

PREPARED BY: JAMES C. HEARTFIELD, ESQ.  
2288 Gunbarrel Road  
Suite 111-249  
Chattanooga, TN 37421

**TRANSFER OF COMMON PROPERTIES AGREEMENT**

THIS TRANSFER OF COMMON PROPERTIES AGREEMENT (the "Agreement"), is made and entered into by and among the EMERALD BAY HOMEOWNERS ASSOCIATION, INC. (the "Association"), a Tennessee nonprofit corporation, and GEORGE W. LUTTRELL, JR. and GEORGE LUTTRELL DEVELOPMENT COMPANY, LLC (collectively "Luttrell"), and TIM MCCLURE and MCCLURE CONSTRUCTION COMPANY, LLC (collectively "McClure") (Luttrell and McClure being sometimes separately and/or collectively referred to "Developer" as the context may require).

WITNESSETH:

THAT WHEREAS, contemporaneous with the execution and delivery of this Agreement, and pursuant to the powers granted in the Declarations (as defined below), the Developer has caused the Emerald Bay Homeowners Association, Inc. (the "Association") to be formed as a Tennessee nonprofit corporation under the laws of the State of Tennessee for the purposes set forth and contained in the Charter for the Association, including for the purpose of performing certain functions for the common good and general welfare of the residents and property owners within the Subdivisions (as defined below) and as contemplated by: (i) the Declaration of Covenants and Restrictions for Emerald Bay executed by Luttrell as Developer, and recorded at Book 5266, Page 234 and amended to Book 6296, 565 in the public records of the Register's Office of Hamilton County, Tennessee and any subsequent amendments or additions thereto (collectively the "Emerald Bay Declarations"), (ii) the Declaration of Covenants and Restrictions for Emerald Point at Emerald Bay executed by Luttrell as Developer, and recorded at Book 5266, Page 234 in the public records of the Register's Office of Hamilton County, Tennessee and any subsequent amendments or additions thereto (collectively the "Emerald Point Declarations"), (iii) the Declaration of Covenants and Restrictions for Emerald Lake at Emerald Bay executed by Luttrell as Developer, and recorded at Book 5378, Page 522 in the public records of the Register's Office of Hamilton County, Tennessee and any subsequent amendments or additions thereto (collectively the "Emerald Lake Declarations"), (iv) the Declaration of Covenants and Restrictions for Patten Place executed by McClure as Developer, and recorded at Book 6296, Page 527 in the public records of the Register's Office of Hamilton County, Tennessee and any subsequent amendments or additions thereto (collectively the "Patten Place Declarations"), and (v) the Declaration of Covenants and Restrictions for Brooke Stone executed by McClure and McClure Construction Company, LLC as Developer, and recorded at Book 6966, Page 540 in the public records of the Register's Office of Hamilton County, Tennessee and any subsequent amendments or additions thereto (collectively the "Brooke Stone Declarations") (the Emerald Bay Declarations, Emerald Point Declarations, Emerald Lake Declarations, Patten Place Declarations and Brooke Stone Declarations together with all subsequent amendments or additions thereto being collectively referred to herein as the "Declarations" or separately with respect to a particular Subdivision as the context may require as the "Declaration"). Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Declarations; and

WHEREAS, pursuant to the Declarations, there shall be one homeowners association for the real estate developments and subdivisions known as Emerald Bay, Emerald Point at Emerald Bay, Emerald Lake at Emerald Bay, Patten Place and Brooke Stone (individually a "Subdivision" and collectively, the "Subdivisions" and/or as may sometimes be referred to herein and in the Declarations individually as a "Development" or collectively as the "Developments"), and the Association shall serve as the single combined homeowners association for the Subdivisions under the Declarations; and

WHEREAS, certain of the Owners of Lots in the Developments are in arrears in payment of their homeowners dues and assessments owed to Luttrell in the combined total amount of \$27,475.00 (collectively the "Past Dues"); and

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Book and Page: GI 8222 462  
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Date: 26-JAN-2007  
Time: 02:28:45 P  
Contact: Pam Hurst, Register  
Hamilton County Tennessee

