret the covenants in this way.

Restrictions on property use must be clear and unambiguous. *Williams*, 219 S.W.3d at 324. We are unable to conclude, based on dictionary definitions alone, that the 1984 covenants clearly and expressly prohibit Pandharipande from leasing his property for short terms of two to twenty-eight days.

b.

Consideration of the covenants as a whole leads to the same conclusion. Section 1, subsection (a) of article XII says that "each *Lot* shall be used for residential and no other purposes." The covenants define the term "Lot" as "a portion . . . of the Properties . . . intended for any type of independent ownership for construction and *use as a residence* by a single family." As explained, dictionary definitions of "residential" and related words do not unambiguously exclude transient stays. So the fact that a "Lot" must be intended for "use as a residence by a single family" does not necessarily mean that it must be used as a permanent or long-term residence. Moreover, the definition of "Lot" is only that—a definition—and does not itself impose restrictions on use of the property.

Also consider section 1, subsection (j) of article XII. That provision says that "no gainful profession, occupation, trade *or other nonresidential use* shall be conducted in any Lot." Because the catchall phrase "other nonresidential use" follows an enumerated list, we apply the *ejusdem generis* canon to shed light on its meaning: "where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated." *Sallee v. Barrett*, 171 S.W.3d 822, 829 (Tenn. 2005) (quoting Black's Law Dictionary 517 (6th ed. 1990)); *see also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 199 (2012) (explaining that in a list like "dogs, cats, horses, cattle, and other animals," the *ejusdem generis* canon "implies the addition of *similar* after the word *other*").

A use that is "nonresidential" is one that is similar to conducting a "gainful profession, occupation, or trade" on the property. The terms "profession," "occupation," and "trade" all refer to something that one does habitually to earn a living. *See, e.g.*, *Profession*, 12 The Oxford English Dictionary 573 (2d ed. 1989) ("Any calling or occupation by which a person habitually earns his living."); *Occupation*, 10 The Oxford

English Dictionary 682 (2d ed. 1989) ("an employment, business, calling"); *Trade*, 18 The Oxford English Dictionary 348 (2d ed. 1989) ("The practice of some occupation, business, or profession habitually carried on, esp. when practised as a means of livelihood or gain"). The phrase "other nonresidential use" therefore is best understood to mean an activity regularly conducted on the property as a means of earning money. To be sure, using a property as a short-term rental ordinarily generates income for the owner. But the only activities that are regularly conducted on the property when it is being used as a short-term rental are things like eating and sleeping—activities in which a resident would engage that are not similar to performing a profession, occupation, or trade. As explained above, it is reasonable to consider those activities residential in nature. Accordingly, we do not read subsection (j) to exclude from the category of "residential" uses any use that generates income for the owner.

Pandharipande contends that section 4 of article XIII makes clear that short-term rentals are allowed. That section allows an owner to "delegate . . . his or her right of enjoyment to the Common Area and facilities to the members of his or her family, *tenants*, and social invitees, subject to such rules and regulations as the Board may establish." According to Pandharipande, because this provision refers to tenants, the covenants plainly contemplate that properties may be leased and do not limit the length of such leases. We agree with Pandharipande that this reference to tenants presupposes that at least *some* rentals are allowed. But the provision provides little clarity regarding the short-term rentals at issue here. Because it is not Pandharipande's burden to prove that the covenants clearly *allow* his short-term rentals, however, that lack of clarity does not doom his position. Instead, it reinforces our conclusion that the covenants are ambiguous and do not clearly *prohibit* his short-term rentals.

c.

Case law from other jurisdictions lends further support to our conclusion that the 1984 covenants do not clearly prohibit short-term rentals. Nearly all courts to have considered whether residential-purposes provisions in restrictive covenants prohibit short-term rentals have held they do not. Many of these courts have concluded that the term "residential" has no temporal element and refers only to "ordinary living purposes" such as relaxing, eating, sleeping, and bathing. *Slaby v. Mountain River Ests. Residential Ass'n,* 100 So. 3d 569, 579–80 (Ala. Civ. App. 2012); *accord Houston v. Wilson Mesa Ranch Homeowners Ass'n*, 360 P.3d 255, 259 (Colo. App. 2015) ("[W]e agree . . . that mere temporary or short-term use of a residence does not preclude that use from being 'residential.'"); *Santa Monica Beach Prop. Owners Ass'n v. Acord*, 219 So. 3d 111, 114 (Fla. Dist. Ct. App. 2017) ("[I]n determining whether short-term vacation rentals are residential uses of the property, the critical issue is whether the renters are using the property for ordinary living purposes such as sleeping and eating, not the duration of the rental."); *Lowden v. Bosley*, 909 A.2d 261, 267 (Md. 2006) ("The fact that the owner receives rental income is not, in any way, inconsistent with the property being *used* as a

residence . . . . 'Residential use,' without more, has been consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode."); *Lake Serene Prop. Owners Ass'n v. Esplin*, 334 So. 3d 1139, 1143 (Miss. 2022) ("The salient point is whether or not the property itself is being used in a manner that a place of abode would be used, not how long the property is being used as a place of abode."); *Ests. at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 300 P.3d 736, 742 (N.M. Ct. App. 2013) (declining to "attach any requirement of permanency or length of stay" (quoting *Mason Family Tr. v. DeVaney*, 207 P.3d 1176, 1178 (N.M. Ct. App. 2009))); *Wilson v. Maynard*, 961 N.W.2d 596, 604 (S.D. 2021) ("It is undisputed the Property is used to eat, sleep, and enjoy recreational activities. Therefore, short-term vacation rentals are a residential purpose consistent with the Covenants."); *Tarr v. Timberwood Park Owners Ass'n*, 556 S.W.3d 274, 291 (Tex. 2018) ("[S]o long as the occupants to whom [the owner] rents his single-family residence use the home for a 'residential purpose,' no matter how short-lived, neither their on-property use nor [the owner's] off-property use violates the restrictive covenants in the . . . deeds."); *Wilkinson v. Chiwawa Cmtys. Ass'n*, 327 P.3d 614, 620 (Wash. 2014) ("If a vacation renter uses a home 'for the purposes of eating, sleeping, and other residential purposes,' this use is residential, not commercial, no matter how short the rental duration." (quoting *Ross v. Bennett*, 203 P.3d 383, 388 (Wash. Ct. App. 2008))).[6]

Other courts have acknowledged that the term "residential" at least sometimes has a temporal connotation. *See, e.g.*, *Applegate v. Colucci*, 908 N.E.2d 1214, 1220 (Ind. Ct. App. 2009) ("[W]e recognize that . . . the definition of residential seems to contemplate a more permanent presence . . . ."); *Craig Tracts Homeowners' Ass'n v. Brown Drake, LLC*, 477 P.3d 283, 286 (Mont. 2020) ("[T]he common understanding of the word 'residential' often goes beyond the mere existence of an activity at a fleeting instant in time to imply a pattern of regularity or duration."); *Yogman v. Parrott*, 937 P.2d 1019, 1021 (Or. 1997) ("[A] 'residence' . . . can refer to a place where one intends to live for a long time."); *Garrett v. Sympson*, 523 S.W.3d 862, 867 (Tex. Ct. App. 2017) (concluding that "residential purposes" could reasonably be interpreted to require "an intention to be physically present in a home for more than a transient stay"); *Scott v. Walker*, 645 S.E.2d 278, 283 (Va. 2007) (noting possibility that "a residential purpose requires an intention to be physically present in a home for more than a transient stay").

But because the term "residential" can also refer to stays of a shorter duration, these courts ultimately found the covenants at issue ambiguous and held that they did not clearly prohibit short-term rentals. *See, e.g.*, *Applegate*, 908 N.E.2d at 1220 ("Although we

[6] Other courts have held that residential-purposes provisions do not prohibit short-term rentals based on different reasoning. *See, e.g.*, *Vera Lee Angel Revocable Tr. v. Jim O'Bryant and Kay O'Bryant Joint Revocable Tr.*, 537 S.W.3d 254, 258 (Ark. 2018) ("[T]here is absolutely no evidence, or even a suggestion, that renting the property in any way changed the essential character of the house as a 'residence.'"); *Russell v. Donaldson*, 731 S.E.2d 535, 538–39 (N.C. Ct. App. 2012) (relying on three cases from other jurisdictions involving "nearly identical" covenants and fact patterns).

recognize that . . . the definition of residential seems to contemplate a more permanent presence . . . it would have been easy to explicitly state this and make the covenant unambiguous. . . . [B]ecause the language in the covenants is ambiguous, [the owner's] short-term rental of its cabins does not run afoul of the covenants."); *Craig Tracts*, 477 P.3d at 287 ("We cannot say that the many jurisdictions . . . to have adopted [a non-temporal] interpretation of 'residential' were unreasonable. Since there are multiple reasonable interpretations of [residential], we join with those courts to have found such language ambiguous in this context."); *Yogman*, 937 P.2d at 1021 ("The ordinary meaning of 'residential' does not resolve the issue between the parties . . . because a 'residence' can refer simply to a building used as a dwelling place, or it can refer to a place where one intends to live for a long time. . . . [Therefore] this portion of the restrictive covenant is ambiguous."); *Garrett*, 523 S.W.3d at 867 ("'[R]esidence purposes' is ambiguous . . . both as to whether [it] requires an intention to be physically present in a home for more than a transient stay and as to whether the focus of the inquiry is on the owner's use of the Property or the renter's use. . . . Because we conclude that the Restriction . . . is ambiguous, we must strictly construe the ambiguity against Appellees and resolve all doubts in favor of the free-and-unrestricted use of the Property."); *Scott*, 645 S.E.2d at 283 (similar).

Only a few courts have held that a residential-purposes provision unambiguously prohibits short-term rentals. *See Hensley v. Gadd*, 560 S.W.3d 516, 524 (Ky. 2018) ("[O]ne-night, two-night, weekend, weekly inhabitants cannot be considered 'residents' within the commonly understood meaning of that word . . . ."); *Edwards v. Landry Chalet Rentals, LLC*, 246 So. 3d 754, 758 (La. Ct. App. 2018) ("The occupants are in the property on a transient basis only and are not utilizing the property for residential purposes."); *cf. O'Connor v. Resort Custom Builders, Inc.*, 591 N.W.2d 216, 221 (Mich. 1999) ("[R]esidential purposes [refers to] . . . a place where someone lives, and has a permanent presence . . . as a resident, whether they are physically there or not.").[7]

Decisions from other jurisdictions of course do not bind us. But the fact that so many other courts have held that similar residential-purposes provisions either unambiguously *allow* short-term rentals or do not unambiguously *prohibit* them further supports our conclusion that the 1984 covenants do not clearly bar Pandharipande's short-term rentals. *See Martin v. Powers*, 505 S.W.3d 512, 520 (Tenn. 2016) (noting, in concluding that certain language in an insurance policy was ambiguous, that other jurisdictions had held similar language ambiguous); *Memphis Hous. Auth.*, 38 S.W.3d at 512 (noting that there was a "split of authority" in other jurisdictions to support a conclusion that the language was ambiguous). If FSD were right that the 1984 covenants plainly prohibit short-term rentals, it is unlikely that so many other courts would have concluded otherwise.

[7] The question in *O'Connor* was whether a restrictive covenant prohibited timeshares. 591 N.W.2d at 221. *Eager v. Peasley* extended *O'Connor*'s reasoning to short-term rentals. 911 N.W.2d 470, 476–77 (Mich. Ct. App. 2017).

We now join those courts that have found residential-purposes provisions ambiguous with respect to whether short-term rentals are allowed. As we must, we resolve this ambiguity in favor of Pandharipande and hold that the 1984 covenants do not prohibit his short-term rentals.

3.

That does not end our inquiry: we also must consider the 2018 amendments. Pandharipande does not dispute that the language in the amendments requiring a minimum lease term of thirty days, standing alone, would prohibit his short-term rentals. But he offers two arguments why the amendments nevertheless do not bar him from continuing to lease his property. First, he contends that the grandfather clause in the amendments allows his rentals. Second, he maintains that Tennessee law prohibits amendments that place additional restrictions on property use.

Start with the grandfather clause. That clause provides in full:

> Any owner engaged in leasing or subleasing activities as of the date of this amendment shall be allowed to continue leasing or subleasing activities *until the expiration of the term of said lease or said lot is sold or conveyed to a third party.* No lease or sublease term extensions are permitted. In order to ascertain the expiration date of current leases, any owner who is leasing as of the date of this Third Amendment shall provide a copy of the lease to the [FSD] Board's secretary within two weeks of the date this Third Amendment is filed with the DeKalb County Register of Deeds' office.

Based on this language, Pandharipande contends that he is allowed to continue renting his property on a short-term basis until his property "is sold or conveyed to a third party," even if the leases that were in place at the time the amendments were executed and recorded have already expired.

We disagree with Pandharipande's reading of this clause. The phrase "is sold or conveyed to a third party" is part of a larger disjunctive phrase: an owner "shall be allowed to continue leasing or subleasing activities until the expiration of the term of said lease *or* said lot is sold or conveyed to a third party." Immediately following this phrase is the sentence, "No lease or sublease term extensions are permitted." This sentence, as well as the ones that follow it requiring the owner to provide copies of any current leases, make clear that the owner's ability to continue leasing or subleasing activities will end when *either* of the two alternatives separated by "or" occurs. It would make no sense to prohibit lease extensions or to require copies of current leases if the owner could, after the expiration of the initial leases, continue leasing the property until it is sold to another party. Pandharipande leases his property for terms of two to twenty-eight days. The term of any

lease in effect when the 2018 amendments were adopted has long since expired. The grandfather clause thus is no help to Pandharipande.

For his second argument, Pandharipande claims that Tennessee law prohibits amendments to restrictive covenants from imposing restrictions greater than those in the original covenants. Because the 1984 covenants do not prohibit short-term leases, he says, neither can the 2018 amendments.

Pandharipande misunderstands Tennessee law. Our precedent instructs that a party is free to purchase property subject to restrictive covenants that allow future amendments, and such amendments generally are permissible unless they are arbitrary and capricious. We have explained that parties to restrictive covenants may "strike their own bargains." *Hughes*, 387 S.W.3d at 475. Thus, "[w]hen a purchaser buys into" a community governed by a restrictive covenant that permits future amendments, "the purchaser buys not only subject to the express covenants in the declaration, but also subject to the amendment provisions of the declaration." *Id.* at 476.

When a homeowners' association or other similar entity amends the existing restrictive covenant, the question is not whether the amendment tightens or loosens existing restrictions, but whether the amendment is "arbitrary and capricious." *Id.* at 478; *see also id.* at 476 (declining to adopt the more stringent "reasonableness" standard embraced by the Court of Appeals and courts in other jurisdictions and observing that "because of the respect Tennessee law affords private contracting parties, we are reticent to inject the courts too deeply into the affairs of a majoritarian association that parties freely choose to enter").[8]

The authorities that Pandharipande cites to support his contrary position are unpersuasive. He relies principally on two unpublished decisions from our Court of Appeals: *Mendelson v. Bornblum*, No. W2004-02549-COA-R3-CV, 2005 WL 1606068 (Tenn. Ct. App. July 8, 2005), and *Conn v. Powell*, 1984 WL 588785 (Tenn. Ct. App. Nov. 5, 1984). In both cases, the Court of Appeals observed that "a provision that any of the restrictions imposed may be modified or amended does not authorize any new or additional restrictions to be imposed, but only authorizes existing restrictions to be made less harsh." *Mendelson*, 2005 WL 1606068, at *6; *Conn*, 1984 WL 588785, at *3.

The *Mendelson* and *Conn* cases, in turn, rely on a section of Corpus Juris Secundum, a treatise that is not binding on this Court. And the particular section of that treatise that Pandharipande cites is unpersuasive. That section, now found at 26A C.J.S. *Deeds* § 427, Westlaw (database updated Aug. 2023), does indeed say that provisions permitting the modification or amendment of a restrictive covenant allow only that existing restrictions be made "less harsh." But the only authority cited to support that assertion is a 1938

[8] Restrictive covenants also may be challenged on constitutional grounds. *See Hughes*, 387 S.W.3d at 478, 478 n.20.

decision by the Supreme Court of Missouri: *Van Deusen v. Ruth*, 125 S.W.2d 1 (Mo. 1938). *Van Deusen*, however, provides little support for the unequivocal rule in C.J.S., or for our Court of Appeals' assertion that amendments may only impose "less harsh" restrictions.

Van Deusen considered whether a restrictive covenant that permitted future amendments allowed for the imposition of greater restrictions than those found in the original covenant. 125 S.W.2d at 2. The covenant at issue stated that "[a]ll or any of the foregoing provisions or restrictions may be modified, amended, released or extinguished at any time after ten (10) years." *Id.* The court read this language to mean that the parties intended "to permit the existing restrictions to be alleviated, that is, made less harsh, or to be entirely extinguished." *Id.* Its conclusion rested on the particular language of the covenant and did not establish any general principle that amendments can *never* impose additional restrictions. Indeed, the Missouri Supreme Court recently observed that the reasoning in *Van Deusen* was "suspect" and the case should have "no persuasive—let alone binding—force . . . in cases using different language." *Trs. of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC*, 585 S.W.3d 269, 281–82 (Mo. 2019).

The language at issue here is quite different from that at issue in *Van Deusen*. The 1984 covenants provide that subsequent amendments "may . . . impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration." Here, in contrast to *Van Deusen*, the intent of the parties was to allow amendments that impose "additional restrictions and obligations." Pandharipande therefore cannot "be heard to complain when, as anticipated by the recorded declaration of covenants, the homeowners' association amends the declaration" in a manner that further restricts use of his property. *Hughes*, 387 S.W.3d at 476.

Amendments to restrictive covenants are subject to review under the arbitrary-and-capricious standard. "An arbitrary or capricious decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Id.* at 479–80 (citing *City of Memphis v. Civil Serv. Comm'n of Memphis*, 216 S.W.3d 311, 316 (Tenn. 2007)). Where, as here, members of a homeowners' association adopt an amendment, the amendment is presumed valid and the party arguing against the amendment's validity carries the burden of showing that the amendment was arbitrary and capricious. *Id.* at 478 ("For amendments adopted by the association's membership . . . 'we will presume that the restriction is valid and uphold it unless it can be shown that the restriction is arbitrary, against public policy or violates some fundamental constitutional right of the unit owners.'" (quoting *Apple II Condo. Ass'n v. Worth Bank & Tr. Co.*, 659 N.E.2d 93, 99 (Ill. App. Ct. 1995))).

Pandharipande argues that the amendments are arbitrary and capricious because they are impermissibly retroactive. But there is no retroactivity at issue here. Pandharipande purchased his property in 2015. The 2018 amendments were recorded

nearly three years later, and FSD did not attempt to restrict Pandharipande's leasing activity until after the amendments were recorded. FSD seeks only declaratory and injunctive relief and does not seek to impose liability on Pandharipande for past uses of his property. Because FSD is not attempting to apply the 2018 amendments to conduct that occurred before the amendments became effective, Pandharipande's argument regarding retroactivity fails. And because that was the only argument Pandharipande offered in support of his assertion that the 2018 amendments are arbitrary and capricious, he has failed to carry his burden. We therefore hold that the 2018 amendments prohibit Pandharipande's short-term rentals.

CONCLUSION

We hold that no genuine issues of material fact exist that preclude summary judgment. We further hold that Pandharipande is prohibited from using his property as a short-term rental. Although the 1984 covenants do not prohibit that use, the 2018 amendments to those covenants do. We therefore affirm the Court of Appeals' decision in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion. Costs of this appeal are taxed to Pandharipande, for which execution may issue, if necessary.

SARAH K. CAMPBELL, JUSTICE

STATE OF TENNESSEE §
§
COUNTY OF CLAIBORNE §

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LONE MOUNTAIN SHORES

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LONE MOUNTAIN SHORES is made this 17th day of September, 1998, by TENNESSEE LONE MT. SHORES CORP., a Tennessee Corporation (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in County of Claiborne, State of Tennessee containing approximately 206.443 acres, more or less; and

WHEREAS, Declarant intends to develop the property as a subdivision known as "LONE MOUNTAIN SHORES" (hereinafter referred to as the "Property"), which is more fully described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, additional property may be included in Lone Mountain Shores in the future and declarant wishes to reserve the right to subject other properties into Lone Mountain Shores by way of future amendments of this Declaration in accordance with the provisions contained herein; and

WHEREAS, Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property in Lone Mountain Shores, and to provide a flexible and reasonable procedure for the development of the Property.

NOW THEREFORE, Declarant hereby declares that the Property which is described in EXHIBIT "A" and any property hereafter made subject hereto as hereinafter provided shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall touch and concern and run with title to the Property. The Covenants and all provisions hereof shall be binding on all parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, successors, successors in title and assigns, and shall inure

ESTEP & ESTEP
ATTORNEYS AT LAW
P.O. Box 177
Tazewell, TN 37879-0177
(423) 626-3525

Amended Covenants Book 1150 page 4-27-2004

EXHIBIT B

to the benefit of each owner thereof.

ARTICLE I
IMPOSITION OF COVENANTS AND
STATEMENT OF PURPOSE

Section 1.01 **Imposition of Covenants.** Declarant hereby makes declares and establishes the following covenants, conditions, restrictions and easements (collectively referred to as the "Covenants") upon the "Property" which shall be held, sold and conveyed subject to the Covenants. The Covenants shall run with the land and shall be binding upon all persons or entities having any right, title or interest in all or any part of the Property, and the covenants shall inure to the benefit of each owner of the Property.

Section 1.02 **Statement of Purpose.** The Covenants are imposed for the benefit of all owners of the parcels of land located within the Property. These Covenants create specific rights and privileges which may be shared and enjoyed by all owners and occupants of any part of the Property.

Section 1.03 **Declarant's Intent.** The provisions of these Covenants, as amended from time to time, are intended to act as the land use controls applicable to the Property, and in the events of a conflict or difference between the provisions hereof and of the Claiborne County Zoning Ordinance, the terms of this Declaration, as amended, shall control and supersede such Zoning Ordinance. Each Owner, automatically upon the purchase of any portion of the Property, is deemed to waive all protections afforded to him, now or in the future, under the Claiborne County Zoning Ordinance to the extent such Zoning Ordinance is at variation with the provisions of this Declaration, as amended, or with the provisions of any of the other Lone Mountain Shores Documents, including but not limited to the Architectural Guidelines established by the Architectural Review Committee.

Section 1.04 **Areas subject to these Covenants:** Be it understood that these covenants shall apply only to the development of Lone Mountain Shores by Tennessee Lone Mt. Shores Corp. Phase One (1) of Lone Mountain Shores and prior conveyances of three (3) lots from Phase II, being Lot Nos. 30, 32 and 42 of Lone Mountain Shores Phase II were developed by prior owners and are therefore not subject to these covenants and restrictions.

ARTICLE II
DEFINITIONS

The following terms as used in these Covenants, are defined as follows:

Section 2.01 **"Architectural Review Committee"** or "ARC" shall mean and refer to the committee formed pursuant to Article VII below to maintain the quality and architectural harmony of improvements in Lone Mountain Shores.

Section 2.02 **"Assessments"** shall mean and refer to annual special, and default assessments levied pursuant to Article IV below to meet the estimated cash requirements of the Associations.

Section 2.03 **"Association"** shall mean and refer to the Lone Mountain Shores Owners Association, Inc., a non-profit corporation, or any successor of the Association by whatever name, charged with the duties and obligations set forth in these Covenants.

Section 2.04 **"Building"** shall mean and refer to any one or more Buildings constructed on a Lot or Tract.

Section 2.05 **"Covenants"** shall mean and refer to this Declaration of Covenants, conditions, restrictions, and easements for Lone

Mountain Shores, as and if amended.

Section 2.06 **"Declarant"** shall mean and refer to Tennessee Lone Mt. Shores Corp., a Tennessee Corporation and its successors and assigns.

Section 2.07 **"Lot"** shall mean and refer to a parcel of land designated as a lot on any Plat of Lone Mountain Shores.

Section 2.08 **"Maintenance Fund"** shall mean and refer to the fund created by Assessments and fees levied pursuant to Article IV below to provide the Association with the funds required to carry out its duties under these Covenants.

Section 2.09 **"Membership"** shall mean and refer to the rights and responsibilities of every Owner of any Lot in Lone Mountain Shores. Every Owner by virtue of being an owner and only as long as he or she is an Owner, shall retain their Membership in the Association. The Membership may not be separated from Ownership of any Lot. Regardless of the number of individuals holding legal title to a Lot, no more than one Membership shall be allowed per Lot owned. However, all individuals owning such Lot shall be entitled to the right of Membership and the use and enjoyment appurtenant to such ownership.

Section 2.10 **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, but shall not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such persons or entity has acquired fee simple title pursuant to foreclose or other proceedings.

Section 2.11 **"Plat"** shall mean and refer to any plat (or asbuilt survey) depicting the Property filed in the Registrar's Office for Claiborne County, Tennessee, as such plat may be amended from portions of the Property from time to time.

Section 2.12 **"Supplemental Covenants"** shall mean and refer to additional or further restrictive covenants imposed on a portion or portions of the Property from time to time.

