

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR WALNUT SPRINGS MOUNTAIN RESERVE A RESIDENTIAL HOME
DEVELOPMENT NEAR UNION, WEST VIRGINIA DATED APRIL 8, 2005**

**ARTICLE I
CREATION OF WALNUT SPRINGS MOUNTAIN RESERVE**

Declarant does hereby covenant and declare that the Halperin Tract, the SUGARTREE Tract, the Mountain America Tract, the Walnut Ridge Tract and any other property subjected to this Declaration pursuant to the provisions of Article X hereto shall be known as “Walnut Springs Mountain Reserve” and shall be held, transferred, sold, and conveyed subject to the following covenants, conditions, restrictions, reservations, easements, and affirmative obligations (hereinafter collectively referred to as “Restrictions”), relating to the use and occupancy thereof, said Restrictions to be construed as restrictive covenants running with the land, and which shall inure to the benefit of and be binding upon all parties having any right, title, or interest in the Properties as defined below and their heirs, successors and assigns.

Every person or other party hereafter acquiring any of the Properties or any portion thereof by acceptance of a deed or contract for deed of any interest in or to said property, whether or not it shall be so expressed in any such deed or contract for deed, and regardless of whether the same shall be signed by such person, and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this Declaration and to the terms and conditions hereof, and shall be deemed to have assented to the same.

Declarant further authorizes and appoints Mountain America (the “Developer”) as its agent and attorney in fact to perform the obligations of Declarant hereunder.

It is the intention of Declarant that Walnut Springs Mountain Reserve qualifies for the exception set forth in W.Va. Code § 36B-1-203(2) and that Walnut Springs Mountain

Reserve is not subject to the provisions of Chapter 36B of the West Virginia Code, as amended, other than W.Va. Code §§ 36B-1-105, 36B-1-106, 36B-1-107, and 36B-1-114.

ARTICLE II DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

“Association” shall mean and refer to Walnut Springs Mountain Reserve Homeowners’ Association, Inc., a non-profit, non-stock homeowners’ association, its successors and assigns.

“Base Assessment” shall mean assessments levied on all Lots subject to assessment under Section 6.5 hereof to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 6.1.

“Board of Directors” or “Board” shall mean the body responsible for administration of the Association, selected as provided in the Bylaws of the Association and generally serving the same role as the board of directors under West Virginia corporate law.

“Common Areas” shall mean and refer to any real and personal property, including easements, deeded or dedicated by Declarant for the common use and benefit of the Owners in Walnut Springs Mountain Reserve or otherwise shown as Common Areas on any plat for Walnut Springs Mountain Reserve Recorded in the office of the Clerk of the County Commission of Monroe County, West Virginia, including without limitation, roads, park areas, trails and storm water management areas.

“Common Expenses” shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the

Governing Documents. Common Expenses shall not include any expenses incurred during the Class “B” Control Period for initial development or other original construction costs unless Members representing a majority of the total Class “A” vote of the Association approve. Payments due under leases of capital improvements such as streetlights shall not be considered an initial development or original construction cost.

“Declarant” shall mean and refer to Halperin, SUGARTREE, Mountain America and Schonberger and any of their heirs, successors and assigns or any other party subjecting real estate to this Declaration pursuant to the provisions of Article X hereof.

“Declarant Control Period” shall mean the period of time during which Developer is entitled to appoint and to remove all members of the Board as provided in the Bylaws of the Association. The Declarant Control Period shall terminate on the first to occur of the following:

- (a) when 100% of the total number of Lots planned for Walnut Springs Mountain Reserve have been conveyed to Owners; or
- (b) when, in its discretion, the Developer so determines.

“Design Review Board” shall mean and refer to the design review committee appointed by Developer, or upon the expiration of the Declarant Control Period, by the Board.

“Developer” shall mean and refer to Mountain America.

“Governing Documents” shall mean collectively this Declaration, any applicable Supplemental Declaration, the Bylaws of the Association, the Articles of Incorporation of the Association, the Design Review Board Guidelines and Board resolutions, as they may be amended.