WHEREAS, the parties mutually desire the Developer to transfer and convey the Common Properties (including without limitation the community pool, clubhouse, and related equipment) to the Association and for the Association to thereafter assume ownership responsibility and care for the same in accordance with the Declarations and this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration the legal sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Association Operating Fund; and Payment of Past Due Arrearage. Upon execution and delivery of this Agreement, Luttrell agrees to and hereby does pay over to the Association the sum of Five Thousand Dollars (\$5,000) cash, receipt of which is hereby acknowledged, to serve as the Association's initial operating fund, and such amount when added to the Past Dues shall represent the total amount owed and payable to Luttrell by the Association (e.g. \$32,475.00), and such combined amount of \$32,475.00 shall hereinafter be referred to as the "Arrearage." The parties agree, and the Association hereby promises to pay to the order of Luttrell, the total sum comprising the Arrearage (without interest) in two equal annual installment amounts, the first such annual installment being due and payable on or before December 31, 2007, and the second and final installment being due and payable on or before December 31, 2008 (each being referred to as an "Installment"). In the event the Association fails to timely make an annual Installment payment, the Association shall be in breach of this Agreement and the unpaid Arrearage shall accrue interest at the maximum rate allowed under Tennessee law from the date of this Agreement until the Arrearage has been paid in full.
2. Architectural Review Committee. Notwithstanding any other term or condition in this Agreement to the contrary, the parties expressly acknowledge and agree that the Developers reserve unto the Developers, their successors and assigns all rights, duties, privileges and responsibilities granted to the Developer and/or Architectural Review Committee (or similar body) under the Declarations relating to Architectural Control as the same is contemplated in Article IV of the Emerald Point Declarations and in each corresponding Article or provision in each of the other Declarations (all of the foregoing being hereinafter collectively referred to as the "ARC Responsibilities"), and such reservation of the ARC Responsibilities shall remain and continue with the Developers until such time as may be otherwise mutually agreed to in writing by and between the Developers and the Association.
3. Transfer of Common Properties; Payment of Taxes; and Right to Collect Past Dues. In connection with the execution and delivery of this Agreement, the Developer agrees to transfer to the Association by separate Quitclaim Deed all of the real estate and by separate Bill of Sale and Assignment all of the tangible personal property and other items of property constituting the Common Properties (as defined in the Declarations), and all such Common Properties are hereby transferred and conveyed on an AS-IS, WHERE IS CONDITION, without any representation or warranty whatsoever, either express or implied, all of which are hereby disclaimed, EXCEPT THAT, Developer will warrant and defend unencumbered title to the Common Properties against all persons. Developer agrees to be responsible to pay the 2006 real estate ad valorem taxes specifically attributable to and assessed on the Common Properties and to pay such taxes on or before the applicable due date in 2007. Additionally, the Developer hereby transfers, conveys and assigns to the Association all of the Developers' legal right and power as may be necessary to demand payment for, recover, and otherwise collect the Past Dues, including the right and power to initiate legal action to collect such Past Dues in the name of the Developer and/or the Association.
4. Release and Indemnity. Except for matters directly relating to the retention and exercise of ARC Responsibilities, the Association agrees to and hereby does generally release and discharge Luttrell and McClure from any and all past, present and future claims, demands, causes of action, obligations,

damages, costs, attorneys' fees and liabilities of any nature whatsoever, in contract or in tort, or under any applicable law, whether or not now known, suspected or claimed, which the Association or its Members ever had, now has, or may claim to have by reason of or arising out of any acts, omissions, rights, duties and/or obligations of either Developer arising out of or in connection with the Declarations, and the Association hereby agrees to indemnify and hold either Developer harmless from any damages, costs or expenses (including reasonable attorneys' fees) arising out of or relating to the same, as well as for any breach or violation of this Agreement by the Association, and/or for any enforcement or attempted enforcement of this Agreement by either Developer. The parties acknowledge and agree that the covenants and releases contained herein are not to be construed as an admission of liability on the part of either Developer.

5. Expedited Arbitration as Option for Resolution of Disputes. In the event of any dispute arising out of or in any way relating to the execution or performance of this Agreement, the transactions provided for herein, the agreements and instruments executed by or between the parties in contemplation thereof (including the Quitclaim Deed and the Bill of Sale and Assignment), or any other related or referenced agreement or instrument, then the parties agree to use their reasonable best efforts to resolve such matter on an informal basis. In the event the parties are unable to resolve the dispute informally, at the option of the party initiating the action, such dispute shall be resolved by expedited arbitration submitted to a board of arbitration mutually selected by the parties and held and conducted in Chattanooga, Tennessee, with the prevailing party (as determined by the board of arbitration) being entitled to an award of their reasonable attorneys' fees, costs and expenses if such party is found to have acted in maliciously, in bad faith, or in willful disregard of this Agreement.

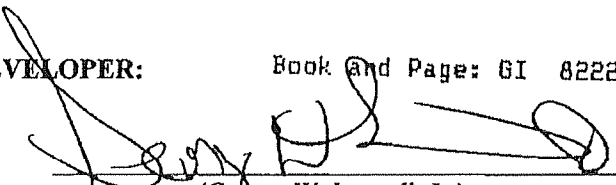
6. Miscellaneous. Any reference in this Agreement to the singular or the plural shall include the opposite thereof, as appropriate. This Agreement shall be deemed to be a contract under the laws of the State of Tennessee and shall be construed and enforced in accordance with and governed by the internal laws of such state without regard to the conflict of laws provision of the State of Tennessee. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, legal representatives, successors and assigns. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof, and shall not be changed, modified or amended in any manner whatsoever except by a writing signed by the parties. Should any provision of this Agreement require interpretation, the parties hereto agree that the arbitrator or court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against the party who itself or through its agent prepared the same. If it is determined that there is a conflict between the terms of this Agreement and the Declarations, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed by their duly authorized representatives, this Transfer of Common Properties Agreement this 19<sup>th</sup> day of January, 2007.