Section 2.13 **"Lone Mountain Shores"** shall mean and refer to the planned community created by these Covenants, consisting of the Property and all of the Improvements located on the Property

Section 2.14 **"Common Area"** shall mean all real property (including the improvements thereto) owned by the Home Owners Association by deed of Declarant for the common use and enjoyment of the Owners. The Common Area or Areas, as exists by plat, shall be conveyed to the Association no later than when seventy-five (75%) percent of the lots in the Subdivision are sold.

ARTICLE III
THE ASSOCIATION

Section 3.01 **Developer as The Association.** Until such time as seventy-five (75%) percent of the lots in Lone Mountain Shores are deeded to individual lot purchasers, and the Association is operative, the Declarant shall act and have the authority to act as the Homeowners Association and have such rights and such obligations as are created herein.

Section 3.02 Every owner of a lot shall 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 3.03 **Board of Directors.** The Association shall elect at its first annual meeting a Board of Directors which shall govern the association. The Board of Directors shall consist of five (5) members, all of whom must be property owners in the Lone Mountain Shores Development and a member in good standing with the associa-

tion. The Board of Directors shall consist of a President, Vice-President, Secretary and Treasurer and a member who shall also serve on the Architectural Review Committee and serve as a Liaison between the Board of Directors of the Association and the Architectural Review Committee. The Board of Directors shall have the responsibility of over seeing all functions of the association as stated in these covenants and restrictions and shall be responsible for collecting all association assessments and shall develop and amend association by-laws consistent with these covenants and restrictions. Furthermore, the Board shall be responsible for appointing and over seeing the members of the Architectural Review Committee.

Section 3.04 **Association Records.** Upon written request to the Association by any Owner of a lot or any, Mortgagee, or guarantor of a first mortgage on any Lot, or the insurer of improvements on any Lot the Association shall make available for inspection current copies of the Association's documents, books, records, and financial statements. The Association shall also make available to the prospective purchasers current copies of the Association's documents, including rules governing the use of lots and the most recent annual financial statement, if such is prepared.

"Available" as used herein shall mean available for inspection upon written request, during normal business hours.

ARTICLE IV
COVENANT FOR COMMON AREAS AND MAINTENANCE ASSESSMENTS

Section 4.01 **Declaration of Declarant's Intent for Common Areas.** It is the Declarant's intent to create an owner's common area or areas for the use and enjoyment of all existing lots and future lots which may include but are not limited to parking areas, marina slips, parks, and land areas.

Section 4.02 **Road.** It is the intent of the Declarant to convey all public roads to the Claiborne County Highway Department and said entity will take over the ownership and maintenance of all public roads throughout the development. Public roads shall be defined as all roads which are not noted on any of the recorded plats as a private road.

Section 4.03 **Owner's Easement of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the Common Area or Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

The right of the Home Owner's Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his/her lot remains unpaid;

The right of the Home Owner's 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 Board of Directors of the Home Owner's Association.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by an authorized officer of the Home Owner's Association has been recorded in the Registrar's Office of Claiborne County, Tennessee.

Section 4.04 **Delegation of Use.** Any owner may delegate, in accordance with the By-Laws, his/her right of enjoyment to the Common Area and facilities to the members of his/her family or the owner's accompanied guests.

Section 4.05 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Lone Mountain Shores Documents, or any expense of the Association which is the obligation of an

Owner or which is incurred by the Association or the Declarant on behalf of the Owner Pursuant to the Lone Mountain Shores Documents, shall be a default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in these Covenants. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date, provided that failure to give such thirty (30) days prior notice shall not constitute a waiver thereof, but shall only postpone the due date for payment thereof until the expiration of said thirty (30) day period.

Section 4.06 **Effect of Nonpayment of Assessment; Lien Remedies of Association.** Any Assessment, whether pertaining to annual, special or default Assessments, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an Assessment becomes delinquent, the Association, in its sole discretion, may take any or all of the following action:

Assess a late charge of at least fifteen (15%) percent per delinquency;

Assess an interest charge from the date of delinquency at the rate per annum of two points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board;

Suspend the voting rights of the Owner during any period of delinquency;

Suspend all privileges to recreational facilities situated upon common areas;

Accelerate any unpaid annual Assessments for the fiscal year such that they shall be due and payable at once;

Bring an action at law against any Owner personally obligated to pay the delinquent installments; or

File a statement of lien with respect of the Lot, and foreclose as set forth in more detail below.

Section 4.07 **Annual Assessments.** The Declarant shall not be required to pay any association dues or annual assessments on any of the unsold lots. The purpose of the assessments by the Declarant is to provide funding for the Declarant or the Association to maintain common areas, entrances and any other obligations as provided in Lone Mountain Shores Documents.

(a) The initial maximum annual assessment for each residential lot shall be Three Hundred ($300.00) Dollars per year. Each owner of each individual lot shall not be required to pay the annual assessment until January 1, of the year immediately following the execution of the deed of conveyance by the Declarant to the owner of each lot, until the Association is formed.

(b) From and after January 1, of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year by the Board of Directors of the Association, or the Declarant if the Association is not operable by not more than ten (10%) percent (but no more than twenty-five (25%) percent over a five (5) year period) above the maximum assessment for the previous year without a majority vote of the Home Owner's Association.

(c) The Board of Directors of the Home Owner's Association may fix the annual assessment at an amount not to exceed the maximum.

ARTICLE V
INSURANCE

Section 5.01 **Casualty Insurance on Insurable Common Areas.** The Association shall keep all insurable improvements and fixtures of the Common Area or Areas insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazard and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair and replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the common assessments made by the Association

Section 5.02 **Liability Insurance.** The Association shall maintain liability insurance as to all common areas and property, acts or omissions of its officers or governing body, or otherwise as it deems necessary designated as a common expense in the By-Laws by the Owners Association.

Section 5.03 **Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

Section 5.04 **Annual Review of Policies.** All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

ARTICLE VI
LAND USE AND BUILDING TYPE

WHEREAS, it is the desire of the Declarant to maintain fair and adequate property values in said development and to prevent nuisances and to maintain an attractive area for residential purposes thus the following covenants are adopted.

Section 6.01 **Minimum residential size restrictions for Lots 24-63 of Lone Mountain Shores, Phase Two (2).** Each dwelling shall contain a minimum of 1,800 square feet of heated living space, excluding garages, porches, overhangs, etc. Dwellings of two (2) stories above ground level shall contain in the heated living area thereof (excluding garages, porches, overhangs, etc.) not less than 1,800 total square feet, inclusive of both stories, with the main first floor to contain not less than 1,200 square feet.

Section 6.02 **Minimum residential size restrictions for all interior lots which are not lots 24-63 of Lone Mountain Shores, Phase Two (2).** Each dwelling shall contain a minimum of 1,200 square feet of heated living space, excluding garages, porches, overhangs, etc. Dwellings of two (2) stories above ground level shall contain in the heated living area thereof (excluding garages, porches, overhangs, etc.) not less than 1,200 total square feet, inclusive of both stories, with the main first floor to contain not less than 800 square feet.

Section 6.03 **Residential Use Only.** The lots shall be used for

residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any dwelling for private residential purposes or to prevent an individual lot owner from conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the dwelling's floor area or employees not more than two (2) persons.

Section 6.04 **Types of Dwellings Prohibited.** Modular homes, mobile homes, manufactured homes, housing motor coaches, recreational vehicles, house trailers, trailers and basements are prohibited for permanent residential or occupancy purposes. However, during the construction phase of the residence upon the real estate, the owner may place a temporary self contained recreational vehicle upon the premises and reside in said recreational vehicle for a maximum period of one (1) year during the construction phase. Furthermore, this covenant is not meant to exclude prefabricated home sections which are constructed at other sites and transported to the owner's lot for attachment to the dwelling.

Section 6.05 **Review By Architectural Committee.** All proposed plans of dwellings to be erected in said subdivision shall be submitted to Architectural Committee to be reviewed and approved by said Committee in accordance with Article VII. Red Creek Ranch, Inc. shall constitute the Architectural Committee until such time as there is a transfer pursuant to Article VII.

Section 6.06 **Exposed Block.** No exposed concrete foundation or block shall be permitted above ground level in construction of a dwelling, building, wall or fence.

Section 6.07 **Drainage.** No construction on any lot shall be done in such a way as to materially increase the drainage of water upon any adjoining lot.

Section 6.08 **Television, Radio and Satellite Antenna.** All television or radio antennas must be placed in the attic of a residence, unless an alternative location is approved by the Architectural Committee. Television or radio towers are prohibited. Satellite dishes of 24 inches or less are allowed and must be hidden from view of the roads and the lake front. All satellite dishes above 24 inches are prohibited.

Section 6.09 **Rental.** As stated in Section 6.04 residences may be rented and all tenants are awarded owner's privileges and are required to abide by all covenants and restrictions.

Section 6.10 **Construction Completion.** All exterior work on improvements shall be completed and an occupancy permit obtained no later than twelve (12) months from the commencement of the construction of the improvement unless specifically waived by the Architectural Review Committee.

Section 6.11 **Setbacks and Building Location.** No building or any part thereof, shall be erected on any lot nearer than thirty (30) feet to the road side lot line or nearer than thirty (30) feet to any side street line. No building or any part thereof shall be located nearer than fifteen (15) feet to any interior lot line or nearer than fifteen (15) feet to any rear lot line, except if the rear lot line is the 1044 TVA Contour Line, then the rear set back line shall be five (5) feet from the 1044 TVA Contour Line. It is noted that the plat of Phase Two (2) of Lone Mountain Shores specifically states that all rear lot lines shall be fifteen (15) feet, unless otherwise noted. Therefore, it is the Declarant's intent to note that the rear lot lines are changed as stated herein. Furthermore, on all lots which are contiguous to the lake, no building or other improvement may be constructed below elevation 1044 unless otherwise permitted by the Tennessee Valley Authority (TVA).

Section 6.12 **Easements.** Declarant reserves unto itself, its successors, and assigns, the right to erect and maintain all utility

and electric lines, and grant easements for utility purposes, with the right of access and ingress for the purpose of installing and maintaining such easements and structures and utility lines, including but not limited to water, sewer, gas and cable situate thereon; on, over, and under a strip of land ten (10) feet wide along the side and rear lot lines of each lot and twenty (20) feet wide along the front lot lines of each lot. Unless the rear lot line in the 1044 TVA contour line and in that event said easement shall be five (5) feet from the 1044 TVA contour line. No structures, plantings or other materials shall be placed or permitted to remain, or activities undertaken thereon, which may damage or interfere with the usage of said easements for utility purposes. The areas on any lot affected by such easements shall, except for improvements situated thereon, by public authority or utility company, be maintained by the owner of the lot.

Section 6.13 **Storage of Boats and/or Boat Trailers.** Each lot owner and/or their assigns or agents may store or park one (1) boat and/or boat trailer upon the lot for not more than fourteen (14) consecutive days in open view to the public, and shall not be for more than twenty-eight (28) days during the entire calendar year. Storage over and above said time frame must be in a facility that is completely enclosed. Furthermore, each lot owner may store more than one (1) boat and/or boat trailer upon their property, but all such boats and/or boat trailers must be stored inside a complete enclosure.

Section 6.14 **Garages.** A private garage may be built separately or attached to and made a part of the dwelling, but must be made of the same materials or conform to construction with the dwelling, and must be built at the same time or after construction of the dwelling and must be approved by the ARC.

Section 6.15 **Outbuildings.** Any separate storage building, workshop or other incidental outbuilding may be allowed provided that the architectural style, quality of construction and building material are consistent with the caliber and appearance of the main residence structure. All out buildings must be approved by the Architectural Review Committee prior to construction, and must be built at the same time or after construction of the dwelling.

Section 6.16 **Construction Materials.** The exterior walls of any structure or dwelling on any such lot shall be of materials consisting of wood, log, stone, stucco, brick or vinyl and must be of natural colors. White vinyl is prohibited as well as any type or color of aluminum siding, except as used for trim, gutters, shutters, soffits and roofs.

Section 6.17 **Foundations.** All foundations shall be fully enclosed at the exterior walls; no pier-type foundations or unenclosed foundations shall be permitted.

Section 6.18 **Above Ground Swimming Pools.** No above ground swimming pools shall be permitted on any lot.

Section 6.19 **Nuisances.** No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 6.20 **Maintenance.** Each residence shall be maintained in a neat and sanitary condition. Each owner shall promptly remove or otherwise dispose of any accumulation of trash, garbage or rubbish. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Junked, inoperative or unlicensed vehicles shall not be stored or kept on any lot.

Section 6.21 **Pets, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be kept, used or bred on any lot either for commercial or private purposes, except the usual domestic pet, provided that the same is not allowed to run at large and does not

otherwise constitute a nuisance to the neighborhood or a health or safety hazard. Dogs will be allowed, but no more than two (2) shall be kept at a residence and these shall be kept for the pleasure and use of the occupants only and not for any commercial breeding uses or purposes. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of a lot unless approved by the Architectural Committee. Pets shall be under leash or under control when walked or exercised. The Board of Directors of the Home Owner's Association shall conclusively determine, in its sole and absolute discretion, whether for the purposes of this Section, a particular pet is a nuisance, and shall have the right to require the owner of a particular pet to remove such pet from the lot if such pet is found to be a nuisance or be in violation of these restrictions. Declarant intends to preserve the natural environment wherever possible and animal control must be strictly observed.

Section 6.22 **Signs.** No signs of any kind shall be displayed to the public view on any lot, except one (1) sign of not more than five hundred (500) square inches identifying the owners of the property. Also, signs of not more than five (5) square feet may be used by a builder to advertise and identify the builder during the construction phase of the dwelling upon the lot for a period of not more than one (1) year from the commencement of construction. All said signs must be properly set on a post and not placed on trees, or structures. Notwithstanding the foregoing, Declarant specifically reserves the right to itself, its successors, nominees and assigns to place and maintain signs in connection with identification or information anywhere on the property, including, but not limited to, "For Sale" signs, display signs, directional signs, and identification signs of common areas. Also, the size of said signs to be placed by the Declarant or its successors, nominees or assigns may be larger than stated herein.

Section 6.23 **Sewage Disposal.** No individual sewage disposal system shall be permitted on any lot unless approved by the Tennessee Department of Health.

Section 6.24 **Fences.** All fencing and walls must be attractive and consistent with color and materials used on the main dwelling and must be approved by the Architectural Review Committee. Chain link fences are not permitted.

Section 6.25 **Further Subdivision of Lots.** No originally platted lots may be subdivided or divided in any manner.

Section 6.26 **Combining Platted Lots.** Combining two (2) or more adjacent lots owned by a common owner or owners to create one (1) lot will be permitted. In the event of such occurrence, all set back lines as described in Sections 6.01 and 6.02 will apply to the newly formed lot and all assessments will apply to the combined lots as one (1) lot.

Section 6.27 **Development Tools.** Nothing contained in these covenants and restrictions shall prevent the Declarant or any person designated by the Declarant from erecting or maintaining such commercial and display signs, such temporary dwellings, model houses or other tools as are deemed necessary for completion and sale of the development.

Section 6.28 **Mail Boxes.** In order to promote uniformity and to make a more desirable neighborhood, all mail boxes must be approved by the Architectural Committee and located in areas designated by the developer.

ARTICLE VII
ARCHITECTURAL REVIEW COMMITTEE

Section 7.01 **Membership.** There is hereby established an ARC which shall be responsible for the establishment and administration of the Architectural Review Guidelines to carry out the purpose

and intent of these Covenants. The ARC shall be composed of five (5) persons of which a minimum of three (3) must be Members who are in good standing with the Association. All of the Members of the ARC shall be appointed, removed and replaced by the Board. The ARC is the only standing committee of the Board that has perpetual existence. One Director shall serve as a member of the ARC and as a liaison to the Board. Until such time as the ARC is functional, the Declarant and/or its assigns shall act as the ARC, having such duties, rights and obligations created herein.

Section 7.02 **Duties of ARC.**

7.02.1 The ARC shall exercise its best judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality, Covenants as outlined in the Architectural Guidelines.

7.02.2 No improvements on the Property shall be erected, placed or altered on any Lot, Building Site nor shall any construction be commenced until plans for such improvements shall have been approved by the ARC; provided, however, that improvements and alterations which are completely within a building may be undertaken without such approval.

7.02.3 The actions of the ARC in the exercise of it's decision including approval of plans, approval of plans with conditions, or disapproval of plans, or with respect to any other matter before it, shall be conclusive and binding on all interested parties subject to appeal as approved in the By-Laws.

Section 7.03 **Organization and Operations of the ARC.**

7.03.1 Term. The term of office of each Member of the ARC, shall be two (2) years except the initial terms of two (2) Members which will be for one (1) year each to create an alternating board, commencing on January 1 of each year and continuing until his or her successor shall have been appointed. Should an ARC Member die, retire, or become unable to serve or in the event of a temporary absence of an ARC Member, a successor may be appointed by the Board.

7.03.2 Chairman. The chairman of the ARC shall be appointed for a two (2) year term by a majority vote of said Board.

7.03.3 Operations. The chairman shall preside over and conduct all meetings and shall provide for reasonable notice to each Member of the ARC prior to any meeting. The notice shall set forth the time and place of the meeting and notice may be waived by any member. In the absence of a Chairman, the Vice Chairman shall serve as temporary successor.

7.03.4 Voting. The affirmative vote of a majority of the Members of the ARC shall govern its actions and be that act of the ARC. A qurom shall consist of a majority of the Members.

7.03.5 Expert Consultation. The ARC may avail itself of technical and professional advice and consultants as it deems appropriate.

Section 7.04 **Expenses.** Except as provided below, all expenses of the ARC shall be paid by the Association. The ARC shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the ARC from time to time, and such fees shall be collected by the ARC and remitted to the Association to help defray the expenses of the ARC's or declarant's operations. Until December 31, 2000, the filing fee shall not exceed three hundred ($300.00) DOLLARS per dwelling unit but may be subject to reasonable increase after that date, as determined by the Board on recommendation from the ARC.

Section 7.05 **Architectural Guidelines and Rules.** The ARC shall adopt, establish and publish from time to time Architectural Guidelines which shall be a Lone Mountain Shores Document. The

Architectural Guidelines are subject to the approval of the Board and shall not be inconsistent with these Covenants, but shall more specifically define and describe the design standards for Lone Mountain Shores and the various uses within the Lone Mountain Shores. The Architectural Guidelines may be modified or amended from time to time by the ARC. Further, the ARC, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may not permit compliance with different or alternative requirements. Compliance with the Lone Mountain Shores design review process is not a substitute for compliance with the Claiborne County building, zoning and subdivisions regulations, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction.

Section 7.06 **Procedures.** As part of the Architectural Guidelines, the ARC shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the By-Laws.

ARTICLE VIII
MAINTENANCE

Section 8.01 **Association's Responsibility.** The Association shall maintain and keep in good repair those areas designated as privately maintained roads, road signs, parks, marinas, boat ramps and entrance area into Lone Mountain Shores, such maintenance to be funded as provided below. This maintenance shall include repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated in roadway and entrance area.

Section 8.02 **Owner's Responsibility.** Except as provided otherwise in the Lone Mountain Shores Documents, applicable Project Documents or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain said Lot in accordance with community wide standards of Lone Mountain Shores. The Association shall in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of the maintenance being provided by such Owner does not satisfy such standards. Before assuming the maintenance responsibilities, the Board shall notify the Owner in writing of its intention to do so and if such Owner has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest at five (5%) percent per annum above the prime rate charged by the Association's bank, or such other rate set by the Board, from the date of expenditure. Such charges shall be a default Assessment and a lien on the Lot or the Owner as provided in Section 4.02 above.

ARTICLE IX
DAMAGE OR DESTRUCTION

Section 9.01 **Damage or Destruction Affecting Lots.** In the event of damage or destruction to the improvements located on any Lot, the Owner thereof shall promptly repair and restore the damaged improvements to their condition prior to such damage or destruction If such repair or restoration is not commenced within one hundred twenty days (120) from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may after notice and hearing as provided in the By-Laws, impose a fine of not less than ONE HUNDRED ($100.00) DOLLARS per day on the owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's con-

trol. Such a fine shall be a default Assessment and a lien against the Lot as provided in Section 4.02 above.

ARTICLE X
ENFORCEMENT OF COVENANTS

Section 10.01 **Violations Deemed a Nuisance.** Every violation of these Covenants or any other of the Lone Mountain Shores Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of these Covenants shall be available.

Section 10.02 **Compliance.** Each Owner or other occupant of any part of the Property shall comply with the provisions of the Lone Mountain Shores Documents as the same may be amended from time to time.

Section 10.03 **Failure to Comply.** Failure to comply with the Lone Mountain Shores Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing shall be given to the delinquent party prior to commencing any legal proceedings.

Section 10.04 **Remedies.** In addition to the remedied set forth above, any violation of the Lone Mountain Shores Documents shall give the Board, the Manager or a designated representative of the Declarant, on behalf of the owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace at the expense of the offending Owner, any structure, thing or condition that may exist therein contrary to the interest and meaning of the Lone Mountain Shores Documents. If the offense occurs on any easement, walkways, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

Section 10.05 **No Waiver.** The failure of the Board, Board of Directors, Declarant, the Manager, the ARC or any aggrieved Owner to enforce the Lone Mountain Shores Documents shall not be deemed a waiver of the rights to do so for any subsequent violations or of the right to enforce any other part of the Lone Mountain Shores Documents at any future time.

ARTICLE XI
DURATION OF THESE COVENANTS AND AMENDMENT

Section 11.01 **Term.** The covenants and restoration of these Covenants shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Covenant, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date these Covenants are recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions in whole or in part or to terminate the same.

Section 11.02 **Amendment.**

(a) Subject to the requirements of (b) below, these Covenants, the Articles, or By-Laws may be materially amended only by a unanimous vote of the Board and the affirmative vote of fifty-five (55%) percent of the Owners voting by absentee ballot. Any amendment must be recorded in the Registrar's Office of Claiborne County, Tennessee.

(b) Pursuant to Sections 3.01 and 3.03 the declarant, acting as

the Homeowners Association, shall be the sole entity or person that may amend these Covenants, Articles or By-Laws until 75% of the Lots in Lone Mountain Shores are deeded.

Section 11.03 **Effective on Recording.** Any modification or amendment shall be immediately effective upon recording in the Registrar's Office for Claiborne County, Tennessee a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Association stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII
PRINCIPLES OF INTERPRETATION

Section 12.01 **Severability.** These Covenants, to the extent possible shall be construed or reformed to give validity to all of it provisions. Any provisions of these Covenants found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceable without invalidating any other part hereof.

Section 12.02 **Construction.** In interpreting words in these Covenants, unless the context shall otherwise provide or require the singular shall include the plural, the plural shall include the singular and the use of gender shall include all genders.

Section 12.03 **Headings.** The headings are included for purposes of convenient references, and they shall not affect the meaning or interpretation of these Covenants.

Section 12.04 **Registration of Mailing Address.** Each Member shall register his mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered or sent by mail, postage prepaid, addressed in the name of the member at such registered mailing address.

Section 12.05 **Notice.** All notices and requests required shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery or three days after posting, when sent by certified mail, return receipt requested, to the address of such a Member on file in the record of the Association at the time of the such mailing. Notice to the Board, the Associatio the ARC or the Manager shall be considered delivered and effective upon personal delivery or three (3) days after postage, when sent by certified mail, returned receipt requested, to the Association, the Board, the ARC or the Manager at such address shall be established by the Association from time to time by notice to Members. General notices to all Members or any classification thereof need not be certified, but may be sent by regular first class mail.

Section 12.06 **Waiver.** No failure on the part of the Association, the Board, or the ARC to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the Chairman or Vice Chairman of the Board on behalf of the Association, or by the Chairman of the ARC on behalf of the ARC.

Section 12.07 **Limitation of Liability and Indemnification.** The Association shall indemnify every Board Member or Committee Member or Architectural Review Committee Member against any and all expenses, including trial and appellate attorney's fees and costs reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceedings (including the settlement of any suit or proceedings if approved by the Board to which he or she may be party by reason of being or having been a board member or committee member. The board members and commit-

tee members shall not be liable for any mistake of judgment, negligent, or otherwise, except for their own individual willful malfeasance, misconduct or bad faith. The board members and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent of that such board member and committee member may also be members of the Association), and the Association shall indemnify and forever hold each such board member or committee member free of harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any board member or committee member may be entitled.

Section 12.08 **Conflict Between Documents.** In case of conflict between these Covenants and the Articles of the By-Laws, to be created by the Association, these covenants shall control. In case of conflict between these Covenants and the Architectural Guidelines, the Architectural Guidelines shall control.

IN WITNESS WHEREOF, the said Tennessee Lone Mt. Shores Corp., hereinbefore known as Declarant, has hereunto caused these presents to be executed on this the 17th day of September, 1998.

TENNESSEE LONE MT. SHORES CORP.

BY: M. J. T. Emmons
Vice President

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, as aforesaid, Vice President, with whom I am personally acquainted, who proved to me by satisfactory evidence of identity, and who, upon oath, acknowledged himself/herself to be the Vice President for Tennessee Lone Mt. Shores Corp., the within named bargainor, and that as such, he/she has been authorized to execute the foregoing instrument on behalf of said corporation for the purposes therein contained, by signing the name of the corporation by himself/herself as such Vice President.

WITNESS my hand and official seal at office this the 17th day of September, 1998.