“Lot” shall mean and refer to any numbered tract or plat of land in the Walnut Springs Mountain Reserve resulting from the subdivision of the Properties.

“Member” shall mean and refer to all those Owners who are members of the Association.

“Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

“Properties” shall mean and refer to the Halperin Tract, the SUGARTREE Tract, the Mountain America Tract, the Walnut Ridge Tract, The Schonberger tract, or tracts known as Walnut Springs Mountain Reserve and such additional properties as may hereafter be subject to this Declaration pursuant to Article X hereof.

“Record”, “Recording”, or “Recorded” shall mean the filing of a legal instrument in the office of the Clerk of the County Commission of Monroe County, West Virginia or such other place as may be designated as the official location for Recording deeds, plats, and similar documents affecting title to real estate.

“Special Assessment” shall mean assessments levied in accordance with Section 6.3.

“Specific Assessment” shall mean assessments levied in accordance with Section 6.4.

“Supplemental Declaration” shall mean an instrument Recorded pursuant to Article X, which subjects additional property to this Declaration and/or creates or imposes additional easements, restrictions, and obligations on the land described in such instrument.

ARTICLE III
ARCHITECTURAL DESIGN REVIEW BOARD

3.1 Each Owner shall be responsible for acquiring from Developer and then reviewing and accepting, prior to purchasing any Lot, a current copy of the Walnut Springs Mountain Reserve Design Review Board Guidelines (consisting of land and structure rules, regulations, and design review charges).

3.2 No residences, buildings, facilities, or other structures, or any additions, changes to grade, terrain, land, or forests on a Lot shall be erected, or the erection thereof begun, until the site plans and specifications and building plans and specifications, shall have been presented to and approved in writing by the Design Review Board. Said plans and specifications shall be submitted to the Design Review Board at least sixty (60) days prior to the intended construction date, and any modifications in such plans shall be submitted to the Design Review Board for approval prior to commencing any such work. The Design Review Board may establish and charge reasonable fees for the review of plans and specifications and may require the fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any plans and specifications reviewed by architects, engineers or other persons deemed necessary by the Design Review Board to perform the review. The following rules and regulations shall govern the approval of building plans and Lot improvements by the Design Review Board:

(a) Unless otherwise approved by the Design Review Board, no building or structure shall be erected closer than fifty (50) feet to the centerline of any street or road, nor closer than seventy-five (75) feet to the side or rear of the Lot. The dwelling and any auxiliary structures must be placed in accordance with the building envelope outline for that particular Lot so as not to obstruct the views of other Owners. Any side of the dwelling's structure may not be any closer than the following to dwellings constructed on other Lots: 130 feet on wooded one-acre or less Lots; 150 feet on one-acre or less non-wooded Lots; 150 feet on 1.1 to 3 acre wooded Lots; 200 feet on 1.1 to 3 acre non-wooded Lots; 250 feet on 3.1 to 5.1 acre wooded Lots; 300 feet on 3.1 to 5.1 acre non-wooded Lots; 350 feet on 5.2 to 7

acre wooded Lots; 400 feet on 5.2 to 7 acre non-wooded Lots; 400 feet on 7.1 to 10 acre wooded Lots; 500 feet on 7.1 to 10 acre non-wooded Lots; 450 feet on 10.1 to 20 acre wooded Lots; 500 feet on 10.1 to 20 acre non-wooded Lots; and 500 feet on Lots above 20 acres. The Design Review Board may grant variances from these provisions if it would place an unreasonable burden on the design and placement of the dwelling on that site, and such variance does not unreasonably interfere with the privacy of neighboring Lots. Pools and decks may not be closer than 50 feet of any boundary of the Lot without a variance and never closer than 15 feet to a side boundary even with a variance.

(b) In order to assure that dwellings or structures will be properly located with regard to the topography or in relation to adjacent Lots, the Design Review Board shall have the right to control the site and location of any dwelling or other structure upon said Lot, *provided however*, unless a variance is granted, such location shall be within the building envelope as designated by the developer and/or detailed on the plat of each Lot as dashed lines showing the building area for dwellings, stables or other structures.

