

DECLARATION OF COVENANTS AND RESTRICTIONS OF HORSE MOUNTAIN PROPERTIES

THIS DECLARATION, made this ____ day of November, 2005 by Middle Mountain, L.L.C., a Virginia limited liability company, hereinafter called "Company" and Horse Mountain Properties Community Association, Inc., a Virginia non-stock corporation, hereinafter called "Association" or "Declarant".

WITNESSETH

WHEREAS, the Company is the owner of the real property described in Article II of this Declaration and desires to create thereon a planned residential community with residential and recreational uses to be known as "Horse Mountain Properties"; and WHEREAS, the Company desires to provide for the preservation of values and for the maintenance of common areas, facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions; and WHEREAS, the Company will cause to be incorporated under the laws of the Commonwealth of Virginia, a non-stock corporation, Horse Mountain Properties Community Association, Inc., for the purpose of exercising the functions hereinafter set forth;

NOW THEREFORE, the Company declares that the real property described in Article II is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments ("Assessments"), affirmative obligations, and liens (all hereinafter sometimes referred to as "the Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to Horse Mountain Properties Community Association, Inc., a Virginia non-stock corporation, its successors and assigns.
- (b) "Common Areas" shall mean and refer to those tracts or parcels of land with any improvements thereon which are deeded to the Association and designated in said deed or lease as "Common Areas." The term "Common Areas" shall also include any personal property acquired or leased by the Association if said property is designated "Common Area." All Common Areas are to be devoted to and intended for the common use and enjoyment of the Members of the Association and their guests (to the extent permitted by the Board of Directors of the Association) subject to the operating rules and regulations ("Rules and Regulations") adopted by the Association.
- (c) "Company" shall mean Middle Mountain, L.L.C., a Virginia limited liability company, its successors and assigns.
- (d) "Conservation Easement" means that deed of gift of easement between Company as Grantor and the Virginia Outdoors Foundation as Grantee dated as of December 27, 2004 and recorded in the Clerk's Office of the Circuit Court of Alleghany

County, Virginia, in Instrument 040004273, pages 044-058, as corrected by deed of correction dated as of _____ and recorded in the aforesaid Clerk's Office in _____.

(e) "Family Dwelling Unit" shall mean and refer to any improved property or any property formerly classified a Lot for which a building permit has been issued by the appropriate governmental authorities, which property is located within the Properties and intended for use as a single family dwelling.

(f) "Lot" or "Lots" shall mean any subdivided parcel of land located within the Properties for which no building permit has been issued by the appropriate governmental authorities and which parcel is intended for use as a site for a single family detached dwelling as shown upon any recorded final subdivision plat on any part of the Properties. No parcel shall, however, be classified as a Lot until the first day of the month following the recording of a plat in the Clerk's Office of the Circuit Court of Alleghany County, Virginia showing such Lot.

(g) "Member" shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section 1 of Article III.

(h) "Plat" shall mean and refer to the plat entitled "Survey for Horse Mountain Properties, Jackson River Magisterial District, Alleghany County, Virginia, Surveyed 28 July 2005" prepared by Vess Surveying, Inc., dated July 28, 2005, and recorded in the Clerk's Office of the Circuit Court of Alleghany County, Virginia in Plat Book 30, pages 643-54. The Plat may be revised from time to time and additional plats may be recorded affecting the Property, as described in Article II.

(i) "Horse Mountain Properties" shall mean and refer to the lands in Alleghany County or the City of Covington, Virginia, which are shown as a part of Horse Mountain Properties on the Plat, as the same may be revised from time to time, or other plats recorded in the Clerk's Office of the Circuit Court of Alleghany County, Virginia from time to time.

(j) "Owner" or "Property Owner" shall mean and refer to the Owner as shown by the real estate records in the Clerk's Office of the Circuit Court of Alleghany County, Virginia, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Lot or Family Dwelling Unit situated within or upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or Tenant of an Owner. In the event that there is recorded in the Office of the Clerk of the Circuit Court of Alleghany County, Virginia, a long-term contract of sale covering any land within the Properties, the Owner of such land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the land for a period extending beyond nine (9) months from the date of the contract and where the purchaser does not receive title to the land until all such payments are made, although the purchaser is given the use of said land.

(k) "Property" or "Properties" shall mean and refer to the property described in Article II hereof as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(l) "Road" or "Roads" shall mean and refer to those areas designated on plats as roads or roadways, other than publicly dedicated and accepted roads, and shall be

deeded, at the discretion of the Company, to the Association, subject to the rights of ingress, egress and utilities.

(m) "Tenant" shall mean and refer to the lessee named under a written agreement for the rent and hire of a Family Dwelling Unit and any immediate family of said lessee who actually reside in the Family Dwelling Unit.

(n) "Trails" shall mean any bicycle, walking or jogging trail or bridle path located within the Common Areas of the Property.

ARTICLE II

PROPERTY

The real property which is subject to these Covenants is described as follows:

All that tract or parcel of land, situated, lying and being in Alleghany County or the City of Covington, Virginia, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

The Company plans to develop the Property in accordance with the Plat. The Plat may be revised from time to time and additional plats may be recorded affecting the Property. The Company reserves the right to review and modify the development plan shown on the Plat (the "Plan") and this statement shall not bind the Company, its successors and assigns, to adhere to the Plan in the development of the Property. Subject to its right to modify the Plan as stated herein, the Company shall convey to the Association certain properties, as in the reasonable exercise of its discretion it so chooses, without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall either become Common Areas or Roads. The Company shall not be required to follow any predetermined sequence or order of improvements.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Company shall be a Member of the Association, and a creditor who acquired title to the Properties or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a Member of the Association. Every Owner, unless otherwise specified, shall be a Member of the Association. Upon the execution of a lease, every Owner shall be required to submit to the Secretary of the Association the names(s) of its Tenant(s), the term of the lease and whether Owner is assigning its right to use the Common Areas to its Tenant(s) during the term of such lease. An Owner and its Tenant(s) may not share an Owner's right to use the Common Areas. The Association may issue to each Member a membership card which shall expire upon the sale by an Owner of its Lot or Family Dwelling Unit. The Association may issue a Common Areas access pass to a Tenant upon an assignment from an Owner which shall expire upon the termination of such Tenant's lease or upon the termination of the assignment by the Owner in favor of such Tenant.