Roberts M. Estes
Notary Public

My commission expires: Sept. 19, 2001

EXHIBIT "A"

DESCRIPTION OF PROPERTY

SITUATED in District No. Three (3) of Claiborne County, Tennessee and further described as follows:

BEING a portion of Tract No. 7031, as shown in Quitclaim Deed dated July 24, 1995, from Norris Lake Development, Inc. to Grantor (Lone Mountain Development, LLC), recorded in W/D Book 231, Pages 213-217, Register of Deed's Office, Claiborne County, Tennessee and further described as follows:

BEING a parcel of land, containing 206.443 acres by Survey of William L. Parsons, RLS #1172, dated 9-13-96 and recorded in Plat Book 3, Page 70, Register's Office, Tazewell, Tennessee.

THERE IS ALSO GRANTED herewith the right of ingress and egress from the waters of Norris Lake over and upon the adjoining land lying between the 1044 contour elevation and the waters of the Lake.

Being Parcel 1.01 on Tax Map 133. (Portions herein Excepted)

THERE IS EXCEPTED from the foregoing parcel the following three tracts:
1. A Lot known as Lot 6 on an unrecorded survey of Norris Landings Unit I as prepared by William L. Parsons, Tennessee RLS No. 1172, dated March 31, 1997; and also known as Lot 30 on an unrecorded survey labeled Lone Mountain Shores Phase II, dated 5/14/98 and revised 5/27/98; and described as follows: BEGINNING at a point on the south side of Rockfish Point, then S. 84° 06' 52" E. 210.54 feet; S. 11° 03' 04" W. 46.73 feet; S. 8° 35' 30" W. 72.29 feet; S. 8° 41' 55" W. 98.61 feet; S. 27° 29' 04" W. 40.17 feet; N. 62° 17' 58" W. 24.26 feet; N. 59° 16' 34" W. 31.52 feet; N. 35° 40' 41" W. 269.86 feet; and N. 62° 54' 13" E. 55.88 feet to the point of beginning, and being the property which Lone Mountain Shores, LLC, conveyed to George L. Evans, III, by warranty deed, dated May 21, 1998, recorded in W/D Book 248, Pages 692-698, Register's Office of Claiborne County, Tennessee.

2. A Lot known as Lot No. 32 on an unrecorded survey labeled Lone Mountain Shores Phase II, dated 5/14/98, revised 5/27/98; and described as follows: BEGINNING at a point on the south side of Rockfish Point, then S. 46° 27' 30" E. 76.75 feet; S. 29° 50' 15" W. 25.61 feet; S. 20° 27' 52" W. 85.50 feet; S. 11° 18' 12" W. 54.74 feet; S. 31° 35' 54" E. 54.61 feet; N. 75° 06' 21" W. 168.60 feet; N. 27° 41' 48" E. 27.67 feet; N. 27° 41' 48" E. 12.82 feet; N. 28° 59' 35" E. 74.82 feet; N. 24° 52' 46" E. 67.76 feet; N. 30° 06' 19" E. 39.65 feet; N. 62° 19' 19" E. 32.26 feet to the point of beginning, containing 0.555 acres.

3. A Lot known as Lot 42 on an unrecorded survey labeled Lone Mountain Shores Phase II; and described as follows: BEGINNING at a point on the south side of Mallard Road, then S. 14° 21' 46" E. 98.87 feet; S. 2° 19' 19" E. 294.75 feet; S. 64° 52' 21" W. 37.03 feet; S. 46° 31' 14" W. 35.80 feet; S. 48° 46' 43" W. 43.36 feet; S. 79° 02' 07" W. 45.45 feet; N. 43° 49' 39" W. 38.64 feet; N. 84° 25' 14" W. 46.63 feet; N. 6° 04' 41" W. 31.94 feet; N. 8° 01' 54" E. 21.61 feet; N. 27° 40' 05" E. 44.52 feet; N. 19° 40' 05" E. 22.53 feet; N. 23° 31' 14" W. 237.07 feet; N. 65° 34' 33" E. 44.34 feet; N. 55° 54' 54" E. 50.25 feet; N. 51° 49' 19" E. 29.10 feet; N. 56° 06' 47" E. 20.53 feet; N. 73° 15' 50" E. 20.88 feet; N. 83° 09' 38" E. 57.19 feet; N. 69° 30' 04" E. 44.26 feet to the point of beginning, containing 2.014 acres.

The property herein conveyed is a portion of the property which Lone Mountain Shores, LLC acquired by warranty deed, dated October 7, 1996, from Lone Mountain Development, LLC, recorded in Warranty Deed Book 238, Pages 547-550, in the Register's Office of Claiborne County, Tennessee.

Subject to all covenants, rights of way, easements, reservations, restrictions, conditions, exceptions, and limitations of record, including rights of ingress and egress for the maintenance of cemeteries, and especially as set out in Deed Book 89, Page 400, in the Register's Office of Claiborne County, Tennessee.

Subject to the Grant of the Transmission Line Easement to the United States of America by deed dated September 30, 1970, recorded in Misc. Book 22, Page 168, in the Claiborne County Register's Office.

STATE OF TENNESSEE, CLAIBORNE COUNTY
THE FOREGOING INSTRUMENT AND CERTIFICATE WERE
NOTED. NOTE BOOK 17 PAGE 239 AT 3:50
O'CLOCK P M THUS DAY 17 MONTH SEPT
1998 AND RECORDED IN misc BOOK 54
SERIES ____ PAGE 274-289 ND
WITNESS MY HAND
REGISTER Kim Reed

STATE OF TENNESSEE	§	AMENDED AND RESTATED
	§	DECLARATION OF COVENANTS,
	§	CONDITIONS, RESTRICTIONS, AND
COUNTY OF CLAIBORNE	§	EASEMENTS FOR LONE MOUNTAIN SHORES

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR LONE MOUNTAIN SHORES is made this 12th day of August, 2013 by LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC., a Tennessee nonprofit corporation (hereinafter referred to as the "**Association**").

WHEREAS, "Lone Mountain Shores" (hereinafter referred to as the "**Property**" or "**Lone Mountain Shores**"), which is more fully described in Exhibits attached hereto and incorporated herein by this reference, has been developed through phased additions as a residential subdivision in County of Claiborne, State of Tennessee containing approximately 2303.078 acres, more or less, and

WHEREAS, prior Declarations of record have imposed upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property in Lone Mountain Shores to provide a flexible and reasonable procedure for the development and the maintenance of use and architectural guidelines for the Property;

NOW THEREFORE, Lone Mountain Shores Owners Association, as "Declarant", having been assigned all rights of Tennessee Lone Mountain Shores Corp., the developer of "Lone Mountain Shores", hereby declares and restates that the Property which is described in EXHIBIT "A" and any property previously made subject to these Covenants as evidenced by duly filed and recorded Amendments to original Declarations of Covenants, Restrictions and Easements for Lone Mountain Shores, shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall touch and concern and run with title to the Property. The Covenants and all provisions hereof shall be binding on all parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, successors, successors; in title and assigns, and shall inure to the benefit of each owner thereof.

BK/PG: 1388/649-684
13048054

36 PGS : AL - RESTRICTIVE COVENANTS	
LINDA BATCH: 43724	08/12/2013 - 11:13 AM
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	180.00
ARCHIVE FEE	0.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	182.00

STATE OF TENNESSEE, CLAIBORNE COUNTY
KIMBERLY H. REECE

ARTICLE I
IMPOSITION OF COVENANTS AND STATEMENT OF PURPOSE

Section 1.01 **Imposition of Covenants**. Declarant hereby amends and restates the following covenants, conditions, restrictions and easements (collectively referred to as the "**Covenants**") upon the Property which shall be held, sold and conveyed subject to the Covenants. The Covenants shall run with the land and shall be binding upon all persons or entities having any right title or interest in all or any part of the Property, and the covenants shall inure to the benefit of each owner of the Property.

Section 1.02 **Statement of Purpose**. The Covenants are imposed for the benefit of all owners of the parcels of land located within the Property. These Covenants create specific rights and privileges which may be shared and enjoyed by all owners and occupants of any part of the Property in accordance with the provisions of Section 4.03 Delegation of Use.

Section 1.03 **Declarant's Intent**. The provisions of these Covenants, as amended from time to time, are intended to act as the land use controls applicable to the Property, and in the events of a conflict or difference between the provisions hereof and of the Claiborne County Zoning Ordinance, the terms of this Declaration, as amended, shall control and supersede such Zoning Ordinance. Each Owner, automatically upon the purchase of any portion of the Property, is deemed to waive all protections afforded to him, now or in the future, under the Claiborne County Zoning Ordinance to the extent such Zoning Ordinance is at variation with the provisions of this Declaration, as amended, or with the provisions of any of the other Lone Mountain Shores Documents, including but not limited to the Architectural Guidelines established by the Architectural Review Committee.

Section 1.04 **Areas Subject to these Covenants**. Be it understood that these Covenants apply only to the development of Lone Mountain Shores by Tennessee Lone Mt. Shores Corp. Phase One (1) of Lone Mountain Shores and prior conveyances of three (3) lots from Phase II, being Lot Nos. 30, 32 and 42 of Lone Mountain Shores Phase II were developed by prior owners and are therefore not subject to these covenants and restrictions.

ARTICLE II
DEFINITIONS

The following terms, as used in these Covenants, are defined as follows:

Section 2.01 "**Architectural Review Committee**" or "**ARC**" shall mean and refer to the committee formed pursuant to Article VII below to maintain the quality and architectural harmony of improvements in Lone Mountain Shores.

Section 2.02 "**Assessments**" shall mean and refer to annual, emergency, and default assessments levied pursuant to Article IV below to meet the estimated cash requirements of the Associations.

Section 2.03 "**Association**" shall mean and refer to the Lone Mountain Shores Owners Association, Inc., a nonprofit corporation, or any successor to the Association by whatever name, charged with the rights and obligations set forth in these Covenants.

Section 2.04 "**Covenants**" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores, as and if amended.

Section 2.05 "**Declarant**" shall mean and refer to Lone Mountain Shores Owners Association, Inc., a Tennessee Not for Profit Corporation, and its successors and assigns.

Section 2.06 "**Dwelling**" shall mean any enclosed space wholly or partly used for living and sleeping by human occupants, provided such use is for single family residential purposes only.

Section 2.07 "**Lot**" shall mean and refer to a parcel of land designated as a lot on any Plat of Lone Mountain Shores.

Section 2.08 "**Maintenance Fund**" shall mean and refer to the fund created by Assessments and fees levied pursuant to Article IV below to provide the Association with the funds necessary for the Board to carry out its duties under these Covenants.

Section 2.09 "**Membership**" shall mean and refer to the rights and responsibilities of every Owner of any Lot in Lone Mountain Shores. Every Owner by virtue of being an owner and only as long as he or she is an Owner, shall retain their Membership in the Association. The Membership may not be separated from Ownership of any Lot. Regardless of the number of individuals holding legal title to a Lot no more than one Membership shall be allowed per Lot owned. However, all individuals owning such Lot shall be entitled to the right of Membership and the use and enjoyment appurtenant to such ownership.

Section 2.10 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but shall not mean or refer to any person or entity who hold; such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such persons or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

Section 2.11 "**Plat**" shall mean and refer to any plat (or as built survey) depicting the Property filed in the Registrar's Office for Claiborne County, Tennessee, as such plat may be amended from portions of the Property from time to time.

Section 2.12 "**Lone Mountain Shores**" shall mean and refer to the planned community created by these Covenants, consisting of the Property and all of the Improvements located on the Property

Section 2.13 "**Common Area**" shall mean all real property (including the improvements thereto) owned by the Owners Association by deed of Declarant for the common use and enjoyment of the owners.

Section 2.14 **"Single Family Residential Purposes"** shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse.. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "single family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by this definition.

ARTICLE III
THE ASSOCIATION

Section 3.01 Every Owner shall 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 3.02 **Board of Directors**. Members of the Association shall elect a Board of Directors (the "**Board**"), which shall govern the Association. The Board shall consist of five (5) members (each an "**Officer**"), all of whom must be Owners in good standing with the Association. The Board of Directors shall consist of a President, Vice-President, Secretary, Treasurer, and an additional member who shall also serve on the Architectural Review Committee (the "**ARC**") as the liaison between the Board and the ARC. The Board shall: (a) have the responsibility of overseeing all functions of the Association as stated in these Covenants; (b) be responsible for collecting all Association Assessments; and (c) develop and amend the Association Bylaws consistent with these Covenants. Furthermore, the Board shall be responsible for overseeing the members of the Architectural Review Committee and any other committees it may appoint. The Board shall also appoint all committee members other than the ARC liaison who is elected by the Owners. Board members shall hold office for a term of two years. Board members shall hold office until their successor has been elected or appointed, unless removed from office pursuant to Article III, Section 8 of the Bylaws.

Section 3.03 **Association Records.** Upon written request to the Association by any Owner of a lot or any, mortgagee, or guarantor of a first mortgage on any Lot, or the insurer of improvements on any Lot the Association shall make available for inspection current copies of the Association's documents, books, records, and financial statements. The Association may also make available to the prospective purchasers current copies of the Association's documents, including rules governing the use of lots and the most recent annual financial statement, if such is prepared. The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members

"**Available**" as used herein means available for inspection upon written request, with reasonable notice, during normal business hours, at the Association's Community Center or such other location as the Association may reasonably decide.

ARTICLE IV
COVENANT FOR COMMON AREAS AND ASSESSMENTS

Section 4.01 **Common Areas**. The Developer has created an owner's Common Area or Areas for the use and enjoyment of all existing Lots and future Lots, which may include, but are not limited to, parking areas, marine slips, parks, and land areas. The Association has expanded the Common Area to include a Community Center and a picnic pavilion.

Section 4.02 **Owner's Easement of Enjoyment**. Every Owner shall have a right and easement of enjoyment in and to the Common Area or Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Owner's Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his/her Lot remains unpaid; and
b. The right of the Owner's 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 unanimous vote of the Board and an affirmative vote of at least fifty five percent (55%) of responding Owners voting by written ballot.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by an authorized officer of the Owner's Association has been recorded in the Registrar's Office of Claiborne County, Tennessee.

Section 4.03 **Delegation of Use**. Any Owner may delegate, in accordance with the Bylaws, his/her right of enjoyment to the Common Area and facilities to the members of his/her family or the Owner's accompanied guests.

Section 4.04 **Creation of Lien and Personal Obligation for Assessments**. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it is explicitly stated in any such deed, is deemed to covenant and agree to pay the Association: (a) annual Assessments or charges as provided in these Covenants; (b) emergency Assessments for capital improvements and other purposes as stated in these Covenants, such annual and emergency Assessments to be established and collected from time to time as provided below; and (c) default Assessments, including fines, which may be assessed against an Owner's Lot pursuant to the LMS Governing Documents or because the Association has incurred an expense on behalf or because of the Owner in accordance with the LMS Governing Documents. The annual, emergency, and default Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and may become a continuing lien upon the Lot against which each such Assessment is made until paid in full. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment fell due.

Section 4.05 **Annual Assessments**. The purpose of annual Assessments is to provide funding for the Association: (a) to maintain the Common Area; (b) to pay for future capital improvement projects; and (c) to pay for any other Association obligations provided for in the LMS Governing Documents. Annual Assessments are due and payable as follows:

a. The annual Assessment for each Lot is $300.00, subject to increase as provided in Subsection (b). The Annual Assessment is due and payable to the Association by each Owner thirty (30) days after the Association mails to each Owner an annual assessment at the Owners last provided address.
b. The annual Assessment may be increased by the Board by not more than ten percent (10%) per year above the Annual Assessment amount of the previous year and by not more than twenty-five percent 25% over any five-year period, unless such greater increase has been approved by an affirmative vote of 55% of the Owners exercising their right to vote in a written ballot conducted in accordance with Article II, Section 10 of the Bylaws.

Section 4.06 **Emergency Assessments.** At any time that it shall appear to the Board that funds on hand or in deposit by the Association are insufficient to pay the outstanding obligations of the Association, the Board shall implement the following actions:

a. Notify Association members of the situation
b. Initially determine which of the outstanding obligations relate to the preservation of the Association assets such as maintenance, insurance or any other such obligations as necessary to discharge the fiduciary duties of the Board.
c. Exercise all available contractual rights of cancellation in any contract not deemed essential for the preservation of the assets of the Association and utilize all other available means of lessening the financial burdens of the Association while ensuring no defaults.
d. After taking these measures, the Board shall determine if a projected shortfall remains for the fiscal year and shall remediate this shortfall by issuing an emergency Assessment of up to One Hundred Twenty Five Dollars ($125.00) per Lot which shall be sent to all Owners in the manner utilized for distribution of annual Assessments and make available for review by all Owners the balance sheet utilized in the calculation of any shortfall.
e. If the shortfall requires an emergency Assessment of greater than One Hundred Twenty Five Dollars ($125.00) per lot, the Board, with at least three (3) Directors in support, may submit a higher emergency Assessment amount to the Owners through written ballot. An affirmative vote of at least Fifty Five Percent (55%) of responding Owners shall be required for the Board to issue any emergency Assessment greater than $125.00 in any fiscal year of the Association.

Section 4.07 **Default Assessments**. All monetary fines assessed against an Owner pursuant to the LMS Governing Documents, as well as any expense that is incurred by the Association on behalf or because of the Owner, including cost associated with the Associations enforcement of the LMS Governing Documents (including all attorney fees and cost), shall be a default Assessment and may become a lien against such Owner's Lot, which may be foreclosed upon or otherwise collected as provided in these Covenants. Notice of the amount and due date of a default Assessment shall be sent to the Owner at least 30 days before the due date, provided that failure to give 30 days prior notice does not constitute a waiver thereof, but may only postpone the due date for payment until the expiration of the 30 day period.

Section 4.08 **Effect of Non-Payment of Assessment; Remedies of Association**. Any Assessment, whether pertaining to annual, emergency, or default Assessments, not paid within 30 days of its due date will be delinquent. If an Assessment becomes delinquent, the Board may, in its sole discretion, take any or all of the following actions:

a. Assess a late charge on the outstanding balance;

b. Assess an interest charge from the date of the delinquency at a rate per annum that is two percentage points above the prime rate charged by the Association's principal bank;

c. Suspend the voting rights of the delinquent Owner during any period of delinquency;

d. Suspend all privileges to recreational facilities situated upon any Common Area;

e. Accelerate any unpaid annual Assessments for the fiscal year such that they shall be due and payable at once;

f. Bring a legal action against any Owner personally obligated to pay the delinquent Assessments; and

g. File a statement of lien with respect of the Lot and foreclose as set forth in more detail below.

Failure of the Board to enforce any of the above-listed remedies does not constitute a waiver of the Board's right to enforce such remedies in the future.

Section 4.09 **Filing a Statement of Lien**. The Board may file a statement of lien by recording with the Register of Deeds for Claiborne County, Tennessee, a written statement with respect to the Lot setting forth the name(s) of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent Assessments then owing and which shall be served upon the Owner of the Lot by registered mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days after the mailing of such notice, the Board may proceed to foreclose the lien in the same manner provided for the foreclosure of mortgages under the statutes of the State of Tennessee. Such lien shall be in favor of the Association for the benefit of all other Owners. In either a personal or foreclosure action, the Association shall be entitled to recover as part of the action interest, costs, and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies provided herein are not exclusive, and the Association may enforce any other remedies to collect delinquent Assessments that are provided by law.

ARTICLE V
INSURANCE

Section 5.01 **Casualty Insurance on Insurable Common Areas**. The Association shall keep all insurable improvements and fixtures of the Common Area or Areas insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazard and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair and replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the common assessments made by the Association

Section 5.02 **Liability Insurance**. The Association shall maintain liability insurance as to all common areas and property, acts or omissions of its officers or governing body, or otherwise as it deems necessary designated as a common expense in the By—Laws by the Owners Association.

Section 5.03 **Replacement or Repair of Property**. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

Section 5.04 **Annual Review of Policies**. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

ARTICLE VI
STANDARDS FOR LAND USE
AND
CONDUCT OF ACTIVITIES ON THE PROPERTY

Section 6.01 **Rationale for Land Use Restrictions**. It is the desire of the Association to preserve and enhance the property values of the Property, to prevent nuisances, and to maintain an attractive area for residential purposes.

Section 6.02 **Minimum Residential Size for Lakefront Lots.** Each Dwelling erected on a Lakefront Lot must contain a minimum of 1,800 square feet of heated living space (excluding garages, porches, overhangs, etc.), inclusive of all stories, with the first floor to contain not less than 1,200 square feet. For purposes of these Covenants, a **"Lakefront Lot"** is a Lot, a portion of which is contiguous to property owned by the Tennessee Valley Authority and which abuts the 1044 foot contour line of Norris Lake.

Section 6.03 **Minimum Residential Size for Interior Lots**. Each Dwelling erected on a Lot that is not a Lakefront Lot must contain a minimum of 1,200 square feet of heated living space (excluding garages, porches, overhangs, etc.) inclusive of all stories, with the first floor to contain not less than 800 square feet.

Section 6.04 **Residential Use Only**. All Lots shall be used for single family residential purposes only, and no commercial use is permitted. This restriction is not to be construed to prevent rental of any Lot or any dwelling for private single family residential purposes or to prevent an Owner from conducting home occupations in a Dwelling, provided such occupations: (a) are subordinate to the primary residential use; (b) occupy no more than twenty percent (20%) of the Dwelling's floor area; and (c) employ not more than two (2) persons.

Examples of prohibited commercial uses of a Lot or any dwelling include providing the services of or operating as a restaurant, an inn, a boarding house, or a bed-and-breakfast or providing other atypical rental services of a commercial nature.

Examples of non single family residential purposes uses of a Lot or any dwelling include, but are not limited to: occupancy by two or more unaffiliated individuals or groups that function as independent housekeeping units; owners or their agents occupying any part of the property at the same time as renters; utilizing the Lot or any dwelling as a fraternity, sorority or dorm complex; or using the Lot or any dwelling as a Group Home or institution of any kind.

All provisions of these Covenants and of any rules, regulations, or use restrictions promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

Section 6.05 Dwellings per Lot. All Lots are restricted to one single-family Dwelling per Lot. This restriction does not prevent the inclusion of one accessory living quarters within a Dwelling or other ARC-approved structures on the same Lot for use as an independent living facility with provision for food preparation, sanitation, and sleeping, provided that: (a) the accessory living quarters must be used in conjunction with the primary residence for single family purposes only; and (b) the accessory living quarters are subordinate in size and function to the primary residence. Accessory living quarters shall be subject to the following standards:

a. Only one accessory living quarters shall be allowed upon a lot;
b. Accessory living quarters can not be rented independently of the primary living quarters or used to house anyone unaffiliated with the rental group (including owners of the property, members of their family or their invited guests) during the rental of the primary living quarters; and
c. The addition of accessory living quarters on a Lot must be approved by the ARC

Section 6.06 **Types of Dwellings Prohibited**. The construction of any type of multi-family residence, such as a condominium, duplex, triplex, apartment building, townhouse, lodging house, clubhouse, or any similar structure, is prohibited. Modular homes, mobile homes, manufactured homes, motor coaches, recreational vehicles, house trailers, travel trailers, and stand-alone basements are also prohibited for permanent Dwellings. This prohibition does not preclude use of panelized construction, characterized by wall sections or floor and roof trusses that are constructed at other sites and transported to an Owner's Lot and assembled at the building site, provided that the ARC has first approved such construction. [Manufactured and modular constructed sheds, garages, and outbuildings may be permitted on a case-by-case basis, provided they meet the other requirements for these structures and are approved by the ARC.] Also, during the construction phase of a Dwelling an Owner may temporarily place a recreational vehicle, motor coach, or travel trailer upon his or her Lot and reside in it for a maximum of one (1) year, provided that construction of the Dwelling is progressing during such occupancy.

Section 6.07 Rental. Lots and Dwellings may be rented only for private single-family residential purposes subject to the following provisions:

a. The renting to unaffiliated individuals or groups at the same time is prohibited;
b. Tenants are required to abide by all LMS Governing Documents;
c. Owners are responsible for the actions of their tenants. Each Owner shall take appropriate steps and should put in place additional rules, limitations and restrictions as necessary to ensure that tenants do not conduct deleterious activities or otherwise create a nuisance to other Owners;
d. All rules, regulations, or use restrictions of these Covenants promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

Section 6.08 **Review By Architectural Committee**. The Architectural Review Committee shall exist as provided in Article VII of these Covenants. Before construction may begin, all proposed plans of Dwellings, garages, outbuildings, sheds, and other property improvements to be erected in Lone Mountain Shores must be submitted to the ARC for its approval in accordance with the LMS Governing Documents.

Section 6.09 **Drainage and Erosion Control**. No construction on any Lot may be done in such a way as to materially increase the drainage of water upon any adjoining Lot.

Section 6.10 **Fire Prevention and Control**. Houses in wooded areas are vulnerable to wildfire and careless debris burning or fireworks displays are a major cause of woodland fires. All occupants of the Property shall exercise extreme caution with all potential sources of wildfire ignition and;

a. Any open-air fires on the Property should not be left unattended at any time.
b. The Tennessee Department of Agriculture, Division of Forestry protects the state's forest and woodlands. Since woodland fires do occur year round, if at any time the Division of Forestry Fire Danger Rating, as delineated on the Departments official web site, is above Moderate for Eastern TN, open-air debris fires or fireworks displays are prohibited on the Property.
c. At certain times of the year, anyone starting an open-air fire on the Property must by TN law secure a burning permit from the Division of Forestry. Members also should follow any local burning ordinances as these regulations may supersede the Division of Forestry's burning permit program.

