

**FIFTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
TELLICO HARBOR PROPERTY ASSOCIATION, INC.**

**ARTICLE VII
COVENANT FOR COMMON EXPENSE,
SPECIAL ASSESSMENTS AND CREATION OF LIENS**

Section 1. Purpose of Common Expense Assessments. The Common Expense Assessments levied hereunder by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and in particular for the construction, leasing, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and the improvements situated thereupon, including, but not limited to, taxes, charges and insurance on the Common Properties, maintenance, repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 2. Purpose of Special Common Expense Assessments. In addition to the Common Expense Assessments, the Association may levy, in any assessment year, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Property and also any desired repair, replacement or improvement of facilities of the Association and/or the construction of any capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be voted on and approved by a majority of the votes of the entire eligible qualified Members of the Association at a Members' Meeting duly called for this purpose.

Section 3. Common Expense Assessment Basis and Changes.

- A. Common Expense Assessment Basis. The maximum Common Expense Assessment shall be One Hundred Eighty-Nine Dollars (\$189.00) per lot payable on an annual basis by January 31 in the year payment is due. However, the Common Expense Assessment aforesaid may be increased each year, above the Common Expense Assessment for the previous year, by majority vote of the Board of Directors of the Association and without a vote of the Membership, provided, however, that such increase shall not in any one (1) year exceed the greater of five percent (5%) or increases in the Consumer Price Index for the twelve (12) month period ending June 30 of the preceding year using the "All Urban Consumer, U.S. City Average" for "General Summary, All Items" as promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor or, if such is not available, any other reliable governmental or other non-partisan publication evaluating

similar information. In the event the Association builds additional amenities, a new Common Expense Assessment amount shall be set which will not exceed the five percent (5%) cap level as aforesaid without requiring a vote of the members. Unless the Common Expense Assessment shall be increased as aforesaid, they shall remain at the rate prevailing for the previous year.

- B. Changes in Common Expense Assessments. From and after January 1 of the year immediately following the date of this Amended Declaration, the Common Expense Assessment may be changed prospectively, from the amounts herein above set forth in any year, without limitation on the amount of such change, when voted on and approved by a majority of the entire eligible and qualified Members of the Association at a meeting called for this purpose. The Board of Directors of the Association may, at any time after consideration of current income and expense and the future income requirements of the Association, within its discretion, fix the Common Expense Assessment at an amount less than the amounts aforesaid.

Section 4. Notice for Any Action of Members Authorized Under Sections 2 and 3. Written notice of a Members' Meeting called for the purpose of taking any action authorized under 2 or 3 hereof shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance thereof.

Section 5. Non-Payment of Assessments. If any Assessments are not paid on the date when due, then such Assessments shall become delinquent and the Association shall have the right to declare the Assessments for the entire year due and payable, together with such interest thereon and cost of collection (including reasonable attorney's fees, court costs and litigation expenses), as hereinafter provided. The Association may bring an action at law against the Owner(s) personally obligated to pay the same and/or foreclose the lien against the property, and both actions shall be cumulative and neither shall preclude the other. No Owner may waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment. The Association, by and through its Board of Directors, may suspend the voting rights of any Owner who has not paid any Assessment as provided for in Article XII of the Declaration.

If Assessments have become delinquent, such Assessments shall bind every Lot in the hands of the then Owner, his/her heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such Assessments shall remain his/her personal obligation and shall not pass to successors in title unless expressly assumed by them. Such delinquent Assessments shall bear interest from the date of delinquency at any lawful rate, as determined from time to time, by the Board of Directors of the Association or, if not so determined, the highest interest rate allowed by law. Further, the Board of Directors may set a late fee charge. In the event a judgment is obtained, such judgment shall include pre-judgment interest and late fees on the assessments, as above provided, and a reasonable attorney's fee, court costs and litigation expenses, together with the costs of the action to be fixed by the court.

Section 6. Creation of Lien. The Owner(s) of a Lot by acceptance of a deed, whether or not it shall be so expressed in any such deed, shall be deemed to covenant and agree to pay the Association: (1) Common Expense Assessments, (2) Personal Charge Assessments, (3) Administrative Fees and (4) Special Assessments (herein collectively "Assessments"), such Assessments to be fixed, established and collected from time to time as herein provided. The Common Expense, Personal Charge, Administrative Fees and Special Assessments, together with interest, late charges and costs of collection thereof, including a reasonable attorney's fee, court costs and litigation expenses, as herein provided, shall be a continuing charge and lien upon each Lot. Each such Assessment, together with such interest, late charges, costs and reasonable attorney's fees, court costs and litigation expenses shall also be the joint personal obligation of the Owners of such Lot, up through the date these past due Assessments, interest and all costs as provided herein are paid-in-full. The personal obligation for delinquent Assessments shall not pass to successors in title, unless expressly assumed by them.

Section 7. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall only be subordinate to any prior recorded lien, of any first mortgage or deed of trust placed upon the properties, subject to Association's lien and/or Assessment.