Section 2. Voting Rights. The Association shall have two (2) types of regular voting membership.

TYPE "A": Type "A" Members shall be all Owners, except the Company, of Lots and Family Dwelling Units. A Type "A" Member shall be entitled to one (1) vote for each Lot or each Family Dwelling Unit which he owns.

TYPE "B": The Type "B" Member shall be the Company, its successors and assigns. The Type "B" Member shall be entitled to five (5) votes for each Lot or each Family Dwelling Unit it owns.

Payment of Special Assessments shall not entitle Members to additional votes.

When any property entitling the Owner to membership as a Type "A" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, their acts with respect to voting shall have the following effect:

- (1) If only one (1) votes, in person or by proxy, his act shall bind all;
- (2) If more than one (1) votes, in person or by proxy, the act of the majority so voting shall bind all;
- (3) If more than one (1) votes, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes;
- (4) If the instrument or order filed with the Secretary of the Association shows that any such tenancy is held in unequal interest, a majority or even split under subparagraphs (2) and (3) immediately above shall be a majority or even split in interest in the property to which the vote(s) is attributable;
- (5) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections, and for the purpose of ascertaining the presence of a quorum.

Section 3. Governance. The Association shall be governed by a Board of Directors. The term and number of such Directors shall be determined in accordance with the provisions of the Articles of Incorporation of the Association.

Section 4. Election of the Board of Directors.

(a) Each member of Type "A" and "B" Membership classes shall be entitled to as many votes as equals the total number of votes he is entitled to based on the number of Lots and Family Dwelling Units owned.

Each voting member may cast the total number of votes to which he is entitled for each vacancy to be filled. Cumulative voting shall not be allowed.

(b) The number of Lots and Family Dwelling Units owned by Type "A" and "B" Members shall be determined by the Board of Directors as of the date on which notice of the meeting of the Members at which the Board of Directors is to be elected is mailed.

Section 5. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at meetings of the Association shall be as follows:

(a) The first time a meeting of the Members of the Association is called to vote on (i) an increase in the maximum regular annual assessment greater than that provided for by Section 6 of Article V hereof, (ii) a special assessment as provided for by Section 4 of Article V hereof, (iii) an Amendment to this Declaration as provided for by Section 2 of Article XI hereof, or (v) the termination of this Declaration as provided in Section 1 of Article XI hereof, the presence at the meeting of Members or proxies entitled to cast

thirty percent (30%) of the total vote of the Membership required for such action shall constitute a quorum.

(b) The first time a meeting of the Members of the Association is called to vote on any action proposed to be taken by the Association, other than that described in subparagraph (a) above, the presence at the meeting of Members or proxies entitled to cast fifteen percent (15%) of the total vote of the Membership required for such action shall constitute a quorum.

If the required quorum is not present at any meeting described in subparagraphs (a) or (b) above, with the exception of any meeting called to vote on the termination of this Declaration described in subparagraph (a) above, another meeting or meetings may be called subject to the giving of proper notice and the required quorum at such subsequent meeting or meetings shall be one-half (1/2) of the required quorum at the preceding meeting.

Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article III, Section 5, and any other requirements for such "duly called meeting" which may be established by the Bylaws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given when given each Member not less than fourteen (14) days prior to the date of the meeting at which any proposed action is to be considered.

Section 6. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

Section 7. Ballots by Mail. When desired by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against each such motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 5 of this Article III; provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment in Common Areas. Subject to the provisions of this Declaration, the rules and regulations of the Association, and any charges established by the Association, every Member, and every guest of such Member, shall have a right of easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title of every Lot and Family Dwelling Unit. A Member's spouse, parents, and children who reside with such Member shall have the same easement of enjoyment hereunder as a Member

Section 2. "B" Member Employees' Easement of Enjoyment in Common Areas. Employees of the Type "B" Member shall have access to and enjoyment of the Common Areas subject to rules and regulations and any user fees established by the Board of Directors.

Section 3. Title to Common Areas.

(a) The Company covenants for itself, its successors and assigns, that it shall convey Common Areas by deed to the Association, at no cost to the Association, and subject to (i) all restrictions and limitations imposed by this Declaration, including,

without limitation, all rights of easement and rights of entry reserved unto the Company, its successors and assigns, in said Declaration, (ii) all other restrictions and limitations of record at the time of conveyance, including but not limited to, the Conservation Easement, (iii) any restrictions, limitations, conditions, or determinations as to the purposes and uses of the conveyed properties as stipulated in said deed, (iv) deeds of trust of record (but the Company shall covenant to hold the Association and the Property harmless from the lien secured by the deed of trust), and (v) any commitments by the Company to construct certain improvements thereon as stipulated in said deed; and, upon such conveyance, such parcels of land and any improvements thereon shall become Common Areas as designated in said deed.

(b) The Association shall not refuse the conveyance to it of any Common Area or Road at such time as the Company, in its sole and uncontrolled discretion, deems it advisable to convey such property to the Association.

(c) At such time that the Company consummates the first sale of a Lot, the Association shall immediately become responsible for all maintenance and operation of all Common Areas and Roads, and for such additional construction of improvements thereon as may be authorized by the Association's Board of Directors. It is the purpose of this provision to provide that the Association shall be responsible for all maintenance and operation of all Common Areas.