Section 6.11 **Television, Radio and Satellite Antenna**. All antennas and satellite dishes must conform to State of Tennessee and Federal Communications Commission Over-the-Air-Reception Devices requirements. Satellite dishes and antennas should be installed so as not to present a nuisance to or block the aesthetic views of neighboring Lots.

Section 6.12 **Completion of Construction**. Exterior improvements commenced on a Lot must be executed diligently to completion and must be completed within twelve (12) months of commencement, unless the ARC grants the Owner an extension in writing. Unless the ARC has granted the Owner such an extension, if an improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 12-month period, the Board may impose a fine on the Owner. Such charges will be a Default Assessment and subject to imposition of a lien as provided in Article IV., Section 4.08 of these Covenants.

Section 6.13 **Setbacks and Building Location**. No building or any part thereof may be erected on any Lot: (a) nearer than thirty (30) feet to any road right-of-way; (b) nearer than fifteen (15) feet to any interior Lot line; or (c) nearer than fifteen (15) feet to any rear lot line, unless the rear Lot line is the 1044 TVA Contour Line, in which case the rear set back line shall be as required by the Tennessee Valley Authority (the "**TVA**"). Furthermore, on all Lakefront Lots no building or other improvement may be constructed below elevation 1044 unless otherwise permitted by the TVA. A zero Lot line setback may be allowed on driveways by written approval of the ARC.

Section 6.14 **Utility Easements**. The Association has been assigned and has reserved all rights to erect and maintain all utility and electric lines, and to grant easements for utility purposes, with the right of access and ingress for the purpose of installing and maintaining such easements, structures and utility lines, including but not limited to, water, sewer, gas and cable situate thereon; on, over, and under a strip of land ten (10) feet wide along the side and rear Lot lines of each Lot and twenty (20) feet wide along the front Lot lines of each Lot, unless the rear Lot line is the 1044 TVA contour line, in which event the easement will be five (5) feet from the 1044 TVA contour line. No structures, plantings, or other materials may be placed or permitted to remain, or activities undertaken thereon, which may damage or interfere with the usage of these easements for utility purposes. No vehicles, including but not limited to recreational vehicles, cars, trucks, boats, boat trailers, utility trailers, or any other object which may impede or obstruct maintenance activities undertaken on the utility easement right-of-way may be parked or stored on the utility easement right-of-way. The areas on any Lot affected by such easements shall, except for improvements situated thereon by a public authority or utility company, be maintained by the Lot Owner.

Section 6.15 Storage **of Water Craft and Water Craft Trailers**. Each Owner may store or park no more than two water crafts, water craft trailers, or water craft and trailer combinations upon each Lot outside of a building structure, provided these water crafts are for their personal use and are stored such that they do not interfere with the maintenance of county roadways and utility easements. All other water crafts and water craft trailers must be stored inside an ARC-approved structure. Owners may not park or store any water craft or water craft trailer in any Common Area for more than 14 consecutive days. The Board, in its discretion, may either: (a) fine an Owner for violations of this restriction until the violation has been corrected; (b) remove the unpermitted water craft, water craft trailer, or water craft and trailer combination at the Owner's expense; or (c) both.

Section 6.16 **Travel Trailers, Recreational Vehicles, and Utility Trailers**. Travel trailers, recreational vehicles, or utility trailers may be utilized for security purposes or as a temporary residence during the period of construction with the approval of the ARC. Such vehicles and tents may also be utilized as a temporary residence when an Owner visits his or her Lot or performs Lot maintenance or clearing prior to start of construction. Vehicles and tents used for such a purpose must be removed from the Lot at the conclusion of each visit.
After construction has been completed, travel trailers, recreational vehicles, utility trailers, or other trailers may be stored on a Lot provided they are not utilized as Dwellings. These vehicles must be stored inside an ARC-approved structure or such that they do not present a nuisance to, or block the aesthetic views of, another Owner and do not interfere with the maintenance of county roadways and utility easements.

Section 6.17 **Garages**. A garage may be built separately from or attached to and made a part of a Dwelling. If a garage is attached to a Dwelling it must be made of the same or similar materials and conform to the construction type of the Dwelling. If a garage is not attached to a Dwelling it must conform either to the Dwelling type or the surrounding natural area. The garage must be built at the same time or after construction of the Dwelling and must be approved by the ARC.

Section 6.18 **Outbuildings**. A separate storage building, shed, workshop, or other outbuilding may be allowed, provided that the architectural style, quality of construction, and building material of such a structure are consistent with the appearance of the Dwelling or blend with the surroundings. All outbuildings must be approved by the ARC prior to construction, and must be built at the same time or after construction of the Dwelling.

Section 6.19 **Construction Materials**. Exterior finish materials must be of natural colors and consist of wood, log, stone, fiber cement based material, stucco, brick, or vinyl to blend with the surroundings. Finish material such as white vinyl siding, aluminum, or aluminum siding are prohibited, except as used for trim, gutters, shutters, or soffits.

Section 6.20 **Foundations**. All foundations must be fully enclosed at the exterior walls with ARC approved materials. No unfinished, exposed concrete foundation or block is permitted above ground level. Exposed concrete foundation, concrete block, or other composite material used in foundations must be coated with a natural-colored material other than paint, such as stucco or stone.

Section 6.21 **No Above Ground Swimming Pools**. No above-ground swimming pools are permitted on any Lot.

Section 6.22 **No Wake Zones.** The Community docks and all coves within the boundaries of LMSOA are "No Wake" zones. Owners are required to assure guest, visitors and tenants adhere to this restriction.

Section 6.23 **Nuisances**. No noxious or offensive trade or activity may be carried on upon any Lot, nor may anything be done thereon which may be or become an annoyance or nuisance to the Property or other Owners. No substance, material, or thing may be kept upon any Lot that will emit foul or obnoxious odors or that might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No junked or inoperative watercraft or other vehicles may be maintained outside an enclosed structure.

Section 6.24 **Pets, Livestock and Poultry**. No animals, livestock, or poultry of any kind may be kept, used, or bred on any Lot either for commercial or private purposes, with the exception of dogs, cats, or other common household pets, provided that such pets are not allowed to run at large and do not otherwise constitute a nuisance or a health or safety hazard. No more than two such pets may be kept on any Lot, and these may be kept only for the pleasure of the occupants and not for any commercial breeding uses or purposes. No structure for the care, housing, or confinement of any pet may be constructed or maintained on any part of a Lot unless first approved by the ARC. Pets must be kept under leash or under control when walked or exercised at all times when they are outside their Owner's Lot. The Board has the right to determine, in its sole discretion, whether a particular pet is a nuisance, and has the further right, in accordance with Section 10.04 *Remedies,* to require the owner of a particular pet to remove such pet from a Lot if such pet is found to be a nuisance or found to be kept in violation of these Covenants.

Section 6.25 **Signs**. Signs may only be placed on a Lot in a form, size, and location designated by the Board. All signs must be placed at least six feet from a County roadway. No sign may be affixed to any tree or utility post. No more than three signs of all types may be placed on a Lot at any one time. Any member of the Board or the ARC has the right, in accordance with Section 10.04 *Remedies,* to remove any sign, advertisement, or other such promotional material that is being displayed in violation of these Covenants and, in so doing, may not be held liable for trespass or any other tort arising from such removal.

a. No "for sale" sign may be larger than 800 square inches in size. No directional signs may be placed within LMS boundaries to aid in locating any Lot. Upon the sale of a Lot or home, a "Sold" sign may be displayed for a period of 14 days following the sale closing, at which time the "Sold" sign must be removed. "For sale" signs are prohibited anywhere on LMS docks.

b. Construction-related signs may only be placed on a Lot after the related project has been approved by ARC. Such signs must be removed within 14 days after the project has been completed. Each Owner, upon having received ARC approval of an improvement project, is required to display an ARC approval sign until the project has been completed.

c. Home protection or security alarm signs that are less than one-foot square may be placed on a Lot. A maximum of two such signs may be placed on a Lot.

Section 6.26 **Sewage Disposal**. No individual sewage disposal system will be permitted on any Lot unless it has been approved by the Claiborne County Health Department. All such systems must be maintained such that they operate in compliance with Claiborne County Health Department regulations.

Section 6.27 **Fences, Walls, and Gates.** All fences, walls, and gates must be approved by the ARC prior to construction or installation. No wall or fence will be allowed that effectively blocks another Owner's view. Fences, walls, and dog runs or other pet containment areas must be of an architectural style and quality of construction and must utilize building materials that are consistent with the appearance of the Dwelling or the surrounding natural area. Chain link, PVC pipe, and wire, alone, are not permitted for fences or pet containment areas. However, chain link or wire is acceptable for a pet containment area if integrated into another acceptable fence material (e.g., split-rail fencing) that has been approved by the ARC. Any exposed concrete foundation, plain or un-faced concrete block, or other composite material used in walls and fences must be coated with a natural-colored material other than paint, such as stucco or stone.

Section 6.28 **No Further Subdivision of Lots Owned by Owners**. No originally platted Lots may be subdivided or divided in any manner.

Section 6.29 **Combining Platted Lots**. Combining two or more adjacent Lots owned by a common Owner to create one Lot will be permitted. In that case, all setback lines and easements, as described in Sections 6.11 and 6.12, will apply to the newly formed Lot, and future Assessments and Owner's rights will apply to the combined Lots as one Lot. An Owner may divide two or more Lots that have been combined into a single Lot, provided that: (a) such division is done so that the Lots have the same boundaries they did before they were combined: and (b) each Lot, including any improvements thereon, continues to meet ARC requirements after the division.

Section 6.30 **Shoreline Protection and Use; No Public Boat Ramps**. An Owner desiring to install riprap or to make an improvement below the 1044 foot elevation adjacent to their Lot (*e.g.*, by installing a dock, steps, fence, outbuilding or other improvement near the shoreline) is required to follow the TVA rules and to obtain the approval of the TVA and the U.S. Army Corps of Engineers. The installation of boat ramps for public use is prohibited on an individual Owner's Lot.

Section 6.31 **Alternative Energy Devices**. An Owner may install alternative energy devices, such as solar panels or backup generators, provided they do not present a nuisance to, or interfere with, the views of another Owner.

ARTICLE VII
ARCHITECTURAL REVIEW COMMITTEE

Section 7.01 **Creation of ARC and Purpose.** There is hereby established an Architectural Review Committee (the "**ARC**"), which shall be responsible for the administration of the Architectural Review Guidelines. The ARC shall review, study, and either approve (with or without conditions) or reject proposed improvements on a Lot, all in compliance with these Covenants and as further set forth in the Architectural Guidelines, as adopted from time to time by the ARC and approved by the Board.

Section 7.02 **Duties of ARC**.

7.02.1 The ARC shall exercise its best judgment to (a) see that all improvements conform and harmonize with any existing structures as to external design and quality, and (b) examine and approve or disapprove any and all proposed improvements for a building site within Lone Mountain Shores, including but not limited to: construction of Dwellings, garages, outbuildings, or any other buildings; construction or installation of sheds, sidewalks, steps, driveways, parking lots, decks, greenhouses, playhouses, awnings, walls, fences, alternative energy devices, rip-rap, exterior lights, any exterior addition, change, or alteration to existing structures, or major excavation and the shaping of land. Additionally, ARC approval must be obtained for dredging and fill operations, clearing of vegetation, or any minor excavation that has the potential to affect drainage. This does not include normal mowing, trimming, or brush or tree removal for the maintenance of a property, but refers to lot or area clearing that has the potential to create an erosion or fire hazard risk.

7.02.2 No improvements may be erected, placed, or altered on any Lot, nor may any construction be commenced until the plans for such improvements have been approved by the ARC; provided, however, that improvements and alterations which are completely within a building may be undertaken without such approval.

7.02.3 The decisions of the ARC, including approval of plans, approval of plans with conditions, or disapproval of plans, or with respect to any other matter before it, shall be conclusive and binding on all interested parties, subject to appeal pursuant to the appeal process established by the Board.

Section 7.03 **Organization and Operations of the ARC**.

7.03.1 Membership. The ARC shall be composed of up to five, but not less than three, members (each an "**ARC Member**"). One ARC Member, who will also serve as the ARC Liaison on the Board, will be elected by vote of the Owners. The remaining ARC Members will be appointed by the Board. All ARC Members must be and remain Owners in good standing with the LMSOA.

7.03.2 **Term**. The regular term of office for each ARC Member will be two (2) years, commencing on January 1. Any ARC Member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such Member. The Board will appoint a successor to fill any such vacancy for the remainder of the removed Member's term.

7.03.3 **Positions on the ARC**. The Board will appoint an ARC Member to serve as Chairperson. The ARC will then select a Vice-Chairperson and Secretary at its first meeting each year.

7.03.4 **Expert Consultation**. The ARC may avail itself of technical and professional advice and consultants as it deems appropriate.

Section 7.04 **Expenses**. Except as provided below, all expenses of the ARC shall be paid by the Association. The ARC shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the ARC from time to time, and such fees shall be collected by the ARC and remitted to the Association to help defray the expenses of ARC operations, including the use of expert consultants.

Section 7.05 **Architectural Guidelines**. The Architectural Guidelines are subject to the approval of the Board and may not be inconsistent with these Covenants, but shall more specifically define and describe the design standards for Lone Mountain Shores and the various uses permitted within Lone Mountain Shores. The Architectural Guidelines may be modified or amended from time to time by the ARC subject to Board approval.

ARTICLE VIII
MAINTENANCE

Section 8.01 **Association's Responsibility**. The Association shall maintain and keep in good repair Association road signs and areas within the Common Area.

Section 8.02 **Owner's Responsibility**. Each Owner shall maintain and keep in good repair their Lot and any improvements thereon. Except as is provided otherwise in the LMS Governing Documents or by written agreement with the Association, maintenance of the Lots and all improvements thereon is the sole responsibility of the Owner thereof, who shall maintain said Lot in accordance with community-wide standards of the Association. The Association may, at the direction of the Board, assume the maintenance responsibility of an Owner or take other action in accordance with Section 10.04 *Remedies* if, in the opinion of the Board, the level and quality of maintenance being provided by the Owner is deemed to be insufficient. Before assuming such maintenance responsibilities, the Board shall notify the Owner in writing of the Board's intention to do so, and if such Owner has not commenced and diligently pursued remedial action within thirty (30) days after the mailing of such notice, then the Board may proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest at five percent (5%) per annum above the prime rate charged by the Association's principal bank, or such other rate as may be set by the Board, from the date of expenditure. Such charges shall be a Default Assessment and subject to a lien on the Lot as provided in Section 4.07 above.

ARTICLE IX
DAMAGE OR DESTRUCTION

Damage or Destruction Affecting Lots. If improvements located on any Lot are destroyed or suffer any material external damage, the Owner thereof shall repair or restore the damaged improvements or return the property to its unimproved state. If such repair or restoration is not commenced within one hundred twenty days (120) from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned, then the Association, after providing written notice to the Owner of his failure to repair the damage, may impose a fine of ONE HUNDRED ($100.00) DOLLARS per day on the Owner of the Lot, or such lesser amount as the Board may, in its discretion, determine, until repair and reconstruction is commenced, unless the Owner proves to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such a fine shall be a Default Assessment and subject to a lien against the Lot as provided in Section 4.07 above.

ARTICLE X
ENFORCEMENT OF LMS GOVERNING DOCUMENTS

Section 10.01 **Violations Deemed a Nuisance**. Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association.

Section 10.02 **Compliance**. Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time.

Section 10.03 **Failure to Comply**. Failure to comply with the LMS Governing Documents shall be grounds for an action by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to the delinquent party prior to commencing any legal proceedings.

Section 10.04 **Remedies**. In addition to the remedies set forth above, any violation of the LMS Governing Documents gives the Board or an Officer, on behalf of the Association, the right to enter upon the offending Owner's Lot and take appropriate peaceful action to abate, remove, modify, or replace at the expense of the offending Owner, any structure, thing, or condition that may exist on the Owner's Lot in violation of the LMS Governing Documents. If the violation affects any part of the Common Area, the corrective action shall be at the expense of the Owner or other person responsible for the offending condition.

Section 10.05 **Non-Exclusive Remedies**. All of the remedies set forth herein are cumulative and non-exclusive.

Section 10.06 **No Liability**. No member of the Board, Officer, or member of the ARC will be liable to an Owner for the failure to enforce any provision of the LMS Governing Documents.

Section 10.07 **No Waiver**. The failure of the Board, the ARC, an Officer, or any aggrieved Owner to enforce any provision of the LMS Governing Documents is not to be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the LMS Governing Documents in the future. No waiver will be effective unless it is in writing and signed by the President or Vice President on behalf of the Association, or by the Chairman of the ARC on behalf of the ARC.

ARTICLE XI
DURATION OF COVENANTS AND AMENDMENT

Section 11.01 **Term**. These Covenants shall run with and bind each Lot and the Property, and shall inure to the benefit of and be enforceable by the Association or an Owner, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date these Covenants were recorded, after which time the Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of a particular 10-year extension, agreeing to terminate the Covenants.

Section 11.02 **Amendment**. These Covenants may be materially amended only by a unanimous vote of the Board and the affirmative vote of fifty- five percent (55%) of the Owners voting by absentee ballot. Any approved amendment must be recorded in the Office of the Register of Deeds for Claiborne County, Tennessee.

Section 11.03 **Effective on Recording**. Any amendment of these Covenants will be effective immediately upon recording in the Office of the Register of Deeds for Claiborne County, Tennessee, together with a duly authenticated Certificate of the Secretary of the Association stating that the required percentage of Owner consents was obtained and are on file in the office of the Association.

ARTICLE XII
PRINCIPLES OF INTERPRETATION

Section 12.01 **Severability**. These Covenants, to the extent possible, shall be construed or reformed to give validity to all of their provisions. Any provision of these Covenants found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceable without invalidating any other part hereof.

Section 12.02 **Construction**. In interpreting these Covenants, unless the context otherwise provides or requires, the singular includes the plural, the plural includes the singular, and the use of either gender includes both genders.

Section 12.03 **Headings**. Headings herein are included for purpose of convenient reference, and they do not affect the meaning or interpretation of these Covenants.

Section 12.04 **Conflict between Documents**. In case of any conflict between these Covenants and the By-Laws these Covenants shall control. In case of any conflict between these Covenants and the Architectural Guidelines, these Covenants shall control.

ARTICLE XIII
MISCELLANEOU PROVISIONS

Section 13.01 **Registration of Mailing Address.** Each Member shall register his current mailing address with the Secretary of the Association, and notices or demands intended to be served upon or given to a Member shall be personally delivered or sent by mail, postage prepaid, addressed in the name of the Member at such registered mailing address.

Section 13.02 **Notice**. All notices and requests referred to in these Covenants shall be in writing. Notice to any Member will be considered delivered and effective upon personal delivery or three days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the record of the Association at the time of such mailing. Notice to the Board, the Association, or the ARC will be considered delivered and effective upon personal delivery or three days after posting, when sent by certified mail, returned receipt requested, to the Association, the Board, or the ARC at such address as is established by the Association from time to time by notice to Members. General notices to all Members or any subgroup thereof need not be certified, but may be sent by regular first class mail, postage prepaid, and will be considered delivered and effective five days after posting.

Section 13.03 **Waiver of Notice**. Whenever notice is required to be given under the provisions of any statute or these Covenants, a waiver thereof in writing signed by the person entitled to such notice, whether signed before or after the date stated thereon, and delivered to the Secretary of the Association and included in the minutes or corporate records, shall be deemed equivalent thereto. No such waiver will be effective unless it is in writing and signed by the President or Vice President on behalf of the Association, or by the Chairman of the ARC on behalf of the ARC.

Section 13.04 **Limitation of Liability and Indemnification**. The Association shall indemnify every Board member, Committee member, and Officer against any and all judgments and

expenses, including trial and appellate attorney's fees and costs reasonably incurred by or imposed upon any Board member, Committee member, or Officer in connection with any action, suit, or other proceeding (including the settlement of any suit or proceeding if approved by the Board) to which he or she may be party by reason of being or having been a Board member, Committee member, or Officer. Board members, Committee members, and Officers are not liable for any mistake of judgment, negligent or otherwise, except for their own willful malfeasance, misconduct, or bad faith. Board members, Committee members, and Officers have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent of that such Board member, Committee member, or Officer is also an Association Member), and the Association shall indemnify and forever hold each such Board member, Committee member, or Officer free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein is not exclusive of any other rights to which a Board member, Committee member, or Officer may be entitled. With respect to claims or liabilities arising out of service as a Board member, Committee member, or Officer, the Association shall indemnify and advance expenses to each such present and future Board member, Committee member, or Officer (and his or her estate, heirs, and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

By signing below the duly elected representative(s) of Lone Mountain Shores Owners Association, Inc. affirm that the Material Changes to this document were approve by unanimous vote of the Board and the affirmative vote of fifty- five percent (55%) of the Owners voting by absentee ballot.

IN WITNESS WHEREOF, the said Lone Mountain Shores Owners Association, Inc., hereinbefore known as Declarant, has hereunto caused these presents to be executed on this the 12th day of August, 2013.

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.
BY: David A. Kennedy

STATE OF TENNESSEE:
COUNTY OF CLAIBORNE:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, as aforesaid Donald N. McNeal and David A. Kennedy with whom I am personally acquainted, who proved to me by satisfactory evidence of identity, and who, upon oath, acknowledged himself/herself to be the President and Vice President for Lone Mountain Shores Owners Association, Inc., the within named bargainer, and that as such, he/she has been authorized to execute the foregoing instrument on behalf of said corporation for the purposes therein contained, by signing the name of the corporation by himself/herself as such President and Vice President.

WITNESS my hand and official seal at office this the 12th day of August, 2013.

Anita Kaye Brown

ANITA KAYE BROWN
STATE OF TENNESSEE
NOTARY PUBLIC
CLAIBORNE COUNTY

EXHIBIT "A"

Exhibit "A"

DESCRIPTION OF PROPERTY

SITUATED in District No, Three (3) of Claiborne County, Tennessee and further described as follows:

BEING a portion of Tract No. 7031, as shown in Quitclaim Deed dated July 24, 1995, from Morris Lake Development, Inc. to Grantor (Lone Mountain Development, LLC), recorded in W/D Book 231, Pages 213—217, Register of Deed's Office, Claiborne County, Tennessee and further described as follows:

BEING a parcel of land, containing 206.443 acres by Survey of William L. Parsons, RLS #1172, dated 9—13—96 and recorded in Plat Book 3, Page 70, Register's Office, Tazewell, Tennessee.

THERE IS ALSO GRANTED herewith the right of ingress and egress from the waters of Norris Lake over and upon the adjoining land lying between the 1044 contour elevation and the waters of the Lake.

Being Parcel 1.01 on Tax Map 133. (Portions herein Excepted

THERE IS EXCEPTED from the foregoing parcel the following three tracts:

1. A Lot known as Lot 6 on an unrecorded survey of Norris Landings Unit I as prepared by William L. Parsons, Tennessee RLS No. 1172, dated March 31, 1997; and also known as Lot 30 on an unrecorded survey labeled Lone Mountain Shores Phase II, dated 5/14/98 and revised 5/27/98 and described as follows; BEGINNING at a point on the south side of Rock-fish Point, then S. 84° 06' 52" E. 210.54 feet; S. 11° 03' 04" W. 46.73 feet; S. 8 35' 30" W. 72.29 feet; S. 8° 41' 55" W. 98.61 feet; 5. 27" 29' 04" W. 40.17 feet; N. 62° 17' 58" W. 24.26 feet; N. 59° 16' 34" W. 31.52 feet; N. 35° 40' 41" W. 269.86 feet; and N. 62° 54' 13" E. 55.88 feet to the point of beginning, and being the property which Lone Mountain Shores, LLC, conveyed to George L. Evans, III, by warranty deed, dated May 21, 1998, recorded in W/D Book 248, Pages 692—698, Register's Office of Claiborne County, Tennessee.

2. A Lot known as Lot No. 32 on an unrecorded survey labeled Lone Mountain Shores Phase II, dated 5/14/98, revised 5/27/98; and described as follows: BEGINNING at a point on the south side of Rockfish Point, then S. 46° 27' 30" E. 76.75 feet; 5. 29° 50' 15" W. 25.61 feet; S. 20° 27' 52" W. 85.50 feet; 5. 11° 18' 12" W. 54.74 feet; S. 31° 35' 54" E. 51.61 feet; N. 75° 06' 21" W. 168.60 feet; N. 27° 41' 48" E., 27.67 feet? N. 27° 41' 40" E. 12.82 feet; N. 28° 59' 35" E. 74.82 feet; N. 24° 52' 46" E. 67.76 feet; N. 30° 06' 19" E. 39.65 feet; N. 62° 19' 19" E. 32.26 feet to the point of beginning, containing 0.555 acres.