(c) For any Lot measuring 5.99 acres or less, nothing but one single-family private dwelling shall be erected, altered, placed or permitted to remain on such Lot. Garages and outbuildings shall be permitted, but the same shall conform in design, style, and construction to the dwelling. Lots may be subdivided once for residential purposes, if the resulting Lots are each at least 6.00 acres, and the structure to be erected on each resulting Lot is a single-family private dwelling, unless approved in advance by the Design Review Board for a special or different use.

(d) No Owner may grant a temporary or permanent license of use or easement over a Lot without the express written and Recorded approval of the Developer.

(e) Where homes are at the top of hills, mountains, or ridges; the roof tops & fireplace chimneys must remain a minimum of 5ft below the highest of the tree tops average for that area. All homes within the development effecting the view of any other home in the development, must not have visible any rear windows facing back at neighbors

that are above the line of site of the foundation level of the overlooking home. No more than 20% of the roof line tops & chimneys may protrude above that same foundation line of site of that residence or proposed building envelope that is directly behind, and/or 45 degrees to either rear side if within 700ft of said lot, , unless approved by the developer or Design Review Board. Unless a variance is granted by the Design Review Board in those instances where a variance would not be intrusive to overall vistas and reviews, the minimum and maximum ground floor area of living space of any single-family dwelling shall be as follows (these square footage calculations do not include fully submerged basements, garages, porches or stables):

(i) Special use cabins in areas specifically designated by Developer (1 to 2 acres Lots): Minimum of 700 square feet for a one-story dwelling and 850 square feet for a two-story dwelling; maximum of 950 square feet for a one-story dwelling and 1250 square feet for a two-story dwelling, with no more than 25% of the square footage being on the second story if the dwelling is in an open field with no tree coverage and with no more than 40% of the square footage being in the second story if within tree coverage; two-car garage maximum; wall plate height of dwelling may not exceed 10 feet except at balloon walls; width of dwelling may not exceed 40 feet and overall width with garage to be no more than 50 feet wide; garage not to exceed 15 feet wide by 20 feet long, 8 feet tall plate maximum, and must have a separate roofline lower than the dwelling's roofline.

(ii) 2.1 to 3 acres: Minimum of 950 square feet for a one-story dwelling and 1200 square feet for a two-story dwelling; maximum of 1400 square feet for a one-story dwelling and 1800 square feet for a two-story dwelling with no more than 25% of the square footage being in the second story if the dwelling is in an open field with no tree coverage and with no more than 40% of the square footage being on the second story if within tree coverage; two-car garage maximum; wall plate height of dwelling may not exceed 10 feet except at balloon walls; width of dwelling may not exceed 50

feet and overall with garage to be no more than 60 feet wide; garage not to exceed 20 feet wide by 28 feet long, 8 feet tall plate maximum, and must have a separate roofline lower than the dwelling's roofline.

(iii) 3.1 to 4.5 acres: Minimum of 1200 square feet for a one-story dwelling and 1400 square feet for a two-story dwelling; maximum of 2200 square feet for a one-story dwelling and 2500 square feet for a two-story dwelling, with no more than 25% of the square footage being on the second story if the dwelling is in an open field with no tree coverage, and with no more than 40% of the square footage being on the second floor within tree coverage; three-car garage maximum; garage not to exceed 36 feet wide by 28 feet deep, 8 feet tall plate maximum, and must have a separate roofline lower than the dwelling's roofline.

(iv) 4.6 to 5.9 acres: Minimum of 1400 square feet for a one-story dwelling and 1650 square feet for a two-story dwelling; maximum of 2400 square feet for a one-story dwelling and 3600 square feet for a two-story dwelling, with no more than 25% of the square footage being on the second story if the dwelling is in an open field with no tree coverage, and with no more than 40% of the square footage being on the second story if within tree coverage; four-car garage maximum; garage not to exceed 40 feet wide by 30 feet deep, 8 feet tall plate maximum and must have a separate roofline lower than the dwelling's roofline.