(d) Notwithstanding anything in the foregoing to the contrary, the Company reserves unto itself, its successors and assigns, and its agents, the right to enter upon any Common Area, for the purpose of constructing or maintaining indoor and outdoor recreational and community facilities thereon. The provisions of this paragraph shall in no way create any obligation on the part of the Company to construct or maintain any such facilities on said properties. The Company further reserves for itself, its assignees and successors the right to reserve and to grant to third parties such easements as it may deem necessary over Common Areas

(e) Notwithstanding anything in the foregoing to the contrary, the Company shall not be required to convey the above referred to parcels where such conveyance would be prohibited under agreements existing on the date hereof, but, in such case, shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be nullified.

Section 4. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association in accordance with its By-laws, to borrow money from the Company or any lender for the purpose of improving and/or maintaining the Common Areas and Roads and providing services authorized herein and in aid thereof to mortgage said properties provided, however, that any such mortgage is with the prior consent of two-thirds (2/3) of the vote of Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds of the vote of Members voting in person or by proxy at a duly called meeting of the Association;

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures;

(c) The right of the Association to suspend the rights and easements of enjoyment of any Member, Tenant or guest of any Member for any period during which the payment of any Assessment against property owned by such Member remains delinquent, and for the periods designated for each infraction of its published rules and

regulations as delineated therein, it being understood that any suspension for either nonpayment of any Assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the Assessment, and, provided that the Association shall not suspend the right to use any Roads belonging to the Association, subject to the rules, regulations and fees, if any, established by the Association for such use.

(d) The right of the Association to charge reasonable admission and other fees and dues for the use of recreational facilities and services on the Common Areas.

(e) The right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Areas.

(f) The right of the Association to give or sell all or any part of the Common Areas, including lease-hold interests, subject to (i) the limitations and restrictions imposed by this Declaration and (ii) all other restrictions and limitations of record at the time of conveyance, to any public agency, authority, public service district, utility, or private concern for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such gift or sale of any parcel of land and improvements thereon, or determination as to the purposes or as to the conditions thereof, shall be effective unless such dedication, transfers, and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer of any parcel of land and improvements thereon affecting the Common Areas prior to the recording thereto. Such certificates shall be conclusive evidence of authorization by the membership. The gift or sale of any personal property owned by the Association shall be determined by the Board of Directors in its sole and uncontrolled discretion.

(g) Notwithstanding anything herein to the contrary, the Board of Directors of the Association shall have the right, in its sole discretion, to cause the Association to grant minor conveyances of Common Areas to resolve setback problems, or to grant easements for the encroachment of initial improvements constructed on parcels adjoining the Common Areas to the extent that such improvements actually encroach on such properties, including but not limited to, overhanging eaves, gutters and downspouts, and walls, such easements to continue only so long as such improvements exist.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Company covenants, and each Owner of any Lot or Family Dwelling Unit located within the Properties, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) annual assessments or charges; and (b) special assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual and special assessments (collectively called the "Assessments"), together

with such interest thereon and costs of collection thereof including a reasonable attorney's fee as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof including a reasonable attorney's fee as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Lot or Family Dwelling Unit, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used for promoting the recreation, health, safety and common benefit of the Owners and for the improvement, maintenance, enhancement, enlargement, and operation of the Common Areas and Roads, and to provide such other services which the Association is authorized to provide.

Section 3. Creation of Assessments. . The Assessments, as may be from time to time specifically authorized by the Board of Directors, shall be allocated equally among all Lots and Family Dwelling Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. The assessment shall commence on the Lots and Family Dwelling Units owned by the Company as of the day of closing of the initial sale from the Company. Assessments shall be pro-rated for any partial year.

Section 4. Special Assessments for Improvements and Additions. In addition to the regular annual assessments, the Association may levy special assessments for the following purposes:

- (a) Construction, reconstruction, repair, or replacement of capital improvements upon the Common Areas, including the necessary fixtures and personal property related thereto, and for road maintenance and repair.
- (b) For additions to the Common Areas;
- (c) To provide for the necessary facilities and equipment to offer the service authorized herein; and
- (d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Such special assessment, before being charged, must have received the approval of the Members of the Association by the favorable vote of three-quarters (3/4) of the votes cast at a duly called meeting of the Association.

This provision shall be interpreted to mean that the Association may make in any one (1) year a regular annual assessment plus an additional special assessment. Such special assessment in any one (1) year may not exceed a sum equal to the amount of the regular annual assessment for such year except for emergency or repairs required as a result of storm, fire, natural disaster, or other casualty loss.

Section 5. Reserve Funds. The Association shall establish reserve funds from its regular annual assessments to be held in reserve in an interest drawing account or investments as a reserve for:

- (a) Maintenance of Roads;
- (b) Emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss; and
- (c) Initial costs of any new service to be performed by the Association.

Section 6. Duties of the Board of Directors. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year to prepare a budget covering the estimated costs of operating the Association during the next year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared including a reserve fund for maintenance of Roads as required by Article VI. The Board shall determine an annual road assessment per Lot or Family Dwelling Unit to fund road maintenance as required in Article VI herein, to be called "Assessment ONE," and an assessment per Lot or Family Dwelling Unit to fund the balance of the Association's Budget to be called "Assessment TWO". Assessment ONE and Assessment TWO together shall be the regular annual assessment per Lot or Family Dwelling Unit. The Board may not, without the vote or written assent of three-quarters (3/4) of the voting power of the Association, increase Assessment TWO more than ten percent (10%) greater than the amount of Assessment TWO for the immediately preceding fiscal year or the percentage increase during the previous one (1) year period in the Consumer Price Index, U.S. City Average, All Items (1967=100), or if not available, a comparable pricing index, whichever is greater. Once the annual assessment is set, the Board shall direct the preparation of an index of the Properties and regular annual assessments applicable thereto, which shall be kept in the office of the Association and which shall be open to inspection by any Member. Written notice of assessments shall thereupon be sent to every Member subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid. If the Board of Directors authorizes a Billing Agent to collect assessments, the certificate of the said billing agent shall be conclusive evidence against all but the Owner of payment of any Assessment therein stated to have been paid.