3. A Lot known as Lot 42 on an unrecorded survey labeled Lone Mountain Shores Phase II; and described as follows: BEGINNING at a point on the south side of Mallard Road, then 5. 14° 21" 46" E. 98.87 feet; S. 2° 19' 19" E. 294.75 feet; S. 64° 52' 21" W. 37.03 feet; S. 46" 31' 14" W. 35.80 feet; S. 48" 46' 43" W. 43.36 feet; S. 79° 02' 07" W. 45.45 feet; N. 43° 49' 39" W. 38,64 feet; N. 84° 25' 14" W. 46.63 feet; N. 6° 04' 41" W. 31.94 feet; N. 8° 01' 54" E. 21.61 feet; N. 27° 40' 05" E. 44.52 feet; N. 19° 40' 05" E. 22.53 feet; N. 23° 31' 14" W. 237.07 feet? N. 65° 34' 33" E. 44.34 feet; N. 55° 54' 54" E. 50.25 feet; N. 51° 49' 19" E. 29'10 feet; N. 56° 06' 47" E. 20.53 feet; N. 73° 15' 50" E. 20.88 feet; N. 83° 09' 38" E. 57.19 feet; N. 69° 30' 04" E. 44.26 feet to the point of beginning, containing 2.014 acre)

BK 1059 PG 15

The property herein conveyed is e portion of the property which Lone Mountain Shores, LLC acquired by warranty deed, dated October 7, 1996, from Lone Mountain Development, LLC, recorded in Warranty Deed Deck 230, Pages 547—550, in the Register's office of Claiborne County, Tennessee.

Subject to all covenants, rights of way, easements, reservations, restrictions, conditions, exceptions, and limitations of record, including rights of ingress and egress for the maintenance of cemeteries, and especially as set out in Deed Book 89, Page 400, in the Register's Office of Claiborne County, Tennessee.

Subject to the Grant of the/Transmission Line Easement to the United States of America by deed dated September 30, 1970, recorded in Misc. Book 22, Page 168, in .the Claiborne County Register's Office.

"Exhibit B"

STATE OF TENNESSEE
COUNTY OF CLAIBORNE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LONE MOUNTAIN SHORES is made this 8th day of February, 1999, by Tennessee lone mountain shores, corp., a Tennessee Corporation (hereinafter referred to as the "Declarant")
WITNES SETH:
WHEREAS, Declarant is the owner of Certain real property located in the County of Claiborne, State of Tennessee, containing 1101.439 acres, more or less; and
WHEREAS, Declarant has previously developed a tract of land of (206.4432) acres, known at; Lone Mountain Shores, Phase II and IIA as recorded in Plat Cabinet 3, Slide 70 and Plat Cabinet 3, Slide 142 and Plat Cabinet 3, . Slide 154 and which the Declarant received title thereto by that Warranty Deed recorded in Warranty Deed Book 249, Page 354 and that Deed of Correction in Warranty Deed Book 250, Page 542, all in the Register of Deeds' Office of Claiborne County, Tennessee, and for which Restrictions on said property were recorded in Miscellaneous Book 54, Page 274; and
WHEREAS, Declarant intends to develop the property described in Exhibit A which is attached to this Declaration as a subdivision known as "LONE MOUNTAIN SHORES PHASE III" (hereinafter referred to as the property, which is more fully described in Exhibit "A" attached hereto and incorporated herein by reference)
WHEREAS, the original Restrictions on the (206.4432) acres, as described in Miscellaneous Book 54, Page 274 contained a clause that provided that the Declarant may include additional properties in Lone Mountain Shores and Declarant reserved

the right to make such

Declaration; and

WHEREAS, the said original Declaration of Covenants, Restrictions and Easements as described above were amended by that Declaration dated January 14, 1999 and recorded in Record Book 1003, Page 123; and

WHEREAS, it is the desire and the intent of the Declarant to subject that property of 1101.439 acres, more or less as described in Warranty Deed Book 250, Page 117 and Deed of Correction Book 250, Page 554 in the Register of Deeds' Office of Claiborne County, Tennessee, to the same Declaration of Covenants, Restrictions and Easements and the Amended Declaration of Covenants, Restrictions and Easements for Lone Mountain Shores as described above.

NOW, THEREFORE, Declarant hereby declares that the property which is described in Exhibit "A" and any property hereafter made subject hereto as hereinafter provided shall be held, transferred, sold, conveyed, leased, occupied and used subject to the Easements, Restrictions, Covenants, Charges, Liens and Conditions which are for the purpose of protecting the value and desirability of the property of the property, and which shall touch and concern and run with title to the property. Said Declaration of Covenants, Conditions, Restrictions and Easements and Amended Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores are attached to this Declaration as Exhibit "B" and "C" and are incorporated herein by reference. The Covenants and provisions hereof shall be binding on parties having any right, title or interest in the property or any portion thereof, and their respective heirs, successors, successors in title and assigns, and shall inure to the benefit of each owner thereof.

IN WITNESS WHEREOF, the said Tennessee Lone Mt. Shores, Corp., hereinbefore known as Declarant, has hereinto caused these presents to be executed on this the 8th day of February, 1999.

TENNESSEE LONE MT. SHORES CORP.

BY

Michael T. Emmons, Vice president

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, as aforesaid, Michael T. Emmons, with whom I am personally acquainted, who proved to me by satisfactory evidence at identity, and who, upon oath acknowledged himself to be the Vice President for Tennessee Lone Mt, Shores, Corp., the within named bargainer, and that as such/ he has been authorized to execute the foregoing instrument on behalf of said corporation for the purposes therein contained, by signing the name of the corporation by himself as such

Vice President.

WITNESS my hand and official seal at office this the 8th day of February, 1999.

My commission expires: Sept. 19, 2001

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Situated in District No. Three (3) of Claiborne County, Tennessee, and more particularly described as follows:

All of that certain tract of land consisting of 1,101.49 Acres as shown on a Survey, dated August 28, 1998, by William L. Parsons, RLS # 1172, signed 12-3-98, entitled Lone Mountain Shores, for Tennessee Lone ML Shores Corp., and recorded in Plat Book 3, Page 156, in the Registers Office of Claiborne County, Tennessee.

This being the same property which Tennessee Lone Mt. Shores Corp. acquired by Deed of Correction, dated August 26, 1998, between Lone Mountain Development, LLC, Red Creek Ranch, Inc. and Tennessee Lone Mt. Shores Corp., recorded in Warranty Deed Book 250, Pages 554-561, Registers Office of Claiborne County, Tennessee.

Also, conveyed and included are those Rights of Way described in Warranty Deed Book 250, Page 562; Warranty Deed Book 249 page 292; and Warranty Deed Book 250 page 550; and Warranty Deed Book 1001, Page 161.

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LONE MOUNTAIN SHORES is made this the 18th day of October, 1999, by TENNESSEE LONE MOUNTAIN SHORES CORP., a Tennessee Corporation (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the County of Claiborne, State of Tennessee, containing 110 1.434 acres, more or less; and

WHEREAS, the Declarant has previously developed a tract of land of (206.4432) acres, known

as Lone Mountain Shores, Phase II and IIA as recorded in Plat Cabinet 3, Slide 70 and Plat Cabinet 3,
Slidel42, and Plat Cabinet 3, Slidel54 and which the Declarant received title thereto by that Warranty
Deed recorded in Warranty Deed Book 249, Page 354 and that Deed of Correction in Warranty Deed
Book 250, Page 542, all in the Register of Deeds' Office of Claiborne County, Tennessee, and for which
Restrictions on said property were recorded in Miscellaneous Book 54, Page 274; and
WHEREAS, the Declarant has developed a portion of the 1101.439 acres described herein into various phases known as Lone Mountain Shores, Phase III which is shown on Plat 3, Slide 167; Phase IIIA- Plat 3, Slide 180; Phase IIIB-Plat 3, Slide 187; and Phase IIIC-Plat 3, Slide 190. The Declaration of Restrictions for the entire 1101.439 acres and the various phases of Phase III were recorded in Record Book 1005, Pages 633-654;and
WHEREAS, the original restrictions as described in Miscellaneous Book 54, Page 274 contained a clause that provided that the Declarant may include additional properties in Lone Mountain Shores as subject to the covenants, conditions, restrictions, and easements as described therein and the Declarant reserved the right to make such declaration; and
WHEREAS, the said original Declaration of Covenants, Restrictions, Conditions, and Easements as described above were amended by that Declaration dated 1999, and recorded in Record Book 1003, Page 123; and
State of Tennessee, Couht of UJIBORRt frmdie datecWatht' 84a of
TQCER 1999 at irne RN. 1.REEII 653 RecordEd in aft icial records Book 1O2 nes OG 524 State lax $ .00 CLerks Fee $,0 RcordiM $102.00, lohi $ 102.0. Rekter of fleds XISERLY EEC€ & 'uty Rniter*

WHEREAS, it is the desire and the intent of the Declarant to reaffirm and declare that all the Lots which shall be subject to Phase V and any subsequent further subdivisions included as part of
Phase V and which is a portion of the 1101.439 acres, more or less as described in Wananty Deed Book
250, Page 117, and Deed of Correction Book 250, Page 554, in the Register of Deeds' Office of Claiborne County, Tennessee, to the same Declaration of Covenants, Conditions, Restrictions, and

Easements and the amended Declaration of Covenants, Conditions, Restrictions, and Easements for

Lone Mountain Shores as described above.

NOW, THEREFORE, Declarant hereby declares that the property which is known as Phase V and any subsequent divisions which may be a part of Phase V or any property hereafter made subject hereto as hereinafter provided shall be held, transfened, sold , conveyed, leased, occupied, and used subject to the Easements, Restrictions, Covenants, Charges, Liens, and Conditions which are for the purpose of protecting the value and desirability of the property, and which shall touch and concern and run with the title to the property. Said Declaration of Covenants, Conditions, Restrictions, and Easements and Amended Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores are attached to this Declaration as Exhibit 'A" and "B" and are incorporated herein by reference. The declaration for the 1101.439 acres as described above is also attached to the document as Exhibit "C". The Covenants and provisions shall be binding on parties having any right, title or interest in the property or any portion thereof, and the respective heirs, successors, successors in title and assigns and shall inure to the benefit of each owner thereof.

Furthermore, the first portion of Phase V is recorded in Plat Cabinet

Slide _____

IN WITNESS WHEREOF, the said Tennessee Lone Mt. Shores, Corp., hereinbefore known as Declarant, has hereinto caused these presents to be executed on this the 18th day of October, 1999.

TENNESSEE LONE MT. SHORES CORP.

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

Before me, the undersigned authority, personally appeared Michael T. Emmons, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the Vice President of the Tennessee Lone Mt. Shores Corp., the within named bargainer, a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for purposes therein contained, by signing the name of the corporation by himself as Vice President.

Witness my hand and official seal, at office Tazewell, TN, this the 18th day of October, 1999.

My commission expires: Sept. 19, 2001

EXHIBIT "D"

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

AMENDED DECLARATION OF COVENANTS. CONDITIONS,

RESTRICTIONS. AND EASEMENTS FOR LONE MOUNTAIN SHORES

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR LONE MOUNTAIN SHORES is made this the 18th day of October 1999, by

TENNESSEE LONE MT. SHORES

CORP., a Tennessee Corporation (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant executed and recorded a Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores and which was recorded in Plat Book 3, Page

142, and Miscellaneous Book 54, Page 274, in the Register of Deed's Office of Claiborne County, Tennessee. Said Declaration referred to a parcel, of land containing 260.443 acres, by survey of William

L. Parsons. Subsequently, said tract of land was subdivided into Phase II and Phase hA of Lone Mountain Shores. Phase II subdivision was shown on Plat 3, Slide 142 and was known as Lots 24-63.

Phase hA was subdivided into Lots 64-92 and was shown on Plat 3, Slide 154.

WHEREAS, Article XI and section 11,02(b) provided that the Declarant may materially amend the Covenants contained therein.

Furthermore, Declarant reserved the right to include additional properties in Lone Mountain Shores and to impose the same Covenants, Conditions, Restrictions, and Easements against the additional property.

Thereafter, Tennessee Lone Mt. Shores Corp., purchased 1,101.49 acres as shown by William L. Parsons which was contiguous to the previously described property.

Thereafter, Tennessee Lone Mt. Shores Corp., as Declarant executed a Declaration of Covenants, Conditions, Restrictions, and Easements for the 1,101.49 acres as described above. Said property has been divided previously into Phase III as recorded in Plat 3, Slide 167 for Lots 93-127; Phase IilA as shown on Plat 3, Slide 180 into Lots 128-162; Phase 1IIB as shown on Plat 3, Slide 187 for Lots 163- 191A; Phase IIIC as shown on Plat 3, Slide 190 for Lots 226-23 1 and Phase V as shown on Plat 3, Slide

192 for Lots 299-335. The protective and restrictive covenants described in this paragraph are recorded in Record Book 1005, Page 63 3-654 and again in Record Book 1024, Page 500-524.

It is the desire and intent of the Declarant as reserved in the original Declaration of Covenants, Conditions, Restrictions, and Easements to amend Article VI section 6.01 and 6.02. Specifically, section

6.01 provides for minimum residential size restrictions for Lots 24-63 of Lone Mountain Shores, Phase

II and section 6.02 provides for minimum residential size restrictions for all interior Lots which are not

Lots 24-6 3 of Lone Mountain Shores, Phase II.

The Declarant amends the restrictions to make it clear that the restrictions described in section 6.01 shall apply to all lake front parcels which are contained in Phase II, III, and Phase V. Furthermore, said restrictions shall apply to any future development of Lone Mountain Shores of lakefront parcels. It is intended by these restrictions that all lakefront parcels in any Phase of development of Lone Mountain Shores shall be subject to the restrictions contained in Article VI, Section 6.01.

Furthermore, Article VI, Section 6.02 is amended to include all Lots of Lone Mountain Shores which are not lakefront parcels. As of the execution of this amendment to restrictions said Lots include Lots 64-92 of Phase hA; Lots 93-127 of Phase III; Lots 128-162 of Phase IIIA; Lots 163-191A of Phase IIIB; Lots 226-23 1 of Phase IIIC. Furthermore, it is the intent of the Declarant that all future phases and developments within Lone Mountain Shores of Lots which are not lakefront Lots shall be subject to the same minimum residential size restrictions as shown in Article VI, Section 6.02.

Furthermore, in the event any other provision of the original Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores is unclear or vague as to the intent to restrict all Phases of Lone Mountain Shores, it is hereby declared by the Declarant that it is the intent that all phases of Lone Mountain Shores are subject to all of the same Conditions and Restrictions as described therein.

Furthermore, any and all amendments to the original Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores shall also apply to all phases of the Lone Mountain Shores development.

IN WITNESS WHEREOF, the said Tennessee Lone Mt. Shores Corp., herein before known as Declarant, has hereunto caused these presents to be executed on this the 18th day of October, 1999.

TENNESSEE LONE MT. SHORES CORP.

MIC AEL T. MONS, VICE PRESIDENT

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

Before me, the undersigned authority, personally appeared Michael T. Emmons, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the Vice President of Tennessee Lone Mt. Shores Corp., the within named bargainer, a corporation, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for purposes therein contained, by signing the name of the corporation by himself as Vice President.

Witness my hand and official seal, at office in Tazewell, Tennessee, this the 18th day of October,

1999.

My commission expires: Sept. 19, 2001

State lax $ .0 tlerks Fee $ .00
Rear4in3 114.00. total $ H. of Deeds KUECLY REEI
Deut Rnister tRISIl HNUI

f Ctity &
STATE OF TENNESSEE: 29 rf
COUNTY OF CLAIBORNE: &))EER 159 1 244 F1. REt 725
t'r f fleed ÜEERLY EECE
eistr

PHASE IV

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR LONE MOUNTAIN SHORES is made this the 27th day of November, 1999, by TENNESSEE LONE Mountain SHORES CORP., a Tennessee Corporation (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the County of Claiborne, State of Tennessee, containing 1101.439 acres, more or less; and WHEREAS, as the Declarant has previously developed a tract of land of (206.4432) acres, known as Lone Mountain Shores, Phase II and IIA as recorded in Plat Cabinet 3, Slide 70 and Plat

Cabinet 3, Slide 142, and Plat Cabinet 3, Slide 154 and which the Declarant received title thereto by the Warranty Deed recorded in Warranty Deed Book 249, Page 354 and the Deed of Correction in Warranty Deed Book 250, Page 542, all in the Register of Deeds office of Claiborne County, Tennessee, and for which Restrictions on said property were recorded in Miscellaneous Book 54, Page 274; and

WHEREAS, the Declarant has developed a portion of the 110 1.439 acres described herein into various phases known as Lone Mountain Shores, Phase III which is shown on plat 3, Slide 167; Phase IIIA-Plat 3, Slide ISO; Phase IIIB-Plat 3, Slide 187; and Phase IIIC-Plat3, Slide 190. The Declaration of Restrictions for the entire 1101.439 acres and the various phases of Phase III were recorded in Record Book 1005, Pages 633-654; and

WHEREAS, the Declarant has also developed a portion of the 110 1.439 acres into a Phase known as Lone Mountain Shores, Phase V which is shown on Plat 3, Slide 192. The Declaration of Restrictions for Phase V was recorded in Record Book 1024, Pages 500-524; and

WHEREAS, the original restrictions as described in Miscellaneous Book 54, Page 274 contained a clause that provided that the Declarant may include additional properties in Lone Mountain Shores as subject to the covenants, conditions, restrictions, and easements as described therein and the Declarant reserved the right to make such declaration; and

WHEREAS, the said original Declaration of Covenants, Restrictions, Conditions, and Easements as described above were amended by that Declaration dated January 14, 1999, and recorded in Record Book 1003, Page 123; and

WHEREAS, the said original Declaration of Covenants, Restrictions, Conditions, and Easements as described above were also amended by an Amended Declaration dated October 18, 1999, and recorded in Record Book 1024, Page 609; and

WHEREAS, it is the desire and the intent of the Declarant to reaffirm and declare that all the Lots which shall be subject to Phase IV and any subsequent further subdivisions included as part of Phase IV and which is a portion of the 1101.439 acres more or less as described in Warranty Deed Book 250, Page 117, and Deed of Correction Book 250, Page 554, in the Register of Deeds' Office of Claiborne County, Tennessee, to the same Declaration of Covenants, Conditions, Restrictions, and Easements and the amended declaration of Covenants, Conditions Restrictions, and Easements for Lone Mountain Shores as described above. NOW, THEREFORE, Declarant hereby declares that the property which is

known as Phase IV and any subsequent divisions which may be a part of Phase IV or any property hereafter made subject hereto as hereinafter provided shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the Easements, Restrictions, Covenants, Charges,

Liens, and Conditions which are for the purpose of protecting the value and desirability of the property, and which shall touch and concern and run with the title to the property, Said Declaration of Covenants, Conditions, Restrictions, and Easements and Amended Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores are attached to this Declaration as Exhibit "A" and "B" and are incorporated herein by reference. The declaration for the 110 1.439 acres as described above is also attached to the document as Exhibit "C". The amended declarations as described above is attached as Exhibit "D". The Covenants, Conditions, Restrictions, and Easements shall be binding on parties having any right, title or interest in the property or any portion thereof, and the respective heirs, successors, successors and title, and assigns and shall inure to the benefit of each owner thereof. Furthermore, the Plat for Phase IV is recorded in Plat Cabinet 3, Slide 202. in WITNESS WHEREOF, the said Tennessee Lone Mt. Shores Corp.,
hereinbefore known as Declarant, has hereinto caused these presents to be executed on this the 27th day of November, 1999.
TENNESSEE LONE MT. SHORES CORP.
*BY: 7_*
Vice President
BK 1027 PG 619
BK 1059 PG 31

STATE OF TENNESSEE:
COUNTY OF CLAIBORNE:
Before me, the undersigned authority, personally appeared Michael T. Emmons, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the Vice President of the Tennessee Lone Mt. Shores Corp., the within named bargainer, a corporation, and that he such Vice President, being authorized so to do, executed the foregoing instrument for purposes therein contained, by signing the name of the corporation by himself as Vice President.
Witness my hand and official seal, at office in Tazewell, TN, this the 27th day of

November, 1999

My commission expires: Sept. 19, 2001

State of Tennessee County of ILNE eceied fur record the 01 da nf it4RCH 20Q1 at 12:57 PH. LREC I541) REcurded in official records

1059 r 728— 744 Siate Ta $ .00 C[rk FeE 4 1.00' ecofdin 315Q.O. Totd $ 1$&C$), Re?i5ter of Opeds KIKERLY REECE 1ruty Rnitr LINDA STtJ*S*

This Instrument Prepared By: ESTEP & ESTEP
Attorneys-At-Law
P.O. Box 770
Tazewell, Tennessee 37879

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, and EASEMENTS FOR TENNESSEE LONE MT. SHORES CORP. TO INCLUDE PROPERTY OWNED BY TN EMMONS, LLC AS PART OF THE SUBDIVISION KNOWN AS LONE MOUNTAIN SHORES SUBDIVISION

Comes Tennessee Lone Mt. Shores Corp., a Tennessee Corporation, party of the first part and TN Emmons, LLC, a Delaware Limited Liability Company hereinafter known as party of the second part.

WITNES SETH

WHEREAS, TN Emmons, LLC, a Delaware Limited Liability Company is the owner of a tract of land being 995.196 acres which is adjacent to and contiguous to property owned by Tennessee Lone Mt. Shores Corporation;

WHEREAS, it is the intention of the two separate entities to develop TN Emmons, LLC property as part of the Lone Mt. Shores Subdivision pursuant to an overall development plan which has been initiated by Tennessee Lone Mt. Shores Corporation through the development of property owned by Tennessee Lone Mt. Shores Corporation and is described in Warranty Deed Book 250, Page 542, and 'Warranty Deed Book 250, Page 554.

WHEREAS, TN Emmons, LLC has purchased adjacent and contiguous property as described in Record Book 1050, Page 204 and it is the intent of both entities to combine its efforts to develop the property owned by TN Emmons, LLC which is owned by primarily the same principals, entities and persons all having the same intention of development with the same covenants, conditions, restrictions, and easements as set forth in the property owned by Tennessee Lone Mt. Shores Corporation;

WHEREAS, Tennessee Lone Mt. Shores Corporation in the original restrictions as recorded in Misc. Book 54, Page 274-289 in the Register Deed's Office of Claiborne County, Tennessee included the following clause:

"WHEREAS, additional property may be included in Lone Mt. Shores in the future and Declarant wishes to reserve the right to subject other properties into Lone Mt. Shores by way of future amendments of this Declaration and
accordance with provision contained herein."
WHEREAS, the intention of Tennessee Lone Mt. Shores Corporation, pursuant to an agreement with TN Emmons, LLC, to include within the Lone Mt. Shores Subdivision the above described property as additional phases of Lone Mt. Shores Subdivision and to impose the same covenants, restrictions, conditions, and casements as set forth in the original restrictions which has been described above.
NOW, THEREFORE, the Declarant, Tennessee Lone Mt. Shores Corporation and Declarant TN Emmons, LLC hereby declare that the property which is described in EXHIBIT "A" and any property hereafter made subject hereto as hereinafter provided shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the value and desirability of the property, and which shall touch and concern and run with title to the property. The covenant and all provisions hereof shall be binding on all property owners having any right title, or interest in the property or any portion thereof, and their respective heirs, successors, successors in title and assigns, and shall inure to the benefit of each owner thereof
A copy of said covenants, conditions, restrictions, and easements are attached to this document and are incorporated herein as if copy verbatim and shall apply to the development of the property by TN Emmons, LLC.
In witness whereof, the said Tennessee Lone Mt. Shores Corporation and TN Emmons, LLC have hereunto caused this agreement to be executed on this 1st day of March, 2001.
TENNESSEE LONE MT. SHORES CORP.
*DY:*_____
Micha T. E ons, Vice-President
TN EMMONS, LLC
A Delaware Limited Liability Company
BY: '-nj -r
Michae7r. Emm ,
Author zed Agent
BK 1059 PG 34

STATE OF TENNESSEE:

COUNTY OF CLAIBORNE:

Before me, the undersigned authority, personally appeared Michael T. Emmons, with whom I am personally acquainted, and who, upon oath, acknowledge himself to be the Vice-President of Tennessee Lone Mt. Shores Corp., the within named bargainer, and that he as such Vice-President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Tennessee Lone Mt. Shores Corp., by himself as Vice-President.

Witness my hand and official seal on this the 1st day of March, 2001

My Commission Expires: Sept. 19. 2001

STATE OF TENNESSEE:
COUNTY OF CLAIBORNE:

Before me, the undersigned authority, personally appeared Michael T. Emmons, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the authorized agent of TN Emmons, LLC, a Delaware Limited Liability Company, the within named bargainer, and that he as such authorized agent, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of TN Emmons, LLC, by himself as authorized agent.
Witness my hand and official seal on this the Vt day of March , 2001.

My Commission Expires: Sept. 19. 2001

Notary PUL

Notary

"EXHIBIT A"
Situated in District No. Three (3) of Claiborne County, Tennessee, and more particularly described as follows:
TRACT NO. 7030:

TVA TRACT NO. XNR-836

All that certain tract or parcel of land situated in the Third (3rd) Civil District of Claiborne County, Tennessee, containing 983 acres, more or less, and being the identical land conveyed unto East Highlands Company by deed from the United States of America, acting by and through its legal agent, the Tennessee Valley Authority, dated March 18, 1959, and recorded in Deed Book 89, Vol. 3, Pages 397-400, in the records of said County, to which reference is made for a complete description of said land. Said property is subject to such rights as may be vested in third parties in a private cemetery; such stock watering rights as may be vested in third parties; such mineral rights as may be outstanding in third parties; and such rights as may be vested in third parties in oil & gas leases on those portions of the tract acquired by Charles B.F. Davis, et ux, under bract designated MR-1628 in the deed recorded in Deed Book 89, Pages 397-400.