SIGNATURES CONTAINED ON NEXT PAGE

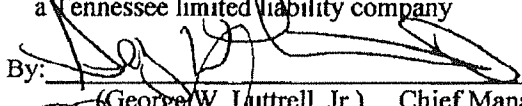
DEVELOPER:

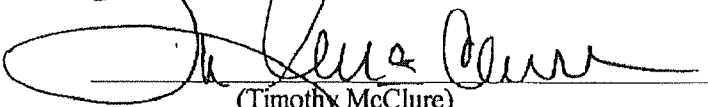
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(George W. Luttrell, Jr.)

GEORGE LUTTRELL DEVELOPMENT COMPANY, LLC  
a Tennessee limited liability company

By:

  
(George W. Luttrell, Jr.) Chief Manager

  
(Timothy McClure)

MCCLURE CONSTRUCTION COMPANY, LLC  
a Tennessee limited liability company

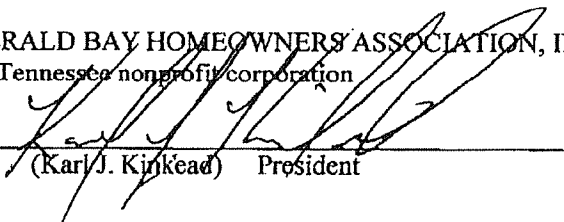
By:

  
(Timothy McClure) Chief Manager

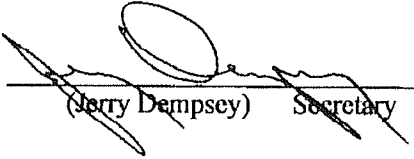
ASSOCIATION:

EMERALD BAY HOMEOWNERS ASSOCIATION, INC.  
a Tennessee nonprofit corporation

By:

  
(Karl J. Kirkhead) President

ATTEST:

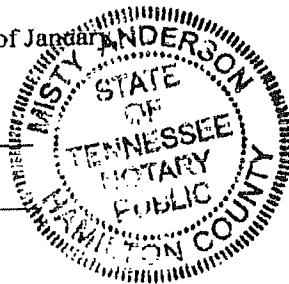
  
(Jerry Dempsey) Secretary

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county aforesaid, personally appeared George W. Luttrell, Jr., the withing name bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 19th day of January 2007.

Misty Anderson  
Notary Public  
My Commission Expires: May 21, 2008

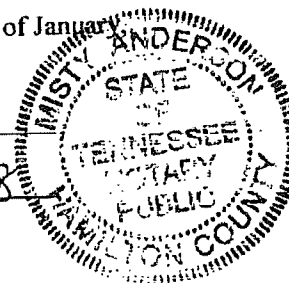


STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county aforesaid, personally appeared George W. Luttrell, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of George Luttrell Development Company, LLC, the within named bargainor, a Tennessee limited liability company, and that he as such Chief Manager executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Manager.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 19th day of January 2007.

Misty Anderson  
Notary Public  
My Commission Expires: May 21, 2008

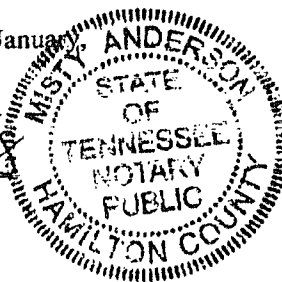


STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county aforesaid, personally appeared Timothy McClure, the withing name bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 19th day of January 2007.

Misty Anderson  
Notary Public  
My Commission Expires: May 21, 2008



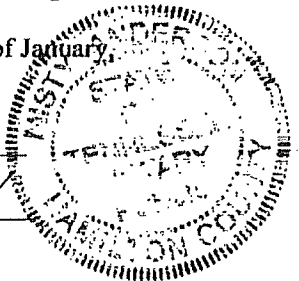
STATE OF TENNESSEE  
COUNTY OF HAMILTON

Book and Page: GI 8222 467

Before me, a Notary Public of the state and county aforesaid, personally appeared Timothy McClure, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of McClure Construction Company, LLC, the within named bargainor, a Tennessee limited liability company, and that he as such Chief Manager executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Manager.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 19th day of January, 2007.

Misty Anderson  
Notary Public  
My Commission Expires: May 21, 2008



STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county aforesaid, personally appeared Karl J. Kinkead and Jerry Dempsey, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the President and Secretary of the Emerald Bay Homeowners Associations, Inc., the within named bargainor, a Tennessee nonprofit corporation, and that they as such President and Secretary executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as President and Secretary.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 19th day of January, 2007.

Misty Anderson  
Notary Public  
My Commission Expires: May 21, 2008