Assessments shall be billed annually, quarterly, monthly, or on such other basis as may be determined by the Board of Directors. All Assessment bills shall be due and payable within thirty (30) days from the date of mailing.

Section 7. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the regular annual assessment or any special assessment is not paid on or before the past-due date specified in Section 6 Article V, then such assessment shall become delinquent and shall (together with interest thereon at the maximum annual rate permitted by law accrued from the due date and cost of collection thereof including a reasonable attorney's fee as hereinafter provided) become a charge and continuing lien on the land and all improvements thereof, against which each such Assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, and assigns.

If the Assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the Owner personally and there shall be added to the amount of such assessment the costs of preparing the filing of the complaint in such action and a reasonable attorney's fee, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee together with the costs of the action.

Section 8. Subordination of the Lien. The continuing lien of the assessments provided for herein shall be subordinate to the lien of any first or second deed of trust

now or hereafter placed upon any properties subject to assessment, and, in addition, shall be subordinate to the lien of the cost of corrective action provided for now or hereafter placed upon any properties subject to assessment. In the event a creditor acquires title to any property subject to assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to assessments accruing after such acquisition.

Section 9. Annual Statements. The President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association; provided however, that this requirement shall be construed to apply only to creditors of more than One Thousand and no/100 (\$1,000.00) Dollars. Such officer shall furnish to each Member of the Association who may make a request therefore in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail. Any holder of a first or second mortgage on a Lot(s) or Family Dwelling Unit(s) shall be entitled upon written request, to a financial statement for the immediately preceding fiscal year.

Section 10. Annual Budget. The Board of Directors shall make available to all Members, prior to the first day of the next fiscal year, a budget outlining anticipated receipts and expenses for the following fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

ARTICLE VI

PRIVATE ROADS

Section 1. Access. As an appurtenance to each of the Lots, Family Dwelling Units and Common Areas and other parcels of land located in Horse Mountain Properties, and for future areas developed as a part of Horse Mountain Properties, there is hereby created a perpetual, but nonexclusive, easement for purposes of ingress and egress over all Roads, shown or hereinafter designated, constructed or set apart by plats or other instruments of record. Guests, employees, customers, agents and contractors of any Owner or Tenant shall at all times have a right and non-exclusive easement of access and use over all such Roads as reasonably necessary to travel from the entrance of Horse Mountain Properties to each respective Lot, Family Dwelling Unit and/or the Common Areas.

Section 2. Maintenance of Roads. The Association shall maintain all Roads, including all repair, improvements, and other work as necessary to properly maintain the Roads in good condition. The maintenance fees for the Roads shall be included in the regular annual assessment as set forth in Article V. Notwithstanding the foregoing, nothing herein shall be construed to impose an obligation upon the Association to remove snow from the Roads.

Cost of construction, maintenance, or upkeep or replacement of the private roads will not be borne by the County of Allegheny, the City of Covington, the Commonwealth of Virginia, or any other public agency, unless said private roads are accepted into the state road system.

Section 3. Rules and Regulations. The appurtenant easements created in Section 1 of this Article shall be subject to such rules and regulations as may exist from time to time as imposed by the Company and/or the Association.

Section 4. Conveyance of Roads. Subject to the use of others, as set forth herein, the fee simple ownership of the Roads will be conveyed to the Association from time to time, the same as Common Areas pursuant to Article IV of this Declaration.

Section 5. Amendments. Notwithstanding the language of other Articles of this document, Section 1 of this Article VI may not be amended to terminate or change the access to any property or persons entitled to said access pursuant to Section 1 of this Article VI without the written consent of the Owner or individual whose access is being changed or terminated.

ARTICLE VII

FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Properties. The Association shall be authorized to own and/or maintain Common Areas and Roads, furnishings, and improvements devoted to, but not limited to, the following uses:

- (a) For Roads, roadways, and any entrance areas throughout the Properties;
- (b) For Trails throughout the Properties;
- (c) For buildings used in maintenance functions;
- (d) For providing any of the services which the Association is authorized to offer;
- (e) For purposes set out in deeds by which Common Areas are conveyed to the Association, provided that such purposes shall be approved by the Board of the Association;
- (f) For indoor and outdoor recreational and community facilities; and
- (g) For picnic areas.

Section 2. Services. The Association shall be authorized but not required, except as specified in Section 3 of this Article, to provide the following services:

- (a) Cleaning and maintenance of all Roads, roadways, entrances, parks, Trails, and Common Areas within the Properties, and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;
- (b) Landscaping and beautification of Roads, roadways, entrances, parks, Trails and Common Areas;
- (c) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration;
- (d) To take any and all actions necessary to enforce this Declaration and to perform any of the functions or services delegated to the Association in this Declaration;
- (e) To set up and operate an Architectural Review Board for all Common Areas;
- (f) To construct improvements on Common Areas, for use for any of the purposes authorized in this Article;
- (g) To provide administrative services for the Association, including, but not limited to, legal, accounting, and financial; and communication services, including, but not limited to, notices of meetings, referendums, and other issues and events of community interest; and

(h) To provide liability and hazard insurance covering improvements and activities on and within the Common Areas and Roads.

(i) To construct signs and other standard features for use throughout the Properties.

Section 3. Minimum List of Functions and Services. The "Minimum List of Functions and Services" shall establish and define the minimum level of functions and services which the Association must furnish to its Members. So long as the Company is engaged in the development of Properties which are subject to the terms of this Declaration, the Association shall not reduce the level of functions and services it furnishes to its Members below such minimum level without the prior written consent of the Company. The "Minimum List of Functions and Services" is as follows:

(a) The Association shall provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association, and the By-Laws of the Association, including, but not limited to, legal, accounting, financial, and communications services.