Said property is subject to reservations, restrictions, covenants, exceptions, and limitations contained in the Deed from United States of America to East Highlands Company dated March 18, 1959, of record in Deed Book 89, Vol. 3, Page 397-400, all in the Claiborne County Register's Office; and to the Grant of the Transmission Line Easement to the United States of America by deed dated September 30, 1970, in Misc. Book 22, Page 168, Register's Office of Claiborne County, Tennessee.

PORTION OF TRACT NO. 7031 (TVA TRACT NO. XNR-837);

Previously by warranty deed, dated August 12, 1998, and recorded in Warranty Deed Book 250, Pages 117-123, Register's Office of Claiborne County, Tennessee, and by Deed of Correction, dated August 26, 1998, recorded in Warranty Deed Book 250, Pages 554-561., Register's Office of Claiborne County, Tennessee, Lone Mountain Development, LLC, conveyed Tract No. 7031 to Tennessee Lone Mt. Shores Corp. The description in said Deed contained a clause as follows: "The grantor is conveying all property in Tract No. 7031 (TVA Tract No.. XNR-837) located to the east of said line." By this deed, Lone Mountain Development, LLC, convey any portion of Tract 7031 which may have been retained in said previous Deeds.

"EXHIBIT A"

Tract 7031 is subject to burial rights and rights of ingress and egress as may be vested in third parties in cemeteries.

There is also granted herewith the right of ingress and egress from the waters of Norris Lake over and upon the adjoining land lying between the 1044 contour elevation and the waters of the Lake.

Tract 7031 is subject to reservations, restrictions, covenants, conditions, exceptions, and limitations contained in the Deeds from United States of America to East Highlands Company dated March 18, 1959, of record in Deed Book 89, Pages 400-403, Register's Office of Claiborne County, Tennessee; and to the grant of the transmission line easement to the United States of America by deed, dated September 30, 1970, recorded in Misc. Book 22, Page 168, in The Claiborne County Register's Office.

Tract 7031 is also conveyed subject to the following, if applicable: 1. The reservations of mineral rights contained in the deed from Hugh D. Coupland to William Lewis and James Loop dated August 14, 1895, recorded in Deed Book 2, Vol. 3, page 261, in the Claiborne County Register's Office. 2. Such rights as may be vested in third parties in a private cemetery on TVA Tract No. NR2440. 3. Stock watering rights and right-of-way for such purpose reserved in the deed from F. T. Muncey to P.M. Muncey dated February 23, 1923, of record in Deed Book 54, Vol. 3, Page 57, in the Claiborne County Register's Office.

RIGHT OF WAY: Lone Mountain Development, LLC does further convey any and all Rights-of-Ways and/or Easements retained by Lone Mountain Development, LLC, which burdened Tract 7029 and 7031 and which benefited Tract 7030.

SURVEYED DESCRIPTION: The property being conveyed herein is more particularly shown on surveyed plat prepared by Parsons Engineering &

Associates, William L. Parsons, R.L.S. No. 1172, dated September 29, 2000, and identified as Drawing # LAKE4, and showing 995.196 Acres, and recorded in Plat Cabinet 3 Page 251 Register's Office of

Claiborne County, Tennessee.

Reference is made to Correction Quit Claim Deed, dated July 24, 1995, from Norris Lake Development, Inc., to Lone Mountain Development, LLC, recorded in Warranty Deed Book 231, Page 213, Register's Office of Claiborne County, Tennessee. Also, see deed recorded in Warranty Deed Book 230, Page 13, in said Register's Office.

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

DEFENDANTS HENRY BENNAFIELD AND JANICE BENNAFIELD'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendants, Henry Bennafield and Janice Bennafield, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 2 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT

2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1197, Pages 92-94, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 2 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is "sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on said Plat and in Record Book 1059, Page 728 in Register's Office of Claiborne County, Tennessee."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Page 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 2 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have rented their property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 2 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as reflected on Pages 1-3 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have advertised their property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 2 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 2 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 2 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, BPR# 040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

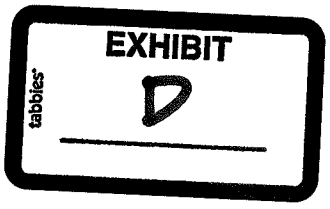
DEFENDANT'S BELLA GOLDEN RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, Bella Golden, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 3 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT

2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds



Office in Book 1078, Page 228, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 3 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that the Conveyance of your property was "subject to applicable restrictions . . ."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 3 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that she has rented her property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 3 of the Second

Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 4-5 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that she has advertised her property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 3 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED. A management company operates the property, and I do not personally handle the rental of the property.

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 3 of the Second Amended Complaint.

RESPONSE: ADMIT. I rent the subject home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 3 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

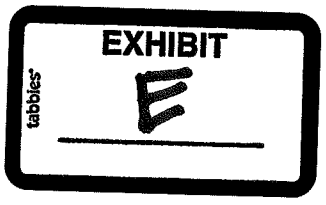
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

DEFENDANTS JAMES HAWS AND DENISE HAWS'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Come now the Defendants, James Haws and Denise Haws, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and respond to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 4 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1588, Page 442-44, a copy of which is attached as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 4 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is "Subject to any and all matters, conditions, limitations, reservations, set back requirements, easements, restrictions, and encumbrances shown on or relating to any subdivision plat of the Demised Premises of records and any survey referred to herein."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

"All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 4 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time.

Without waiving the foregoing, Defendants ADMIT that they have rented their property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 4 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 6-7 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have advertised their property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 4 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 4 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 4 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

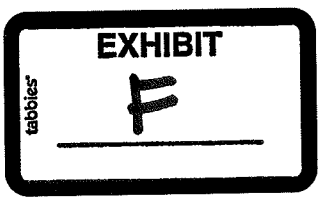
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

DEFENDANTS VIC WARTHMAN AND ELIZABETH WARTHMAN'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Come now the Defendants, Vic Warthman and Elizabeth Warthman, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and respond to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 5 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1568, Pages 600-602, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 5 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is "sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on said Plat and in Record Book 1059, Page 728, in the Register's Office of Claiborne County, Tennessee."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 5 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have rented their property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 5 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as reflected on Page 8 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have advertised their property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 5 of the Second Amended Complaint as a rental property.

RESPONSE: ADMIT

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 5 of the Second Amended Complaint.

RESPONSE: ADMIT

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 5 of the Second Amended Complaint.

RESPONSE: DENIED. VRBO has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

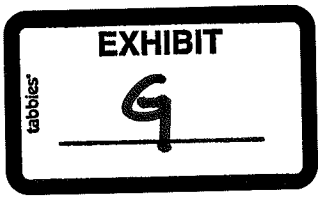
DEFENDANT ED LUND'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, Ed Lund, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 7 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT

2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds



Office in Book 1486, Pages 77-78, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 7 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property was "sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on the Plat of Lone Mountain Shores . . . ."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 7 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS to the extent that I previously rented the property for periods of time that are less than seven (7) days prior to the cease-and-desist letter and the special meeting to discuss. During the time in which I did rent, it was with the recognition and consent of the previous HOA boards. Just as the previous two owners of my property did with consent of the HOA boards at that time. I have, however, since the cease-and-desist and special meeting stopped renting for less than seven (7) day periods until which time a final decision has been made related to this outstanding matter.

11. Admit that you have advertised the property identified in Paragraph 7 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS to the extent that I previously advertised the property for rent prior to the cease-and-desist letter and the special meeting to discuss. During the time that I did advertise for rent, it was with the recognition and consent of the previous HOA boards. Just as the previous two owners of my property did with consent of the HOA boards at that time. I have, however, since the cease-and-desist and special meeting stopped advertising my property for rent until which time a final decision has been made related to this outstanding matter.

12. Admit that you have a business license to operate the property identified in Paragraph 7 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED.

13. Admit that you pay Tennessee State taxes on revenue generated by renting the

property identified in Paragraph 7 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 7 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

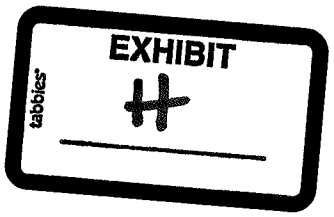
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

DEFENDANT LAKE FRONT RENDEZVOUS, LLC'S AMENDED RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, Lake Front Rendezvous, LLC, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 8 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1535, Pages 517-519, a copy of which is attached as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is "SAID property is sold subject to the protective and restrictive covenants duly recorded on said Plat and in Record Book 1024, Page 500, and amended in Book 1024, Page 609, and in Book 1003, Page 123 in the Register's Officer [sic] of Claiborne County, Tennessee."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 8 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time.

Without waiving the foregoing, Defendant ADMITS to the extent that the property was previously rented for periods of time that are less than seven (7) days prior to the cease-and-desist letter and the special meeting to discuss. However, since the cease-and-desist and special meeting, we have stopped renting for periods less than seven (7) day.

11. Admit that you have advertised the property identified in Paragraph 8 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Page 11 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has advertised its property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 8 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 20 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 20 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

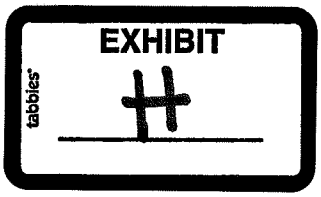
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

DEFENDANT LAKE FRONT RENDEZVOUS, LLC'S AMENDED RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, Lake Front Rendezvous, LLC, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 8 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1535, Pages 517-519, a copy of which is attached as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is "SAID property is sold subject to the protective and restrictive covenants duly recorded on said Plat and in Record Book 1024, Page 500, and amended in Book 1024, Page 609, and in Book 1003, Page 123 in the Register's Officer [sic] of Claiborne County, Tennessee."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 8 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time.

Without waiving the foregoing, Defendant ADMITS to the extent that the property was previously rented for periods of time that are less than seven (7) days prior to the cease-and-desist letter and the special meeting to discuss. However, since the cease-and-desist and special meeting, we have stopped renting for periods less than seven (7) day.

11. Admit that you have advertised the property identified in Paragraph 8 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Page 11 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has advertised its property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 8 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 20 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 20 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

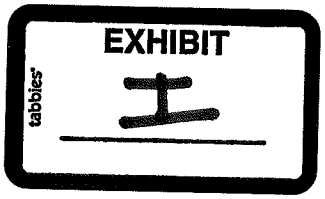
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

DEFENDANT M & G EAGLESNEST, LLC'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, M & G Eaglesnest, LLC, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 9 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1585, Pages 337-339, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 9 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is "made and accepted to SUBJECT to restrictions of record in Misc. Book 54, Page 574, Deed Book 249, Page 344 and Deed Book 1024, Page 609, in the Register's Office, Claiborne County, Tennessee and any setback lines, easements and restrictions as may appear on the plat of record aforesaid."

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings

or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 9 of the Second

Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has rented its property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 9 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 12-14 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has advertised its property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 9 of the Second Amended Complaint as a rental property.

RESPONSE: DENY

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 9 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 9 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

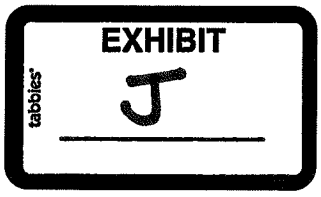
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

DEFENDANT'S B & M STORAGE, LLC RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, B & M Storage, LLC, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 10 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1557, Page 626, a copy of which is attached as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 10 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states:

> This Instrument was prepared without an examination of title unless provided by separate document, in which case such title opinion, if any, may only be relied upon by the person or persons to whom it is addressed, and is not to be relied upon by any other person or persons for any reasons or purposes whatsoever, and the preparer of this instrument otherwise makes no representations of any kind to any persons as to the status or quality of the title, or as to any restrictions, zoning, or fitness for any particular use, or the accuracy of the description, or of the amount of acreage or square footage, or of the compliance with any applicable Planning Commission regulations or requirements, subdivision restrictions, covenants and conditions, or of the legal disability or competency of any party to this instrument, or as to any other matters. The preparer of this instrument has provided no legal advice or counseling to any party to this transaction concerning any federal or state tax consequences of this transaction, and any affected party hereto is advised to seek the advice of a competent tax attorney or a certified public accountant with respect thereto prior to closing. The preparer of this instrument has not acted as Settlement Agent or Closing Agent with respect to this transaction unless same is documented by all customary Settlement Documents and Closing Statements, or as may be required in conformity with law, as applicable, and signed and fully executed by all necessary parties to such transaction.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

"**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

"All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or

for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 10 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has rented its property for period(s) of time that are less than seven (7) days. Further, Defendant stopped renting when it received the Association's cease and desist letter.

11. Admit that you have advertised the property identified in Paragraph 10 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 15-16 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has advertised its property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 10 of the Second Amended Complaint as a rental property.

RESPONSE: DENY

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 8 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by

Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 10 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

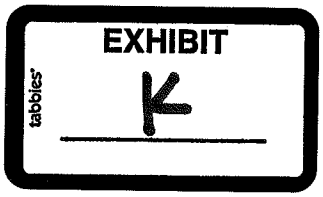
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

DEFENDANTS MICHAEL SISLOW AND BRANDY SISLOW'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Come now the Defendants, Michael Sislow and Brandy Sislow, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and respond to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 11 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1590, Pages 148-149, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 11 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states:

> This Conveyance is made subject to restrictions, easements, setbacks, and other conditions recorded in Plat Cabinet 3, Slide 299, in the Register's Office for Claiborne County, Tennessee.
>
> Subject to restrictions, easements, setbacks, Architectural Guidelines, and other conditions recorded in Misc. Book 54, Page 274, Record Book 1059, Page 728, Record Book 1087, page 243, Record Book 1179, page 689, Record book 1193, page 583, 1214, page 536, Book 1219, page 586,
> Book 1223, Page 283, Book 1235, Page 211, Book 1318, page 617, Book 1388, page 633, Book 1388, page 649, in the Register's Office for Claiborne Count, Tennessee
>
> Subject to TVA Easement of record in Book 89, Page 397 and 400, in the Register's Office for Claiborne, County Tennessee.
>
> Also Subject to any and all applicable restrictions, easements, building setback lines and other conditions as are shown in the records of the said Register's Office.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply

with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 11 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS to the extent that we previously rented the property for periods of time that are less than seven (7) days prior to the cease-and-desist letter and the special meeting to discuss. We have, however, since the cease-and-desist and special meeting stopped renting for less than seven (7) day periods until which time a final decision has been made related to this outstanding matter.

11. Admit that you have advertised the property identified in Paragraph 11 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as reflected on Pages 17-18 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT to the extent that we previously advertised the property for rent prior to the cease-and-desist letter and the special meeting to discuss. We have, however, since the cease-and-desist and special meeting stopped advertising our property for rent until which time a final decision has been made related to this outstanding matter.

12. Admit that you have a business license to operate the property identified in Paragraph 11 of the Second Amended Complaint as a rental property.

RESPONSE: ADMIT

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 11 of the Second Amended Complaint.

RESPONSE: DENIED. We are not making revenue on the property.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 11 of the Second Amended Complaint.

RESPONSE: DENIED

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

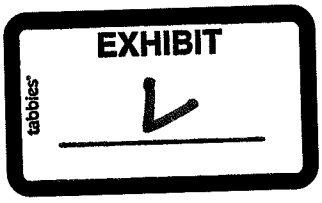
DEFENDANT'S JASON JORDAN RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, Jason Jordan, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 12 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT

2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds



Office in Book 1578, Pages 94-95, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 12 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property is:

> Subject to Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided in the Covenants, Conditions and Restrictions of record in Book 1059, Page 728, Register's Office for Claiborne County, Tennessee, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap but does not discriminate against handicapped persons.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings

or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 12 of the Second

Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant does not have enough information to admit or deny request 10 as this property is managed by a third party. However, Defendant believes that the property is usually rented for more than seven (7) days at a time.

11. Admit that you have advertised the property identified in Paragraph 12 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as reflected on Pages 19-20 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that his rental company has advertised his property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 12 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 12 of the Second Amended Complaint.

RESPONSE: Defendant does not have enough information to admit or deny request 13 as this property is managed by a third party. However, Defendant believes that the property manager pays Tennessee State taxes.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 12 of the Second Amended Complaint.

RESPONSE: Defendant does not have enough information to admit or deny request

14 as this property is managed by a third party. However, Defendant believes that the property manager performs background checks.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

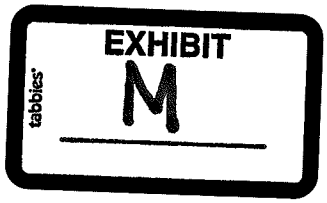
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

DEFENDANT 836 JACKSBLUFF, LLC'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, 836 Jacksbluff, LLC, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 13 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1395, Pages 276-278, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 13 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property:

> Said property is sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on said Plat an in Record Book 1059, Page 728, in the Register's Office of Claiborne County, Tennessee.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 13 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time.

Without waiving the foregoing, Defendant ADMITS that it has rented its property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 13 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 21-22 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that it has advertised its property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 13 of the Second Amended Complaint as a rental property.

RESPONSE: ADMIT

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 13 of the Second Amended Complaint.

RESPONSE: ADMIT

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 13 of the Second Amended Complaint.

RESPONSE: DENY

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766

217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

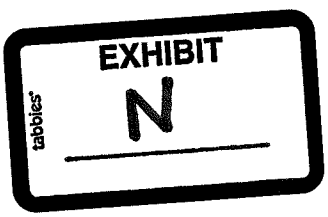
LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

DEFENDANTS FRED MAESS AND KRISTY WAMBOLD'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Come now the Defendants, Fred Maess and Kristy Wambold, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and respond to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 14 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT



2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1472, Pages 674-675, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 14 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states that your property:

> Said property is sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on said Plat and in Record Book 1059, Page 728, in the Register's Office of Claiborne County, Tennessee.
>
> Subject to all applicable reservations, restrictions, covenants, exceptions, limitations, burial rights and rights of ingress and egress reserved by the United States of America, in Deed Book 89, Pages 397-400, and Deed Book 89, Pages 400-403 and Misc. Book 22, Page 168, Register's Office of Claiborne County, Tennessee.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any

rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

"All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 14 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have rented their property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 14 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Page 23 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have advertised their property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 14 of the Second Amended Complaint as a rental property.

RESPONSE: ADMIT

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 14 of the Second Amended Complaint.

RESPONSE: ADMIT

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 14 of the Second Amended Complaint.

RESPONSE: DENIED. We routinely do background checks on guests.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC. Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH, Defendants.	)	No.: CV-2354

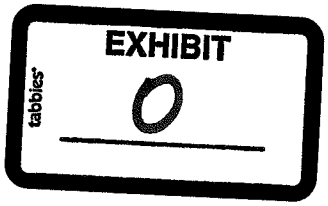
DEFENDANT JAMES SCRUGGS'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Comes now the Defendant, James Scruggs, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and responds to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 15 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT

2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds



Office in Book 1179, Pages 105-107, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 15 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states:

> Said property is sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on said Plat and in Record Book 1059, Page 728, in the Register's Office of Claiborne County, Tennessee.
>
> Subject to all applicable reservations, restrictions, covenants, exceptions, limitations, burial rights and rights of ingress and egress reserved by the United States of America, in Deed Book 89, Pages 397-400, and Deed Book 89, Pages 400-403 and Misc. Book 22, Page 168, Register's Office of Claiborne County, Tennessee.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings

or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 15 of the Second

Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that he has rented his property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 15 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 24-26 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendant ADMITS that he has advertised his property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 15 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 15 of the Second Amended Complaint.

RESPONSE: ADMIT

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 15 of the Second Amended Complaint.

RESPONSE: DENIED

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	
vs.	)	No.: CV-2354
HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN ELIZABETH WARTHMAN, TROY VANDERHOOF, PAM VANDERHOOF, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & C EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DEBBIE HUNLEY, BRENDAN FRANTZ, AIMEE FRANTZ, DAVID LANG, DAVID NORCROSS, MICHELLE NORCROSS, PETE SZUCH, and CAROLINE SZUCH,	)	
Defendants.	)	

DEFENDANTS DAVID NORCROSS AND MICHELLE NORCROSS'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Come now the Defendants, David Norcross and Michelle Norcross, pursuant to Rules 26 and 36 of the Tennessee Rules of Civil Procedure, and respond to Plaintiff's First Requests for Admissions as follows:

1. Admit that you own the property identified in Paragraph 19 of the Second Amended Sworn Complaint for Permanent Injunction ("the Second Amended Complaint").

RESPONSE: ADMIT

2. Admit that the Warranty Deed filed with the Claiborne County Register of Deeds Office in Book 1606, Pages 551-552, a copy of which is attached hereto as **Exhibit A**, accurately reflects your acquisition of the property identified in Paragraph 19 of the Second Amended Complaint.

RESPONSE: ADMIT

3. Admit that the Warranty Deed, attached as **Exhibit A**, states:

> THIS CONVEYANCE is made subject to any and all applicable restrictions, easements, and building setback lines, as shown in said Register's Office.

RESPONSE: ADMIT

4. Admit that the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants"), which are attached to the Second Amended Complaint as Exhibit A, are on file with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317.

RESPONSE: ADMIT

5. Admit that Section 2.14 of the Declaration of Covenants states:

> "**Single Family Residential Purposes**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "simple (sic) family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by definition.

RESPONSE: ADMIT

6. Admit that Section 6.04 of the Declaration of Covenants states:

> "All Lots shall be used for single family residential purposes only, and no commercial use is permitted."

RESPONSE: ADMIT

7. Admit that Section 10.01 of the Declaration of Covenants states: "Every violation of any of the LMS Governing Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association."

RESPONSE: ADMIT

8. Admit that Section 10.02 of the Declaration of Covenants states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time."

RESPONSE: ADMIT

9. Admit that Section 10.03 of the Declaration of Covenants states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings."

RESPONSE: ADMIT

10. Admit that you have rented the property identified in Paragraph 19 of the Second Amended Complaint for period(s) of time that are less than seven (7) days.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time.

Without waiving the foregoing, Defendants ADMIT that they have rented their property for period(s) of time that are less than seven (7) days.

11. Admit that you have advertised the property identified in Paragraph 19 of the Second Amended Complaint on rental websites, such as VRBO, Airbnb, etc. as depicted on Pages 28-29 of Exhibit B to the Second Amended Complaint.

RESPONSE: Objection – Overbroad. This request as stated is not limited in time. Without waiving the foregoing, Defendants ADMIT that they have advertised their property on rental websites.

12. Admit that you have a business license to operate the property identified in Paragraph 19 of the Second Amended Complaint as a rental property.

RESPONSE: DENIED

13. Admit that you pay Tennessee State taxes on revenue generated by renting the property identified in Paragraph 19 of the Second Amended Complaint.

RESPONSE: ADMIT. We rent our home through Vacasa and all state tax is paid by Vacasa.

14. Admit that you have never performed a background check on any individual who has rented the property identified in Paragraph 19 of the Second Amended Complaint.

RESPONSE: DENIED. Vacasa has informed that all clients are vetted.

RESPECTFULLY SUBMITTED this the 13 day of March, 2023.

KIZER & BLACK, ATTORNEYS, PLLC

JOEL P. REEVES, TN #040766
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 13 day of March, 2023.

Joel P. Reeves

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC., Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN, ELIZABETH WARTHMAN, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & G EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DAVID NORCROSS, and MICHELLE NORCROSS, Defendants.	)	No. CV-2354

AFFIDAVIT OF SABRINA IZBRAND

Comes now the Affiant, Sabrina Izbrand, who after being duly sworn, says as follows:

1. My name is Sabrina Izbrand, and I am more than eighteen (18) years of age, and I have personal knowledge of the facts contained in this Affidavit.

2. I am the current Secretary of the Lone Mountain Shores Owners Association, Inc. ("LMSOA"), and I have held that position since September 2021.

3. Prior to August 2022, the Board was made aware of numerous instances of LMSOA owners using their properties as short-term rentals within Lone Mountain Shores either by the

LMSOA online message board, direct contact by LMSOA members, or reviewing vacation travel websites or mobile device applications such as VRBO, AirBNB, and Travelocity, etc.

4. Later in 2022, the LMSOA Board of Directors determined, through their due diligence and the advice of multiple legal counsel, that short-term rentals within Lone Mountain Shores are in violation of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Amended Covenants").

5. In August 2022, prior to initiating any cause of action related to the short-term rental issue, the Board of Directors of LMSOA directed that Cease-and-Desist Letters ("the Cease-and-Desist Letters") be delivered to those owners in Lone Mountain Shores that the Board had identified or discovered were using their properties as short-term rental properties.

6. Prior to delivering the Cease-and-Desist Letters, the Board confirmed that all of the identified short-term rental properties were within the Lone Mountain Shores subdivision and subject to the Amended Covenants of Lone Mountain Shores.

7. Several owners, including all the named Defendants in this matter, were sent the Cease-and Desist Letters by United States Mail to their permanent address and by electronic mail to their e-mail address on file with LMSOA records.

8. Pursuant to Section 10.03 of the Amended Covenants, the Cease-and-Desist Letters provided an invitation to attend a Special Meeting called for the purpose of addressing the short-term rentals in Lone Mountain Shores. The Special Meeting was open to the entire LMSOA as numerous members (other than simply the short-term renters) wanted to be heard on the issue.

9. The Special Meeting took place on September 14, 2022, and was well attended. A large majority of those in attendance urged the Board to enforce the Amended Covenants by taking legal action against short-term renters.

9. The Special Meeting took place on September 14, 2022, and was well attended. A large majority of those in attendance urged the Board to enforce the Amended Covenants by taking legal action against short-term renters.

10. Subsequently, the instant cause of action was filed against the named Defendants.

11. Since 2022, none of the named Defendants have produced a written waiver signed by the President or Vice President of the LMSOA related to the use of their properties as short-term rental, as would be required under Section 10.07 of the Amended Covenants.

12. A thorough review of LMSOA records has also not revealed any such waiver that would satisfy the written waiver provision of Section 10.07 of the Amended Covenants.

I declare under penalty of perjury that foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.

Sabrina Izbrand

LMSOA Secretary

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC., Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN, ELIZABETH WARTHMAN, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & G EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DAVID NORCROSS, and MICHELLE NORCROSS, Defendants.	)	No. CV-2354

STATEMENT OF MATERIAL FACTS

Comes now the Plaintiff, Lone Mountain Shores Owners Association, Inc., by and through its counsel, and pursuant to Rule 56.03 of the Tennessee Rules of Civil Procedure, and submits the following material facts to which this moving party contends there is no genuine issue for trial:

1. Lone Mountain Shores is a subdivision located in Claiborne County, Tennessee on Norris Lake. *See* Second Amended Complaint, ¶ 1; Answer to Second Amended Complaint, ¶ 1.

RESPONSE:

2. Lone Mountain Shores is governed by restrictive covenants as filed in the Office of the Register of Deeds for Claiborne County, Tennessee. Relevant portions of the restrictive covenants are attached to Plaintiff's Motion for Summary Judgment as **Collective Exhibit B**

RESPONSE:

3. Defendants Henry Bennafield and Janice Bennafield are the owners of real property located in Claiborne County identified as Lots 656 and 657 of the Lone Mountain Shores subdivision and known as 207 Cliffside Lane, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 2; Answer to Second Amended Complaint, ¶ 2

RESPONSE:

4. Defendants Henry Bennafield and Janice Bennafield admitted that their property was acquired subject to the Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores. *See* Responses of Henry Bennafield and Janice Bennafield to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit C**

RESPONSE:

5. Defendants Henry Bennafield and Janice Bennafield admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Henry

Bennafield and Janice Bennafield to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit C**

RESPONSE:

6. Defendants Henry Bennafield and Janice Bennafield admitted that they have rented their property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of Henry Bennafield and Janice Bennafield to Plaintiff's First Request for Admissions, Nos. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit C**.

RESPONSE:

7. Defendant Bella Golden is the owner of real property located in Claiborne County identified as Lot 332 of the Lone Mountain Shores subdivision and known as 125 Shoreside Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 3; Answer to Second Amended Complaint, ¶ 3.

RESPONSE:

8. Defendant Bella Golden admitted that her property was acquired "subject to applicable restrictions." *See* Responses of Bella Golden to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit D**.

RESPONSE:

9. Defendant Bella Golden admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and

Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Bella Golden to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit D**.

RESPONSE:

10. Defendant Bella Golden admitted that she has rented her property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of Bella Golden to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit D**.

RESPONSE:

11. Defendants James Haws and Denise Haws are the owners of real property located in Claiborne County identified as Lot 41 of the Lone Mountain Shores subdivision and known as 1755 Mountain Shores Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 4; Answer to Second Amended Complaint, ¶ 4.

RESPONSE:

12. Defendants James Haws and Denise Haws admitted that their property was acquired "Subject to any and all matters, conditions, limitations, reservations, set back requirements, easements, restrictions, and encumbrances on or relating to any subdivision plat of the Demised Premises of records and any survey referred to herein." *See* Responses of James Haws and Denise Haws to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit E**.

RESPONSE:

13. Defendants James Haws and Denise Haws admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of James Haws and Denise Haws admitted to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit E**.

RESPONSE:

14. Defendants James Haws and Denise Haws admitted that they have rented their property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of James Haws and Denise Haws admitted to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit E**.

RESPONSE:

15. Defendants Vic Warthman and Elizabeth Warthman are the owners of real property located in Claiborne County identified as Lot 860 of the Lone Mountain Shores subdivision and known as 205 Evergreen Way, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 5; Answer to Second Amended Complaint, ¶ 5.

RESPONSE:

16. Defendants Vic Warthman and Elizabeth Warthman admitted that their property was "sold subject to the Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores" *See* Responses of Vic Warthman and Elizabeth Warthman to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit F**.

RESPONSE:

17. Defendants Vic Warthman and Elizabeth Warthman admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Vic Warthman and Elizabeth Warthman to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit F**.

RESPONSE:

18. Defendants Vic Warthman and Elizabeth Warthman admitted that they have rented their property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of Vic Warthman and Elizabeth Warthman to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit F**.

RESPONSE:

19. Defendant Ed Lund is the owner of real property located in Claiborne County identified as Lot 834 of the Lone Mountain Shores subdivision and known as 265 Jacks Bluff

Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 7; Answer to Second Amended Complaint, ¶ 7.

RESPONSE:

20. Defendant Ed Lund admitted that his property was "sold subject to the Declaration of Covenants, Conditions, Restrictions, and Easements duly records on the Plat of Lone Mountain Shores . . . ." *See* Responses of Ed Lund to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit G**.

RESPONSE:

21. Defendant Ed Lund admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Ed Lund to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit G**.

RESPONSE:

22. Defendant Ed Lund admitted that he has rented his property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of Ed Lund to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit G**.

RESPONSE:

23. Defendant Lake Front Rendezvous, LLC, is the owner of real property located in Claiborne County identified as Lot 355 of the Lone Mountain Shores subdivision and known as 272 Morning Glory Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 8; Answer to Second Amended Complaint, ¶ 8.

RESPONSE:

24. Defendant Lake Front Rendezvous, LLC, admitted that its property was acquired subject to the Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores. *See* Amended Responses of Lake Front Rendezvous, LLC, to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit H**.

RESPONSE:

25. Defendant Lake Front Rendezvous, LLC, admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Amended Responses of Lake Front Rendezvous, LLC, to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit H**.

RESPONSE:

26. Defendant Lake Front Rendezvous, LLC, admitted that it has rented its property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Amended Responses of

Lake Front Rendezvous, LLC, to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit H**.

RESPONSE:

27. Defendant M & G Eaglesnest, LLC, is the owner of real property located in Claiborne County identified as Lot 68 of the Lone Mountain Shores subdivision and known as 473 Ridgecrest Drive, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 9; Answer to Second Amended Complaint, ¶ 9.

RESPONSE:

28. Defendant M & G Eaglesnest, LLC, admitted that its property was acquired subject to the Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores. *See* Responses of M & G Eaglesnest, LLC, to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit I**.

RESPONSE:

29. Defendant M & G Eaglesnest, LLC, admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of M & G Eaglesnest, LLC, to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit I**.

RESPONSE:

30. Defendant M & G Eaglesnest, LLC, admitted that it has rented its property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of M & G Eaglesnest, LLC to Plaintiff's First Request for Admissions, Nos. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit I**.

RESPONSE:

31. Defendant B & M Storage, LLC, upon information and belief, is the owner of real property located in Claiborne County identified as Lot 824 of the Lone Mountain Shores subdivision and known as 609 Wildcat Hollow Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 10; Answer to Second Amended Complaint, ¶ 10.

RESPONSE:

32. Defendant B & M Storage, LLC's property was acquired subject to the Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores, although its "Warranty Deed" was prepared without an examination of the title. *See* Responses of B & M Storage, LLC, to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit J**.

RESPONSE:

33. Defendant B & M Storage, LLC, admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of B & M Storage, LLC, to Plaintiff's First

Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit J**.

RESPONSE:

34. Defendant B & M Storage, LLC, admitted that it has rented its property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of B & M Storage, LLC to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit J**.

RESPONSE:

35. Defendants Michael Sislow and Brandy Sislow are the owners of real property located in Claiborne County identified as Lot 819 of the Lone Mountain Shores subdivision and known as 616 Wildcat Hollow Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 11; Answer to Second Amended Complaint, ¶ 11.

RESPONSE:

36. Defendants Michael Sislow and Brandy Sislow admitted that their property was "[s]ubject to any and all applicable restriction, easements, building setback lines and other conditions as are shown in the records of the said Register's Office." *See* Responses of Michael Sislow and Brandy Sislow to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit K**.

RESPONSE:

37. Defendants Michael Sislow and Brandy Sislow admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Michael Sislow and Brandy Sislow to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit K**.

RESPONSE:

38. Defendants Michael Sislow and Brandy Sislow admitted that they have rented their property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of Michael Sislow and Brandy Sislow to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit K**.

RESPONSE:

39. Defendant Jason Jordan is the owner of real property located in Claiborne County identified as Lot 823 of the Lone Mountain Shores subdivision and known as 629 Wildcat Hollow Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 12; Answer to Second Amended Complaint, ¶ 12.

RESPONSE:

40. Defendant Jason Jordan admitted that his property is "[s]ubject to Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and lien provided in Covenants, Conditions and Restrictions of record in Book 1059, Page 728 [Lone Mountain

Shores]...." *See* Responses of Jason Jordan to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit L**.

RESPONSE:

41. Defendant Jason Jordan admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Jason Jordan to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit L**.

RESPONSE:

42. Defendant Jason Jordan implicitly admitted that he has rented his property in Lone Mountain Shores for periods of time less than seven (7) days by stating that it is his "belief" that it was "usually" rented for more than seven (7) days at a time. Moreover, his objection to the Request for Admission was previously struck by this Court's Order dated July 27, 2023. *See* Responses of Jason Jordan to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit L**.

RESPONSE:

43. Defendant 836 JACKSBLUFF, LLC, upon information and belief, is the owner of real property located in Claiborne County identified as Lot 836 of the Lone Mountain Shores subdivision and known as 221 Jacks Bluff Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 13; Answer to Second Amended Complaint, ¶ 13.

RESPONSE:

44. Defendant 836 JACKSBLUFF, LLC's property was "sold subject to the Declaration of Covenants, Conditions, Restrictions, and Easements [of Lone Mountain Shores]". *See* Responses of 836 JACKSBLUFF, LLC, to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit M**.

RESPONSE:

45. Defendant 836 JACKSBLUFF, LLC, admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of 836 JACKSBLUFF, LLC, to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit M**.

RESPONSE:

46. Defendant 836 JACKBLUFF, LLC, admitted that it has rented its property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of 836 JACKSBLUFF, LLC to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit M**.

RESPONSE:

47. Defendants Fred Maess and Kristy Wambold are the owners of real property located in Claiborne County identified as Lot 825 of the Lone Mountain Shores subdivision and known as 605 Wildcat Hollow Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 14; Answer to Second Amended Complaint, ¶ 14.

RESPONSE:

48. Defendants Fred Maess and Kristy Wambold admitted that their property was "sold subject to the Declaration of Covenants, Conditions, Restrictions, and Easements [of Lone Mountain Shores]...." *See* Responses of Fred Maess and Kristy Wambold to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit N**.

RESPONSE:

49. Defendants Fred Maess and Kristy Wambold admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of Fred Maess and Kristy Wambold to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit N**.

RESPONSE:

50. Defendants Fred Maess and Kristy Wambold admitted that they have rented their property in Lone Mountain Shores for periods of time less than seven (7) days. See Responses of

Fred Maess and Kristy Wambold to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit N**.

RESPONSE:

51. Defendant James Scruggs is the owner of real property located in Claiborne County identified as Lot 856 of the Lone Mountain Shores subdivision and known as 385 Wildcat Hollow Road, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 15; Answer to Second Amended Complaint, ¶ 15.

RESPONSE:

52. Defendant James Scruggs admitted that his property is "sold subject to the Declaration of Covenants, Conditions, Restrictions, and Easements [of Lone Mountain Shores]...." *See* Responses of James Scruggs to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit O**.

RESPONSE:

53. Defendant James Scruggs admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of James Scruggs to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit O**.

RESPONSE:

54. Defendant James Scruggs admitted that he has rented his property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of Jason Jordan to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit O**.

RESPONSE:

55. Defendants David Norcross and Michelle Norcross are the owners of real property located in Claiborne County identified as Lot 201 of the Lone Mountain Shores subdivision and known as 203 Nightshade Lane, New Tazewell, TN 37825. *See* Second Amended Complaint, ¶ 19; Answer to Second Amended Complaint, ¶ 19.

RESPONSE:

56. Defendants David Norcross and Michelle Norcross admitted that the conveyance of their property was "made subject to any and all applicable restrictions, easements, and building setback lines, as shown in the Register's Office." *See* Responses of David Norcross and Michelle Norcross to Plaintiff's First Request for Admissions, Nos. 2-3, attached to Plaintiff's Motion for Summary Judgment as **Exhibit P**.

RESPONSE:

57. Defendants David Norcross and Michelle Norcross admitted the language of Sections 2.14, 6.04, 10.01, and 10.03 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements of Lone Mountain Shores as recorded with the Claiborne County Register of Deeds Office in Book 1555, Pages 291-317. *See* Responses of David Norcross

and Michelle Norcross to Plaintiff's First Request for Admissions, Nos. 4-9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit P**.

RESPONSE:

58. Defendants David Norcross and Michelle Norcross admitted that they have rented their property in Lone Mountain Shores for periods of time less than seven (7) days. *See* Responses of David Norcross and Michelle Norcross to Plaintiff's First Request for Admissions, No. 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit P**.

RESPONSE:

59. In August 2022, prior to initiating any cause of action related to the short-term rental issue, the Board of Directors of LMSOA directed that Cease-and-Desist Letters ("the Cease-and-Desist Letters") be delivered to those owners in Lone Mountain Shores that the Board had identified or discovered were using their properties as short-term rental properties. *See* Affidavit of Sabrina Izbrand ¶ 5, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

60. Prior to delivering the Cease-and-Desist Letters, the Board confirmed that all of the identified short-term rental properties were within the Lone Mountain Shores subdivision and subject to the Amended Covenants of Lone Mountain Shores. *See* Affidavit of Sabrina Izbrand ¶ 6, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

61. Several owners, including all the named Defendants in this matter, were sent the Cease-and Desist Letters by United States Mail to their permanent address and by electronic mail to their e-mail address on file with LMSOA records. *See* Affidavit of Sabrina Izbrand ¶ 7, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

62. Pursuant to Section 10.03 of the Amended Covenants, the Cease-and-Desist Letters provided an invitation to attend a Special Meeting called for the purpose of addressing the short-term rentals in Lone Mountain Shores. *See* Affidavit of Sabrina Izbrand ¶ 8, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

63. The Special Meeting took place on September 14, 2022. *See* Affidavit of Sabrina Izbrand ¶ 9, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

64. Subsequently, the instant cause of action was filed against the named Defendants. *See* Affidavit of Sabrina Izbrand ¶ 10, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

65. Since 2022, none of the named Defendants have produced a written waiver signed by the President or Vice President of the LMSOA related to the use of their properties as short-

term rental, as would be required under Section 10.07 of the Amended Covenants. *See* Affidavit of Sabrina Izbrand ¶ 11, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

66. A thorough review of LMSOA records has also not revealed any such waiver that would satisfy the written waiver provision of Section 10.07 of the Amended Covenants. *See* Affidavit of Sabrina Izbrand ¶ 12, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

RESPONSE:

Respectfully submitted this 9th day of November 2023.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

LEWIS THOMASON, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901
phawkins@lewisthomason.com
(865) 546-4646
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all parties at interest in this cause as follows:

☐ By placing postage prepaid envelope in United States Mail Service, addressed to:

Ryan Sarr, Esq.
Trammell, Adkins & Ward, P.C.
1900 N. Winston Road, Suite 600
Knoxville, TN 37919

☒ By e-mail, addressed to:

Ryan Sarr, Esq.
ryansarr@tawpc.com

This 6th day of November 2023.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

9081859

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC., Plaintiff, vs. HENRY BENNAFIELD, JANICE BENNAFIELD, BELLA GOLDEN, JAMES HAWS, DENISE HAWS, VIC WARTHMAN, ELIZABETH WARTHMAN, ED LUND, LAKE FRONT RENDEZVOUS, LLC, M & G EAGLESNEST, LLC, B & M STORAGE, LLC, MICHAEL SISLOW, BRANDY SISLOW, JASON JORDAN, 836 JACKSBLUFF, LLC, FRED MAESS, KRISTY WAMBOLD, JAMES SCRUGGS, DAVID NORCROSS, and MICHELLE NORCROSS, Defendants.	)	No. CV-2354

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Comes now the Plaintiff, Lone Mountain Shores Owners Association, Inc. ("LMSOA"), by and through counsel, pursuant to Rule 56 of the Tennessee Rules of Civil Procedure ("Rule 56") and submits this Memorandum of Law in Support of its Motion for Summary Judgment. This lawsuit is about the Defendants' use of their properties in Lone Mountain Shores as short-term rentals. Plaintiff asserts that as a matter of law such use of Defendants' properties violates the Amended and Restated Declaration of Covenants, Restrictions, and Easements for Lone Mountain Shores ("the Amended Covenants"). Accordingly, and as will be further explained below,

LMSOA is entitled to summary judgment on its permanent injunction claim against the Defendants.

FACTUAL BACKGROUND

Lone Mountain Shores is a subdivided residential community in Claiborne County, Tennessee. Lone Mountain Shores is governed internally by the Lone Mountain Shores Owners Association, Inc., which was created by original developer TENNESSEE LONE MT. SHORES CORP. LMSOA is the successor in interest to TENNESSEE LONE MT. SHORES CORP. At the inception of Lone Mountain Shores, TENNESSEE LONE MT. SHORES CORP. filed the original Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores ("the Original Covenants") on or about September 17, 1998, with the Claiborne County Register of Deeds at Book/Page MISC54/274-289. Section 6.03 of the Original Covenants specified that properties within Lone Mountain Shores were intended for Residential Use Only:

> Residential Use Only. The lots shall be used for single family residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any dwelling for private residential purposes or to prevent an individual lot owner from conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the dwelling's door area or employs not more than two (2) persons.

See Original Covenants, section 6.03, attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**. Importantly, there was no definition for "single family residential purposes" in the Original Covenants.

Additionally, Section 10.05 of the Original Covenants contained the following pertinent provision:

> No Waiver. The failure of the Board, Board of Directors, Declarant, the Manager, the ARC or any aggrieved Owner to enforce the Lone Mountain Shores Documents shall not be deemed a waiver of the

> rights to do so for any subsequent violations or of the right to enforce any other part of the Lone Mountain Shores Documents at any future time."

See Original Covenants, section 10.05, attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**.

Additionally, the Original Covenants contained the following pertinent provision:

> Amendment. (a) Subject to the requirements of (b) below, these Covenants, the Articles, or By-Laws may be materially amended only by a unanimous vote of the Board and the affirmative vote of fifty-five (55%) percent of the Owners voting by absentee ballot. Any amendment must be recorded in the Registrar's Office of Claiborne County, Tennessee.

See Original Covenants, section 11.02 attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**.

Subsequently, the Original Covenants were amended and restated on about August 12, 2013, when the "Amended and Restated Declaration of Covenants, Restrictions, and Easements for Lone Mountain Shores" ("the Amended Covenants") were filed with the Claiborne County Register of Deeds at Book/Page 1388/649-684.[1] Initially, the Amended Covenants significantly and dramatically altered and expanded the residential use provision of LMSOA:

> Residential Use Only. All Lots shall be used for single family residential purposes only, and no commercial use is permitted. This restriction is not to be construed to prevent rental of any Lot or any dwelling for private single family residential purposes or to prevent an Owner from conducting home occupations in a Dwelling, provided such occupations: (a) are subordinate to the primary residential use; (b) occupy no more than twenty percent (20%) of

[1] After the 2013 Amended Covenants were filed, there was another Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores filed with the Claiborne County Register of Deeds on September 25, 2020, at Book/Page: 1555/291-317. The provisions at issue in this matter were unchanged between the 2013 and the 2020 Amended Covenants, which is the most recent full restatement of the Covenants of Lone Mountain Shores and which is attached to the Second Amended Sworn Complaint for Permanent Injunction as **Exhibit A**.

> the Dwelling's floor area; and (c) employ not more than two (2) persons.
>
> . . .
>
> Examples of prohibited commercial uses of a Lot or any dwelling include providing the services of or operating as a restaurant, an inn, a boarding house, or a bed-and-breakfast or providing other atypical rental services of a commercial nature.
>
> . . .
>
> Examples of non single family residential purposes uses of a Lot or any dwelling include, but are not limited to: occupancy by two or more unaffiliated individuals or groups that function as independent housekeeping units; owners or their agents occupying any part of the property at the same time as renters; utilizing the Lot or any dwelling as a fraternity, sorority or dorm complex; or using the Lot or any dwelling as a Group Home or institution of any kind.
>
> . . .
>
> All provisions of these Covenants and of any rules, regulations, or use restrictions promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

See Amended Covenants, Section 6.04, attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**.

Moreover, a critical definition was added to the Amended Covenants:

> "Single Family Residential Purposes" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "single family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by this definition.

See Amended Covenants, Section 2.14, attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**. (emphasis added).

Finally, and pertinently, the Amended Covenants were altered as follows:

> No Waiver. The failure of the Board, the ARC, an Officer, or any aggrieved Owner to enforce any provision of the LMS Governing Documents is not to be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the LMS Governing Documents in the future. No waiver will be effective unless it is in writing and signed by the President or Vice President on behalf of the Association, or by the Chairman of the ARC on behalf of the ARC.

See Amended Covenants, Section 10.07, attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**.

Over the years, the practice of using "residential" properties as short-term rentals, particularly in lake/ocean/mountain adjacent areas has significantly increased, including in Lone Mountain Shores. The ability of property owners to easily market the short-term rental of such properties has increased commensurately with the increased use of internet websites and mobile device applications, such as Travelocity, VRBO, AirBNB. There is also an entire industry of property management companies, such as Vacasa among others, who will manage the entire marketing/rental/cleaning process for a fee. The rise of short-term rentals in communities that were originally restricted, marketed, and sold as residential communities has often led to conflict within homeowners' associations – with the battle lines often being drawn between owners who are permanent local residents and their "neighbors," who often live in other states and primarily use their properties as short-term rentals. *See Pandharipande v. FSD Corporation*, 2023 Tenn. LEXIS 61, No. M2020-01174-SC-R11-CV (Tenn. 2023) *supra.*

LMSOA, and particularly its board, harbors no ill-will toward any of the named Defendants in this matter. However, because of its belief that the actions of Defendants violate the Amended

Covenants, LMSOA's Board of Directors is duty-bound to seek the enforcement of the Amended Covenants and stop the practice of short-term renting in Lone Mountain Shores. Since this lawsuit was filed, LMSOA has only sought Requests for Admissions from the Defendants, the responses to which LMSOA asserts eliminate any issues of material fact and reduce this matter to a legal question as in *FSD Corporation*. Importantly, Defendants in this matter have all provided responses to Plaintiff's First Requests for Admissions, admitting that: 1) they own their properties within Lone Mountain Shores; 2) their properties are subject to the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores; and 3) they have used their properties as short-term rentals. *See* Statement of Material Facts, Nos. 3-58, 60; *see also* Affidavit of Sabrina Izbrand, ¶ 6, attached to Plaintiff's Motion for Summary Judgment as **Exhibit Q**.

Pursuant to the Tennessee Supreme Court's analysis and reasoning in *FSD Corporation*, LMSOA asserts that the short-term rental of properties within Lone Mountain Shores, as by Defendants in this case, violates the Amended Covenants of Lone Mountain Shores as a matter of law. Such activity is specifically and unambiguously excluded under Section 6.04 of the Amended Covenants and the definition of "Single Family Residential Purposes" found in Section 2.14 of the Amended Covenants as detailed below. Moreover, regardless of any previous position or statement on the issue of short-term rentals made by any former member of the LMSOA Board of Directors, LMSOA is entitled to (and obligated to) seek the enforcement of the Amended Covenants, and LMSOA is neither judicially estopped nor equitably estopped from doing so. Finally, none of the Defendants have produced (and Plaintiff has been unable to locate) any signed waiver, which pursuant to Section 10.07 of the Amended Covenants would permit the Defendants to use their properties as short-term rentals. *See* Affidavit of Sabrina Izbrand, attached as **Exhibit**

Q to LMSOA's Motion for Summary Judgment. Accordingly, Plaintiff Lone Mountain Shores Owners Association, Inc. is entitled to summary judgment on its permanent injunction claim against Defendants.

SUMMARY JUDGMENT STANDARD

Under Rule 56.04 of the Tennessee Rules of Civil Procedure, the moving party is entitled to summary judgment if the moving party can show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. Specifically, Rule 56.04 states as follows:

> [T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admission on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Tenn. R. Civ. P. 56.04.