(b) The Association shall administer and enforce the Covenants established in this Declaration, and subsequent declarations including, but not limited to, the following:

(1) The Association shall set assessments, levy cash Assessments, notify the Members of such Assessments, and collect such assessments;

(2) The Association shall maintain in good condition and operate all Common Areas and Roads once obligated to do so under this Declaration;

(3) The Association shall hold annual meetings, and special meetings, as required, hold elections for the Board of Directors as required, and give Members "proper notice" as required; and

(4) The Association shall prepare annual statements and annual budgets, and shall make the financial books of the Association available for inspection by Members at all reasonable times.

(c) Should the Company appoint the Association its agent for the administration and enforcement of any Covenants of this Declaration and any subsequent Declarations, the Association shall assume such responsibility and any obligations which are incident thereto.

(d) Should the Company assign to the Association any of the rights reserved unto it in any Covenants of this Declaration and any subsequent Declarations, the Association shall assume the responsibility of administering and shall assume any obligations which are incident thereto.

(e) The Association shall provide appropriate liability and hazard insurance coverage for improvements and activities on all Common Areas and for Roads.

(f) The Association shall provide appropriate Directors' and Officers' Legal Liability Insurance. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance,

malfeasance, misconduct, or bad faith. The officers and directors 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 that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer and director free and 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 present or former officer, director, or committee member may be entitled.

(g) The Association shall keep a complete record of all its acts and corporate affairs.

(h) The Association shall provide regular and thorough cleanup and maintenance of all Roads, roadways, berms, entrances, and Trails throughout the Properties, including, but not limited to regrading of Roads, mowing grass on all roadsides and around the entrances and Trails; landscape maintenance on all roadsides, entrances and Trails; pickup and disposal of trash on all Roads, roadsides, entrances and Trails.

(i) The Association shall provide general maintenance of any entrance sign or other area signs, including, but not limited to, maintaining, repair work, replacement as needed, and landscaping within Common Areas and within any sign easement on any Lot. Easements for signs and access easements for the maintenance and landscaping around the sign as shown on any recorded plat shall be for the benefit of the Company, the Association, and their assigns.

(j) The Association shall repair all Trails as needed.

(k) The Association shall provide regular and thorough maintenance and cleanup of all Common Areas, including, but not limited to, mowing of grass, fertilization as needed, landscape maintenance as needed, pickup and disposal of trash, washing down of picnic tables and benches as needed, and painting, repairs to and replacement of all improvements as needed.

(l) Insurance coverage on the Property shall be governed by the following provisions:

(1) Ownership of Policies. All insurance policies upon the Roads and Common Areas shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees as their security interest may appear.

(2) Coverage. All buildings and improvements upon the land and all personal property included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Board of Directors of the Association. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazard covered by standard extended coverage endorsement;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses provided for waiver of subordination.

(3) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(4) Premiums. Premiums for insurance policies purchased by the Association shall be paid by Association and charged to the Owners as part of the regular annual assessment.

(5) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their security interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the By-Laws and for the benefit of the Owners and their mortgagees.

(6) Proceeds of insurance policies received by the Association as insurance trustee shall be placed in the Association's treasury for the following:

(i) Expense of the Trust. All expenses of the insurance trustee shall first be paid or provisions made therefore.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be retained by the Association.

(7) All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a quality insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

Section 4. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 3 of this Article. The functions and services, other than those set in Section 3 of this Article, to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services, other than those set in Section 3 of this Article, which the Association is authorized to carry out or to provide, may be added or reduced at any time upon the affirmative vote of three quarters (3/4) of the votes cast at a duly called meeting of the Association at which a quorum is present; provided, however, that so long as the Company is a member of the Association no change may occur without its consent.

Section 5. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions and services; provided that any such mortgage is with the prior consent of three-quarters (3/4) of the vote of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of three-quarters (3/4) of the Association. The Company may, but shall not be required, to make loans to the Association, subject to approval by the Company of the use to which such loan proceeds will be put and the terms pursuant to which such loan will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the level of the Regular Annual Assessment at any time without the express written consent of the Company as long as there are outstanding amounts due the Company from the Association.

ARTICLE VIII

ARCHITECTURAL CONTROL AND GENERAL PROPERTY COVENANTS

Section 1. Architectural Approval for Lots and Family Dwelling Units. No building, fence, or other structure shall be erected, placed, or altered, nor shall a building permit for such improvement be applied for on any Lot or Family Dwelling Unit until the proposed building plans, specifications, exterior color or finish, shall have been approved in writing by the Company. Notwithstanding the foregoing, the exterior color of any structure on the Lot shall be earth tone(s). The Company further reserves the right to promulgate and amend from time to time architectural guidelines (hereinafter referred to as the "Architectural Guidelines") for the Properties and such Architectural Guidelines shall establish, define, and expressly limit those standards and specifications that will be approved including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design, and construction technique. Approval of plans, exterior color or finish, or specifications by the Company shall not be unreasonably withheld. No alteration in the exterior appearance of any building, fence or other structure, including exterior color or finish, shall be made without like prior written approval by the Company. One (1) copy of all plans and related data shall be furnished the Company for its records. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Company of written demand for approval, approval shall be deemed to have been granted. Notwithstanding the foregoing, the Company reserves the right to transfer its duties and obligations under this provision to the Architectural Review Board as defined in Section 10 of Article VIII hereof.

Section 2. Site and Location Approval for Lots and Family Dwelling Units. In order to assure that buildings and other structures will be located with regard to the topography of each Lot, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Company reserves the right to control absolutely and to decide solely (subject to the provisions of the Zoning Ordinance of the County of Allegheny or City of Covington, whichever is applicable)) the precise site and location of any building or structure on a Lot or Family Dwelling Unit for reasons which may in the sole and uncontrolled discretion and judgment of the Company seem sufficient; provided, however, that no such approval is required if all portions of the main dwelling and/or accessory building is located more than one hundred fifty feet (150') from each boundary line of the Lot. Notwithstanding the foregoing, the Company reserves the right to transfer its duties and obligations under this provision to the Architectural Review Board as defined in Section 10 of Article VIII hereof.

Section 3. Landscape Guidelines. No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed from Common Areas or Lots without the prior written approval of the Company; provided, however, that approval for the removal of trees located within ten (10) feet of the site of main dwelling and/or accessory building and driveway is not required. Notwithstanding the foregoing, the Company reserves the right to transfer its duties and obligations under this provision to the Architectural Review Board as defined in Section 10 of Article VIII hereof.

Section 4. Off Street Parking. Each Owner of a Lot or Family Dwelling Unit shall provide space for the parking of automobiles off the Roads prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Company.

Section 5. Maintenance of Property. It shall be the responsibility of each Owner, Tenant, contractor, or subcontractor to prevent the development of any unclean, unsightly, unkempt, unhealthy or unsafe conditions of buildings or grounds on any Property which shall tend to substantially decrease the beauty or safety of the Property. The Company and its agents shall have the right to enter upon any Property for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Property, and the cost of such corrective action shall be paid by the Property Owner. Such entry shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such condition pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Company to take any such corrective action.

Section 6. Septic. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made by Owner for the disposal of sewage.

Section 7. Well. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made by Owner for supplying running water.

Section 8. Easement Reservation. The Company reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable, and releasable easement and right, on, over and under the Properties to erect, install, maintain, and use electric, community antenna television, cable television and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage, or other public conveniences or utilities on, in, or over those portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Company. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance. The Company further reserves the right to locate wells, pumping stations, siltation basins, and tanks within any Common Areas or on any Property designated for such use on the applicable plat of said Property, or to locate same upon any Property with the permission of the Owner of such Property. Such rights may be exercised by any licensee of the Company, but this reservation shall not create any obligation on the part of the Company to provide or maintain any such utility or service.

Section 9. Architectural Review of Common Areas. No building, wall, fence, or other structure shall be commenced, erected, or maintained upon the Common Areas, nor shall any landscaping be done in these Areas, nor shall any exterior addition to any existing structure located on these Areas or change or alteration therein be made until the plans and specifications therefore showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as

to the harmony and compatibility of its external design and location with the surrounding structures and topography by the Architectural Review Board of the Association and/or by the Company pursuant to the provisions of this Declaration.

Section 10. Architectural Review Board. The Architectural Review Board shall be composed of at least one (1) but not more than five (5) Members, all of whom shall be appointed by the Board of Directors of the Association.

ARTICLE IX ADDITIONAL RESTRICTIONS AFFECTING THE PROPERTIES

Section 1. Residential Use.

(a) All Lots shall be used for residential purposes, recreational purposes incidental thereto, and for customary accessory uses. The use of a portion of a dwelling unit on a Lot as an office by the Owner or Tenant thereof shall be considered a residential use if such use does not create undue customer or client traffic, as determined by the Company in its sole and uncontrolled discretion, to and from the Lot. Such use must be in compliance with the zoning ordinances and other applicable regulations of the governing municipality and, if applicable, the terms and conditions of the Conservation Easement.

(b) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on a Lot other than one (1) detached single family dwelling and, if permitted by the deed to such Lot, one (1) accessory building.

(c) A guest suite or like facility without a kitchen may be included as part of the main dwelling or an accessory building on any Lot, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such suite would not result in overcrowding the Property, as determined by the Company in its sole and uncontrolled discretion.

Section 2. Completion of Improvements.

(a) The exterior of each house, and all other structures must be completed within one (1) year after the construction of same shall have commenced on all Lots except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. Houses may not be temporarily or permanently occupied until the exteriors thereof have been completed. During the continuance of construction, the Owner of the Lot shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition, pursuant to the provisions of these Covenants.

(b) The failure to complete the exterior of any house, or any other structure within the time limit set forth in paragraph 2(a) above shall constitute a violation and breach of these Covenants. The Company hereby reserves unto itself, its successors and assigns, a right on, over, and under all Lots for the purpose of taking any action necessary to effect compliance with paragraph 2(a) above, including, but not limited to the right to enter upon any property for the purpose of completing the exterior of such house, dwelling unit, or any other structure which is in violation of paragraph 2 (a). Such entry shall not be made until thirty (30) days after the Owner of the property has been notified in writing of the violation of these Covenants and unless such Owner has failed to complete said exterior within said thirty (30) day period. The cost of such corrective action, when performed by the Company or its agents, shall be paid by the Owner of the

Lot on which the corrective action is performed. The provisions of this paragraph shall not create any obligation on the part of the Company to take any action to effect compliance with paragraph 2(a).

Section 3. Screened Area and Other Matters.

(a) Each Owner of a Lot shall provide a screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or similar storage receptacles, electric and gas meters, air conditioning equipment, and other unsightly objects must be placed or stored in order to conceal them from view from the Road and adjacent properties. Plans for such screened area delineating the size, design, specifications, exterior color or finish, and location must be approved by the Company prior to construction. No alteration in the exterior appearance of any screened area shall be made without like prior written approval by the Company. Garbage receptacles and fuel tanks may be located outside of screened area only if located underground, and such underground garbage receptacles and fuel tanks and their location must likewise be approved by the Company prior to construction.

(b) If garbage pickup occurs, no Owner shall place the receptacles at the Road earlier than six (6) hours before pickup and shall remove within six (6) hours after pickup. Garbage and trash pickup shall be only by such company, companies or individuals as are designated as an approved operator in advance by the Association in its sole discretion. No burning of trash, other than leaves or wood debris, shall be permitted on any Lot or Common Areas.