In *Rye v. Women's Care Center of Memphis*, 477 S.W.3d 235 (Tenn. 2015), the Tennessee Supreme Court dramatically overhauled the summary judgment standard in Tennessee by adopting the standards articulated by Justice Brennan in the *Celotex* trilogy." *Rye*, 477 S.W.3d at 246. The stated purpose was to "correct course" and overrule *Hannan v. Alltel Publishing Company*, 270 S.W.3d 1 (Tenn. 2008), which had essentially driven "a stake through the heart of summary judgment in Tennessee." *Rye*, 477 S.W.3d at 260 (internally quotation omitted)). Although the clear thrust of *Rye* was to create a summary judgment standard that would result in its increased use as a device to resolve lawsuits, the *Rye* Court did not specially articulate what summary judgment standard trial courts should use when – as here – the moving party has the burden of proof at trial.

More recently, in *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019), the Tennessee Supreme Court clarified the summary judgment standard to be applied when

the moving party also bears the burden of proof at trial, and it again cited with approval Justice Brennan's dissent in *Celotex*: "[I]f the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict." *TWB Architects, Inc.*, 578 S.W.3d at 888 (citing *Celoxtex Corp. v. Catrett*, 477 U.S. 317, 331 (1986) (Brennan, J., dissenting). If the moving party produces such evidence, then "the burden shifts to the nonmoving party to produce evidence showing that there is a genuine issue of fact for trial." *Id.* The *TWB Architects, Inc.* Court reiterated:

> The emphasis under the *Rye* standard is the evidence at the summary judgment stage. Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, "[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. This is the standard Tennessee courts must apply when ruling on summary judgment motions regardless of which party bears the burden of proof at trial.

TWB Architects, Inc., 578 S.W.3d at 888-89 (citing *Rye*, 477 S.W.3d at 265). Plaintiff LMSOA asserts that the evidence as reflected in its Motion for Summary Judgment and exhibits is sufficient that, if uncontroverted at trial, would entitle it to a directed verdict. Accordingly, if in response to this Motion for Summary Judgment, Defendants cannot produce evidence showing that there is a genuine issue of material fact, then this motion must be granted and a permanent injunction in favor of LMSOA must be placed against Defendants' use of their properties as short-term rentals in Lone Mountain Shores.

LAW AND ARGUMENT

I. The Recent Tennessee Supreme Court Decision in *Pandharipande v. FSD Corporation* Supports Summary Judgment in Favor of Lone Mountain Shores Owners Association, Inc.

A few weeks ago, on October 17, 2023, the Tennessee Supreme Court issued a critical decision related to several of the legal issues joined in this matter. *See Pandharipande v. FSD Corporation*, 2023 Tenn. LEXIS 61 (Tenn. 2023) (for ease of reference, a true and accurate copy of the *FSD Corporation* opinion is attached to Plaintiff's Motion for Summary Judgment as **Exhibit A**). In *FSD Corporation*, the Tennessee Supreme Court affirmed the trial court's grant of summary judgment in favor of a homeowners' association against an owner within the community who was using his property as a short-term rental in violation of the restrictive covenants placed upon his property. There are a striking number of similarities between the facts of the *FSD Corporation* and the instant matter. Both cases involve the following: owners of properties in communities on or around a Tennessee lake; restrictive covenants aimed at stopping short-term rentals that have been amended since the original covenants were put in place by the developers; admitted use of properties as short-term rentals by the offending owners; alleged (and failing) defenses that earlier board members stated that short-term rentals were permitted in the respective communities. However, there is one unmistakable and dramatic difference in the facts of the two cases: the language in the Amended Covenants for Lone Mountain Shore is in all respects clear and unambiguous in its prohibition of short-term renting.

Applying the standards of review and principles of contract interpretation articulated by the *FSD Corporation* Court leads to the inescapable conclusion that the Amended Covenants of Lone Mountain Shores are clear and unambiguous and do not permit the short-term rental of

properties as by Defendants within Lone Mountain Shores. Accordingly, the Court must grant LMSOA summary judgment on its permanent injunction claim against Defendants in this matter.

A. In *FSD Corporation*, the simple "residential purpose" provision in the original covenants from 1984 was held to be ambiguous on the issue of short-term renting and thus unenforceable.

In *FSD Corporation*, there were two separate restrictive covenants at issue: 1) the original covenants filed in 1984, and 2) amendments to the original covenants filed in 2018. *FSD Corporation* ultimately prevailed on the 2018 amendments which restricted leases to a minimum of thirty (30) days. However, the bulk of the critical analysis of the Court was geared toward interpreting the "residential purpose" provision from the 1984 original covenants, which stated that "each Lot shall be used for residential and no other purposes." The Court ultimately held that the 1984 provision was ambiguous and did not prohibit short-term rentals.

However, the *FSD Corporation* Court did not reach that conclusion until after articulating and analyzing several principles of contract interpretation, undertaking an exhaustive review of the commonly accepted definitions of the terms "used," "purposes," and "residential," examining other provisions within the original covenants which might inform on the issue, and examining how courts from other states had dealt with this particular provision. *See FSD Corporation*, 2023 Tenn. LEXIS 61 at *16-*38. LMSOA respectfully asserts that the multiples provisions in the Amended Covenants of 2013 for Lone Mountain Shores, upon which this lawsuit is based, are dramatically different than the simple "residential and no other purposes" provision from the 1984 covenants in *FSD Corporation.* Applying the analysis of the *FSD Corporation* Court to the 2013 Amended Covenants of Lone Mountain Shores leads to the conclusion that the provisions clearly and unambiguously prohibit short-term renting in Lone Mountain Shores.

B. The key provisions of the Amended Covenants of Lone Mountain Shores at issue are much more descriptive and clearly defined than those in *FSD Corporation.*

In *FSD Corporation*, the Court stated: "[i]n arguing that the 1984 covenants prohibit short-term rentals, FSD relies primarily on the requirement that "each Lot shall be used for residential and no other purposes." *FSD Corporation*, 2023 Tenn. LEXIS at *23. That one sentence (and little else) was the target of the Court's analysis and ultimate holding that the 1984 provision was ambiguous and not enforceable against short-term rentals. However, the provisions from the Amended Covenants upon which Lone Mountain Shores relies in this matter, have much more breadth and description within them. The provisions also contain defined terms and, in some cases, spell out specific examples of what is and is not included within the definitions that govern the provisions. Under any reasonable interpretation of the Amended Covenants, short-term rental use of properties in not allowed in Lone Mountain Shores.

By way of background, when Lone Mountain Shores was developed in the late 1990's, the Original Covenants included the following provision:

> Residential Use Only. The lots shall be used for single family residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any dwelling for private residential purposes or to prevent an individual lot owner from conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the dwelling's door area or employees not more than two (2) persons.

See Original Covenants, section 6.03, attached as part of **Collective Exhibit B** to LMSOA's Motion for Summary Judgment.

While this provision has more descriptive language for the permitted use of properties within Lone Mountain Shores than the 1984 "residential purpose" provision at issue in *FSD Corporation*, it is possible – perhaps even likely – that the *FSD Corporation* Court would have

interpreted the provisions similarly and ultimately held that it was ambiguous as to any prohibition against short-term renting. After all, in the Original Covenants for Lone Mountain Shores, there was no definition for "single family residential purposes." Moreover, it was clear that at least some renting was allowed for "private residential purposes," without spelling out exactly what those were. Moreover, there were no specific examples of rental activities that would be prohibited. Importantly, this is not the provision upon which LMSOA relies in this matter.

Rather, like the homeowners' association in *FSD Corporation*, LMSOA relies upon the provisions of amended covenants in its effort to obtain a permanent injunction against Defendants in this matter. Specifically, LMSOA relies upon Sections 6.04 and 2.14 of the 2013 Amended Covenants. As noted above, Section 6.04 of the Amended Covenants completely restates and expands upon the prior provision on Residential Use.

> Residential Use Only. All Lots shall be used for single family residential purposes only, and no commercial use is permitted. This restriction is not to be construed to prevent rental of any Lot or any dwelling for private single family residential purposes or to prevent an Owner from conducting home occupations in a Dwelling, provided such occupations: (a) are subordinate to the primary residential use; (b) occupy no more than twenty percent (20%) of the Dwelling's floor area; and (c) employ not more than two (2) persons.
>
> . . .
>
> Examples of prohibited commercial uses of a Lot or any dwelling include providing the services of or operating as a restaurant, an inn, a boarding house, or a bed-and-breakfast or providing other atypical rental services of a commercial nature.
>
> . . .
>
> Examples of non single family residential purposes uses of a Lot or any dwelling include, but are not limited to: occupancy by two or more unaffiliated individuals or groups that function as independent housekeeping units; owners or their agents occupying any part of the property at the same time as renters; utilizing the Lot or any

> dwelling as a fraternity, sorority or dorm complex; or using the Lot or any dwelling as a Group Home or institution of any kind.
>
> . . .
>
> All provisions of these Covenants and of any rules, regulations, or use restrictions promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

See Amended Covenants, Section 6.04, attached as part of **Collective Exhibit B** to LMSOA's Motion for Summary Judgment.

In Section 6.04 of the Amended Covenants, "All lots are to be used for single family residential purposes only, and no commercial use is permitted." *Id.* Additionally, as part of the 2013 Amended Covenants, a definition for "Single Family Residential Purpose" was added as Section 2.14:

> "Single Family Residential Purposes" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "single family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by this definition.

See Amended Covenants, Section 6.04, attached as part of **Collective Exhibit B** to LMSOA's Motion for Summary Judgment.

C. Applying the analysis undertaken by the *FSD Corporation* Court to the key provisions of the Amended Covenants of Lone Mountain Shores reveals that short-term rentals are prohibited in Lone Mountain Shores.

Unlike the Court in *FSD Corporation*, in determining what "Residential Use Only" means in this matter, this Court does not have to resort to dictionaries or the case law of other states to

aid in its determination. Rather, it only must apply basic rules of contract interpretation. Because a "covenant is a contract," it must be interpreted by looking "to the plain meaning of the words in the document." *FSD Corporation*, 2023 Tenn. LEXIS 61 at *17 (quoting *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 480-81 (Tenn. 2012) and *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006)). Section 6.04 of the Amended Covenants states unequivocally that: "All Lots shall be used for single family residential purposes only". While "single family residential purposes" was an undefined term in the Original Covenants, the decision to amend the covenants to provide a lengthy definition for the term is critical and is illustrative of the fact that LMSOA members sought to prohibit certain uses of the properties within Lone Mountain Shores.

In *FSD* Corporation, the Court noted that principles of contract interpretation require the consideration of the entire document in which the words appear because "one clause may modify, limit or illuminate another." *FSD Corporation*, 2023 Tenn. LEXIS 61 at *17 (quoting *Cocke Co. Bd. of Hwy. Comm'rs v. Newport Utilis. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985)). It was clearly the intention of LMSOA in adopting the 2013 Amended Covenants to illuminate the Residential Use Only provision of Section 6.04 by providing a definition for one of the key terms of the provision – "single family residential purposes." Applying the definition of "Single Family Residential Purposes" as detailed in Section 2.14 of the Amended Covenants to Section 6.04 reveals that its is anticipated that one housekeeping unit, i.e. one family, will occupy the dwelling. The definition specifically differentiates between "one housekeeping unit" (which is acceptable) from "unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse" (which is not). Unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse are all situations where the duration of the stay would be expected to be brief in nature, as with short-term rentals. Section 2.14 clearly excludes such activities from

its definition and accordingly such activity is not considered a "single family residential purpose" under Section 6.04 of the Amended Covenants.

Moreover, the last sentence of Section 2.14 unequivocally states: "**Any rental accommodations and services** such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings, or condominiums **are excluded by this definition**." (Emphasis added). It would be difficult to draft a more clearly worded sentence to convey the idea that short-term rentals are excluded from the definition of "single family residential purposes" than the last sentence of Section 2.14. It is neither vague nor ambiguous. It excludes "any rental accommodations and services" such as those provided by a hotel, a motel, a bed & breakfast, a rooming house, a boarding house, an apartment building, or a condominium.

To put it bluntly, the short-term rentals of Defendants' properties are indistinguishable from the rental accommodations and services that one would expect when renting a condominium. There is simply no tangible difference between renting a vacation condominium in the mountains or the beach and one of Defendants' properties in Lone Mountain Shores. Someone who desires to rent such a property would simply go to a rental website, plug in their dates of intended stay and number of guests, and search for availability. In the Second Amended Sworn Complaint, LMSOA attached as **Exhibit B** numerous screen shots of Defendants' properties listed for rental on such websites as vrbo.com, vacasa.com, facebook.com, and expedia.com. In their Answer, Defendants did not deny the truth of the allegations, and in fact, admitted them. Moreover, every named Defendant in this matter admitted that they advertised their properties on rental websites, such as those described above. *See* Responses of All Defendants to Plaintiff's First Requests for Admissions, No. 11 in each document, attached as **Exhibits C-P** to Plaintiff's Motion for Summary Judgment.

Similarly, the short-term rentals of Defendants' properties are almost indistinguishable from the rental accommodations and services that one would expect when staying at a hotel. In fact, the State of Tennessee includes "short-term rental units" in its definition of "hotel:"

> "Hotel" means any structure or space, or any portion thereof, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes privately, publicly, or government-owned hotels, inns, tourist camps, tourist courts, tourist cabins, motels, short-term rental units, primitive and recreational vehicle campsites and campgrounds, or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration;

See Tenn. Code Ann. § 67-4-1401 (emphasis added). Moreover, short-term rentals are required to pay sales tax and/or tourist accommodation tax or hotel occupancy tax. *See* https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/short-term-rentals.pdf. If the Court agrees with LMSOA that the short-term rental of Defendants' properties is similar or analogous to renting a condominium or hotel as indicated above, or other place of stay as listed in Section 2.14, then it must find that such short-term rentals are not included in the definition of "Single Family Residential Purposes." In fact, such short-term rentals are specifically and unequivocally **excluded** from the definition by the plain meaning of the words in Section 2.14. Accordingly, if short-term rentals are excluded from the term "single family residential purposes," then they cannot be allowed under the Residential Use Only restriction – Section 6.04 of the Amended Covenants. Thus, LMSOA is entitled to summary judgment and the entry of a permanent injunction prohibiting the Defendants' use of their properties as short-term rentals.

D. Other provisions of the Amended Covenants support the argument that short-term rentals are prohibited in Lone Mountain Shores.

In addition to the portion of Section 6.04 already discussed and Section 2.14 of the Amended Covenants, other provisions within the Amended Covenants also support a finding by

the Court that short-term rentals are prohibited by the Amended Covenants. In addition to requiring that lots be used for single family residential purposes only, Section 6.04 also states that "no commercial use is permitted." The second paragraph of Section 6.04 states that examples "of prohibited commercial uses of a Lot or any dwelling include providing the services of or operating as a restaurant, an inn, a boarding house, or a bed-and-breakfast or providing other atypical rental services of a commercial nature." Because the Amended Covenants allow for rental of lots or dwellings for single family residential purposes, the identification of "atypical rental services of a commercial nature" as a "prohibited commercial use" implies a clear distinction between rentals that are allowed and rentals that are not allowed. Because the language "atypical rental services of a commercial nature" follows "an inn, a boarding house, or a bed & breakfast," which are all situations where the duration of the stay would be expected to be brief in nature, as with short-term rentals, it seems clear that the provision is directed more specifically at the type of "rental services" being provided by the Defendants.

Additionally, Section 6.07 of the Amended Covenants governs permissible rentals within Lone Mountain Shores. Specifically, Section 6.07 states:

> Section 6.07 Rental. Lots and Dwellings may be rented only for private single family residential purposes subject to the following provisions:
>
> a. The renting to unaffiliated individuals or groups at the same time is prohibited.
>
> b. Tenants are required to abide by all LMS Governing Documents.
>
> c. Owners are responsible for the actions of their tenants. Each Owner shall take appropriate steps and should put in place additional rules, limitations and restrictions as necessary to ensure that tenants do not conduct deleterious activities or otherwise create a nuisance to other Owners.

> d. All rules, regulations, or use restrictions of these Covenants promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

See Amended Covenants, Section 6.07, attached as part of **Collective Exhibit B** to LMSOA's Motion for Summary Judgment. (Emphasis added).

Section 6.07 states that lots and dwellings in Lone Mountain Shores may be rented "only for private single family residential purposes." It also expressly states that renting to unaffiliated individuals or groups at the same time is prohibited. Because the definition for "single family residential purposes" specifically excludes "any rental accommodations or services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums," it seems abundantly clear that the intention is for owners to be able to rent to a single housekeeping unit for longer periods of time – such as a yearly lease or month-to-month lease. The specific inclusion of certain rental activities as in Section 6.07 and exclusion of other rental activities by the use of "single family residential purpose," whose definition in Section 2.14 expressly prohibits other "rental accommodations and services" should inform the Court as to the intention of the members of LMSOA with respect to the Amended Covenants. The clear intention is to allow rentals of a longer duration to one single housekeeping unit, while prohibiting those rentals that are shorter in duration, or encompass more than one single housekeeping unit, such as the stays at hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums. In any event, these additional provisions within the Amended Covenants add further support for LMSOA's position that short-term rentals are prohibited by the Amended Covenants. As the *FSD Corporation* Court stated, a reviewing court may only "conclude that the language in a covenant is ambiguous if it is susceptible of more than one reasonable interpretation."

FSD Corporation, 2023 Tenn. LEXIS 61 at *17 (quoting *Memphis Hous. Auth. v. Thompson*, 38 S.W.3d 504, 512 (Tenn. 2001)). Taking all these provisions into account, the only reasonable interpretation of the relevant provisions in the Amended Covenants is that they prohibit short-term rental use of properties in Lone Mountain Shores. Thus, LMSOA is entitled to summary judgment and the entry of a permanent injunction prohibiting the Defendants' use of their properties as short-term rentals.

II. The *FSD Corporation* Decision Forecloses the Viability of Defendants' Affirmative Defenses of Judicial and Equitable Estoppel.

In their unsworn Answer to the Second Amended Complaint, Defendants raised a couple of notable affirmative defenses: judicial estoppel and equitable estoppel. With respect to judicial estoppel, Defendants asserted that LMSOA has "admitted in previous judicial proceedings that short-term rentals were permitted in the Lone Mountain Shores community. . . . Based upon the prior admissions of the Association, the Association must be estopped from now claiming that short term rentals are prohibited." *See* Answer, Affirmative Defenses ¶ 1 (citing *Lone Mountain Shores Owner's Association, Inc. v. The Elizabeth Lynn Webb revocable Trust, et al.*, Claiborne County Chancery Court No. 18369). No evidence or proof has been placed into the record of any such "admission" by LMSOA. However, even if there were evidence produced that confirmed the truth of such an admission, it would not provide a valid judicial estoppel defense for Defendants.

In *FSD Corporation*, the Plaintiff, Mr. Pandharipande, contended that FSD Corporation should be judicially estopped from arguing that the original covenants prohibited short-term rentals. *See FSD Corporation*, 2023 Tenn. LEXIS 61 at *18. Pandharipande's basis for the defense was that FSD had initially stated in its answer to his complaint that "no restrictive covenants prevented [him] from leasing his property on a short-term basis at the time he purchased

it." *Id.* The *FSD Corporation* Court noted that in Tennessee, the doctrine of judicial estoppel "applies only when has attempted to contradict by oath a sworn statement previously made." *Id.* (quoting *Cracker Barrel Ole Country Store, Inc. v. Epperson*, 2874 S.W.3d 303, 315 (Tenn. 2009)). Moreover, judicial estoppel "applies only when the inconsistent sworn statement concerns an issue of fact." *Id.* (citing *Kershaw v. Levy*, 583 S.W.3d 544, 549 (Tenn. 2019) (emphasis added).

In determining whether FSD Corporation's alleged statement concerned an issue of fact, the Court determined that it did not. Rather, the Court held that "the statements amounted to legal conclusions about the effect of the 1984 [covenants]. As explained above, the doctrine of judicial estoppel is triggered only by inconsistent statements regarding issues of *fact*." *FSD Corporation*, 2023 Tenn. LEXIS 61 at *19 (italics in original) (internal citations omitted). Accordingly, based upon the Tennessee Supreme Court's holding in *FSD Corporation*, what any prior LMSOA board member may have said about short-term rentals in Lone Mountain Shores, whether under oath or not, cannot form the basis for a judicial estoppel defense. LMSOA's "belief regarding the effect of the [original covenants] is not a material fact at all; it is an opinion on a legal issue." 2023 Tenn. LEXIS 61 at *21.

Defendants' equitable estoppel defense fails for the same reason. In the unsworn Answer to the Second Amended Complaint, Defendants asserted that a prior board member(s) of LMSOA "made affirmative representations to the Defendants that short term rentals were permitted in Lone Mountain Shores community." *See* Answer, Affirmative Defenses ¶ 2. In *FSD Corporation*, like judicial estoppel, Mr. Pandharipande argued that FSD Corporation was equitably estopped from enforcing the original covenants against him. *Id.* at *19. In support of his defense, he pointed to "evidence that two FSD employees leased their properties in [FSD] on a short-term basis before the 2018 amendments were recorded. He also points to emails between FSD's board members and

minutes from FSD's board meetings which suggest that the board believed short-term rentals were permitted under the 1984 covenants." *Id.* at *20-21. The *FSD Corporation* Court denied his equitable estoppel defense because he failed to explain how any of the evidence established that "FSD made false representations of material fact or concealed material facts. Indeed, FSD's belief regarding the effect of the 1984 amendments is not a material fact at all; it is an opinion about a legal issue." *Id.* at *21 (citing *Ryan v. Lumberman's Mut. Life Ins. Co.*, 485 S.W.2d 548, 551 (Tenn. 1972)). Similarly, LMSOA's "belief regarding the effect of the [Amended Covenants] is not a material fact at all; it is an opinion about a legal issue." Accordingly, the *FSD Corporation* decision forecloses the viability of Defendants' equitable estoppel defense. Moreover, it should inform this court as to the lack of necessity for extensive discovery of the LMSOA's records, which would yield irrelevant information.

III. Section 10.07 of the Amended Covenants forecloses Defendants' Affirmative Defenses of Waiver and Abandonment due to Community Acquiescence.

In its unsworn Answer to the Second Amended Complaint, Defendants assert that the language in the Amended Covenants that LMSOA's claim is based upon was adopted in 2013. Defendants assert that since that time, LMSOA "has not only failed to claim such language prohibits short term rentals, they have indicated to Defendants and others that short term rentals are actually permitted." *See* Answer, Affirmative Defenses ¶ 3. Similarly, Defendants assert that "even if the [Amended Covenants] relied upon by [LMSOA] are deemed to prohibit short *(sic)* rentals, for approximately ten years, the Association acquiesced to Defendants and other Association members purchasing homes that were explicitly advertised as having the ability to be short term rented. . . . [LMSOA] abandoned any right to prohibit short term rentals by community acquiescence. *See* Answer, Affirmative Defenses ¶ 4.

Defendants' waiver and abandonment due to community acquiescence defenses completely ignore the plain language of the Amended Covenants with respect to the issue of waiver. Section 10.07 of the Amended Covenants states:

> No Waiver. The failure of the Board, the ARC, an Officer, or any aggrieved Owner to enforce any provision of the LMS Governing Documents is not to be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the LMS Governing Documents in the future. No waiver will be effective unless it is in writing and signed by the President or Vice President on behalf of the Association, or by the Chairman of the ARC on behalf of the ARC.

See Amended Covenants, Section 10.07, attached to Plaintiff's Motion for Summary Judgment as part of **Collective Exhibit B**. The plain language of Section 10.07 indicates that there is no waiver of provisions of the Amended Covenants – at least not in the manner argued by Defendants. In fact, Section 10.07 appears to anticipate that some boards might fail (knowingly or unwittingly) to enforce the provisions of the Amended Covenants. In such circumstances, LMSOA members have agreed that any such failure will not waive future enforcement of the Amended Covenants by a later board. In fact, that is exactly what is happening in this case. Finally, although Defendants assert in their unsworn Answer that there is a signed document that satisfies the requirements for a written waiver in Section 10.07 of the Amended Covenants, one has not been produced to date. *See* Affidavit of Sabrina Izbrand, ¶ 11. Moreover, a search of the records of LMSOA has not uncovered any written waiver. *See* Affidavit of Sabrina Izbrand, ¶ 12.

CONCLUSION

Based on the foregoing, the pleadings of the parties, Plaintiff's Motion for Summary Judgment and Exhibits, Plaintiff's Statement of Material Facts, and the entire record of this Court, Plaintiff requests that this Honorable Court enter an Order granting Summary Judgment as to Plaintiff's claim for permanent injunction against Defendants related to the use of their properties

in Lone Mountain Shores as short-term rentals. Further, Plaintiff requests any further relief that this Honorable Court deems appropriate.

Respectfully submitted this 9th day of November 2023.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

LEWIS THOMASON, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901
phawkins@lewisthomason.com
(865) 546-4646
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all parties at interest in this cause as follows:

☐ By placing postage prepaid envelope in United States Mail Service, addressed to:

Ryan Sarr, Esq.
Trammell, Adkins & Ward, P.C.
1900 N. Winston Road, Suite 600
Knoxville, TN 37919

☒ By e-mail, addressed to:

Ryan Sarr, Esq.
ryansarr@tawpc.com

This 9th day of November 2023.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

9080929