(c) No school buses, campers, trailers, recreational vehicles, dune buggies, or boats shall be parked on any Road or Common Area. No school buses, campers, trailers, recreational vehicles, dune buggies, or boats shall be parked on any Lot so as to be visible from the Road or adjacent properties. No mobile homes or residential trailers of any kind will be permitted whatsoever on any Lot or Property.

(d) No clothing, laundry or wash shall be aired or dried on any Lot so as to be visible from any Road or adjacent properties.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or in any Family Dwelling Unit, except that horses, dogs, cats or other household pets may be kept on the Lot or in the Family Dwelling Unit subject to rules and regulations adopted by the Company, its successors or assigns.

Section 4. Prohibited Structures.

(a) No mobile home or residential trailer shall be placed on any Lot at any time, either temporarily or permanently.

(b) No television antenna, satellite dish, radio receiver, radio sender, or other similar device shall be attached to or installed on any Lot or on the exterior portion of any building or structure on any Lot so as to be visible from any Road or adjacent properties except as follows: should C.A.T.V. services or cable service be unavailable and good television reception not be otherwise available, the Owner or Tenant of a Family Dwelling Unit may make written application to the Company for permission to install a television antenna or a stationary satellite dish, which may be approved or denied in the sole and uncontrolled discretion of the Company.

Section 5. Utility and Drainage Easements. The utility and drainage easements reserved by the Company in these Covenants shall be located within twenty five feet (25') of the boundary lines of each Lot, unless otherwise shown on a subdivision plat.

ARTICLE X

TRAILS

(a) Easement. There is hereby created for the benefit of the Owners, an easement across the Roads and Common Areas for biking, walking, and jogging trails and bridle paths ("Trails") as they may be built from time to time. There is further reserved the right of access to repair and replace the Trails which shall be maintained in good repair by the Association. The provisions of this paragraph shall in no way create any obligation on the part of the Company to construct or maintain any Trails on the Properties.

(b) Liability. Any party using the Trails shall hold the Company and the Association harmless from any liability arising out of the use of and/or maintenance of the Trails except for liability caused by the negligent or willful act of the Company or the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. The Covenants of this Declaration and any Amendments thereto shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically extended for successive periods of ten (10) years. The number of ten (10) years extension periods hereunder shall be unlimited, and this Declaration shall be automatically extended upon the expiration of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year extension period, unless at a duly called meeting of the Association fifty-one percent (51%) or more of the total vote entitled to be cast by all the Members of the Association shall vote in favor of terminating this Declaration at the end of its then current term. The presence at the meeting of the Members or proxies entitled to cast thirty percent (30%) of the total vote of the Membership shall constitute a quorum. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the Resolution of Termination adopted by the Association, the date of the meeting of the Association at which such Resolution was adopted, the date the notice of such Meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the total number of votes necessary to adopt a Resolution terminating this Declaration, the total number of votes cast in favor of such Resolution, and the total number of votes cast against such Resolution. Said certificate shall be recorded in the Clerk's Office of the Circuit Court of Alleghany, Virginia, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. All proposed Amendments to this Declaration shall be submitted to a vote of the Members at a duly called meeting of the Association and any

such proposed amendment shall be deemed approved if two-thirds (2/3) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least fourteen (14) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the Amendment, the effective date of the Amendment (which in no event shall be less than fifteen (15) days after the date of the meeting of the Association at which such Amendment was adopted), the date the notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the number of votes necessary to adopt the Amendment, the total number of votes cast for and against the Amendment, and such Addendum shall be recorded in the Clerk's Office of the Circuit Court of Alleghany County, Virginia.

So long as the Company is a Type "B" Member, no Amendment of this Declaration shall be made without the written consent of the Company.

The Company reserves unto itself, its successors and assigns, the right to add additional restrictive covenants in respect to lands within the Properties to be conveyed in the future by the Company to the Association or to any other third party, or to limit therein the application of these covenants. The right to add additional restrictions or to limit the application of these covenants shall be reasonably exercised.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when delivered personally or sent by mail, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one (1) of two (2) or more co-owners or co-tenants shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of these Covenants shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any Covenant, either to restrain a violation or to recover damages, may be against the land or to enforce any lien created by these Covenants. Failure by the Association or the Company to enforce any Covenant herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter. In addition in the event of a violation or breach of any of the Covenants contained herein by any Property Owner, Tenant, or agent of such Owner, the Owners of the Properties, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance to the terms hereof.

In addition to the foregoing, the Company or its agent shall have the right, whenever there shall have been placed or constructed on any of the Properties any building, structure, chemical, substance, object, material, or condition which is in violation of these Covenants to enter upon such portion of the Properties where such violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the Owner, Tenant, or agent of the Owner; provided, however, that whenever stated in these

covenants and restrictions that the Company may serve notice requiring immediate corrective action, and such action is not performed immediately by the Owner, Tenant, or agent of the Owner, the Company or its agent shall have the right to enter immediately and summarily abate or remove such violation at the expense of the Owner. Any such entry and abatement or removal shall not be deemed trespass.

In addition to the foregoing the Company or its agent shall have the right, whenever permitted by this Declaration, to enter immediately (unless otherwise specifically stated) the Property to implement environmental controls, to take corrective action, or to take any action necessary. The cost of such action, when performed by the Company or its agent shall be paid by the Owner of the Property on which the work is performed. Entrance upon any Property pursuant to the provisions shall not be deemed a trespass.

Whenever the Company or its agent is permitted by this Declaration to correct, repair, enhance, improve, clean, preserve, clear out, remove, or take any action on any Property or on the easement areas adjacent thereto, entering the Property and taking such action shall not be deemed a trespass.

Section 5. Severability. Should any Covenant herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Corrective Action. Whenever the Company or its agent is permitted by this Declaration to correct, repair, enhance, improve, clean, preserve, clear out, remove, or take any action on any Property or on the easement areas adjacent thereto, and whenever it is stated in this Declaration that the cost of such action (hereinafter called the Cost of Corrective Action) shall be paid by the Owner of the Property on which such corrective action is performed, the Cost of Corrective Action, together with such interest thereon at the maximum annual rate permitted by law from the due date and costs of collection thereof or including a reasonable attorney fee as hereinafter provided, shall be a charge and continuing lien on the real Property and improvements thereon, against which the Cost of Corrective Action is charged, in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, and assigns, and in addition shall also be the personal obligation of the Owner of such real Property at the time when such Cost of Corrective Action becomes due and payable. The Cost of Corrective Action shall be billed at the completion of such corrective action, and all bills shall be due and payable thirty (30) days from the date of mailing of same.

If the Cost of Corrective Action is not paid within thirty (30) days after the due date, the Company or its agent may bring an action at law against the Property Owner personally and there shall be added to the amount of such Cost of Corrective Action the costs of preparing the filing of the complaint in such action and obtained, such judgment shall include interest on the Cost of Corrective Action as above provided and a reasonable attorney's fee together with the costs of the action.

The lien of the cost of Corrective Action provided for herein shall be subordinate to the lien of any first or second deed of trust now or hereafter placed upon any Property subject to these Covenants and Restrictions. In the event a creditor (other than the Company or the creditor of the Company) acquires title to any Property pursuant to

foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to any lien of the Cost of Corrective Action placed upon such Property during the time in which the creditor holds title to such Property.

Section 7. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration, and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 8. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 9. Limited Liability. The Company or its agent shall not be liable to any Property Owner or to any other person on account of any claim, liability, damage, or expense suffered, incurred by, or threatened against any Property Owner or such other person arising out of or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the Company or from the County of Alleghany and/or the City of Covington, Virginia, whether given, granted or withheld.

Section 10. Assignment of Rights. The Company reserves unto itself, its successors and assigns, the right to assign in whole or in part to the Association its rights reserved in this Declaration to grant approvals (or disapprovals), to establish rules and regulations, to administer and enforce the provisions of this Declaration, and all other rights reserved herein by the Company including, but not limited to, the right to approve (or disapprove) plans, specifications, color, finish, plot plan, land management plan, and construction schedules for any or all buildings or structures to be erected in any or all of the Properties. The assignment of such rights shall be subject to any conditions, limitations, or restrictions that the Company, in its sole and uncontrolled discretion, may elect to impose at the time of assignment. Following the assignment of such rights, the Association shall assume all of the Company's obligations which are incident thereto (if any), and the Company shall have no further obligation or liability with respect thereto. The assignment of such right or rights by the Company to the Association shall be made by written instrument that shall be recorded in the Clerk's Office of the Circuit Court of Alleghany County, Virginia.

Notwithstanding anything in the foregoing to the contrary, so long as the Company, its successors and assigns, is the Owner of all or any part of the Property subject to the provisions of this Declaration, the Company shall retain all rights of easement reserved onto it in this Declaration, and shall, furthermore, retain all rights of entry granted in this Declaration for the purposes of correcting, repairing, enhancing, improving, cleaning, preserving, clearing out, removing, or taking any action to prevent a violation of these Covenants, and the retention of said rights of easement and entry by the Company shall in no way create any obligation on the part of the Company to perform any affirmative action.

The Company reserves unto itself, its successors and assigns, the right to appoint the Association its agent for the purpose of administering and enforcing, in whole or in part, the rights reserved unto the Company in this Declaration. Such appointment may be

temporary or permanent, and shall be subject to any conditions, limitations, or restrictions that the Company, in its sole and uncontrolled discretion, may elect to impose. Upon any such appointment of the Association as agent by the Company, the Association shall assume any obligations that are incident thereto.

Section 11. Rights of Noteholders. Any institutional holder of a first mortgage on a Family Dwelling Unit or Lot will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects a material portion of the property securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the Owner of any property on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders and (h) be furnished with a copy of the master insurance policy.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed in its behalf.

MIDDLE MOUNTAIN, L.L.C.

a Virginia limited liability company

By: [SEAL]

David S. Witmer

Manager

HORSE MOUNTAIN PROPERTIES COMMUNITY ASSOCIATION, INC.

By: [SEAL]

David S. Witmer

President

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this _____ day of _____ 2005 by David S. Witmer, as Manager of Middle Mountain, L.L.C., a Virginia limited liability company.

My Commission expires: .

Notary Public

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this _____ day of _____ 2005 by David S. Witmer, as President of Horse Mountain Properties Community Association, Inc. a Virginia non-stock corporation.

My Commission expires: .

Notary Public

EXHIBIT A

Property Description

All the lots numbered one through twenty shown collectively as "Horse Mountain Properties" together with the adjacent 1,328.82 acres, by survey, shown as "Common Area" on the plat entitled "Survey for Horse Mountain Properties, Jackson River Magisterial District, Alleghany County, Virginia, Surveyed 28 July 2005" prepared by Vess Surveying, Inc., dated July 28, 2005, recorded in the Clerk's Office of the Circuit Court of Alleghany County, Virginia in Plat Book 30, pages 643-54.

REA265919.8

ABOUT US

Fresh Estates & Country Properties, Inc., was founded by Principal Broker Larry Fresh in the early 1980s. Growing up in Bath County and graduating from Washington & Lee University in 1980, Fresh has instilled the same "Honor Code" in business as in life. Since its inception, Fresh Estates has been a full-service Real Estate Firm only focusing on candid, honest opinions and advice...[Read More](#)

LOCATION

CONTACT INFO

FRESH ESTATES & COUNTRY PROPERTIES, INC.

12187 Sam Snead Highway

Warm Springs, VA 24484

Larry W. Fresh, Broker

Home - 540.997.5219

Office - 540.839.3101



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