(v) 6 to 12 acres: Minimum of 1900 square feet for a one-story dwelling and 2200 square feet for a two-story dwelling; maximum of 5700 square feet for a one-story dwelling and 7500 square feet for a two-story dwelling with no more than 25% of the square footage being on the second story if the dwelling is in an open field with no tree coverage, and with no more than 40% being on the second story if within tree coverage; six-car garage maximum; to be located in one structure, shall not to exceed 50 feet

wide by 30 feet deep max, or (2) structures of (28) feet wide x 30 deep and the separation distance of these two garages approved in advance by the developer or Design Review Board ; 8 feet tall plate maximum and must have a separate roofline lower than the dwelling's roofline.

(vi) Greater than 12.1 acres: Minimum of 2000 square feet for a one-story dwelling and 2300 square feet for a two-story dwelling; maximum of 15,500 square feet for a one-story dwelling and 19,500 square feet for a two-story dwelling, with no more than 25% of the square footage being in the second story if the dwelling is in an open field with no tree coverage, and no more than 40% being in the second story if within tree coverage; six-car garage maximum; to be located in one structure, shall not to exceed 50 feet wide by 30 feet deep max, or (2) structures of (28) feet wide x 30 deep and the separation distance of these two garages approved in advance by the developer or Design Review Board ; 8 feet tall plate maximum and must have a separate roofline lower than the dwelling's roofline.

(f) Unless approved by the Design Review Board, horse stalls will not be permitted unless there exists on the Lot a minimum of 2.5 acres of cleared land outside of the building envelope. Only one stall shall be permitted for 2.5 acres of cleared land and one additional stall shall be permitted for each additional four acres of approved cleared land, with a maximum of three stalls, unless more stalls approved by Developer. Stalls may not encroach any views and must have an approved roof design, which is not higher than 18 feet from the base foundation soil.

(g) Private driveways, the location of which shall be subject to approval by the Design Review Board, will access all Lots. Where private driveways cross drainage ditches for any access road, such driveways shall have a drainpipe installed of not less than twelve (12) feet in length and twelve (12) inches in diameter in order to insure proper drainage and proper construction, such drainpipes to be smooth if on a level area, and ribbed if on an incline. For those Lots with shared driveways, the cost of the installation and maintenance of the drainpipe shall be shared equally between the Owners of the lots serviced by the driveway. Owner's sloped driveways may require a heated under-base treatment for winter access at Owner's expense.

(h) No parking shall be allowed on the roads and no permanent parking of any vehicles outside of garages or storage of equipment, tools, vehicles, boats, RV's Campers, Trailers or other items shall be permitted outside the garage or dwelling.

(i) Barns are not permitted. Above-ground pools may be approved as a variance if there is a legitimate solid rock excavation problem, there is no other area within the Owner's Lot to install an in-ground pool, and the above-ground pool meets Design Review Board approval for appearance and view concerns.

(j) No trailers, double- or singlewides are permitted. System homes or higher quality pre-manufactured modular homes will be allowed if approved by the Design Review Board.

(k) All exterior construction of dwellings and any additional buildings must be completed within one (1) year of the commencement date of construction, unless otherwise approved by the Design Review Board.

(l) The Design Review Board shall have ultimate and final control of the designs of homes and structures as outlined in the Walnut Springs Mountain Reserve Design Guidelines that include but are not limited to:

- The Exterior Of All Residences
- Exterior or any auxiliary structures or buildings
- Garden Walls And Fences
- Entrance Treatments On Lots
- Window Treatments
- All Exterior Colors
- Pools
- Height Restrictions
- Exposed Foundations And Ground Floor Piers
- Exterior Design, Materials and Finishes
- Standards For Roofs
- Standards For Gutters And Downspouts
- Septic Fields
- Standards For Solid, Glazed, Storm/Screen Doors

Wood Shutters
Standards For Windows, Shutters And Storm/Screen Sash
Awnings And Canopies
Standards Pertaining To Mechanical, Electrical And Other Equipment
View Corridors
Site Work
Tree Policy
General Site Clearing Requirements
Site Grading And Drainage
System Homes
Building Envelope and Setbacks
Design Acceptance and Variances

ARTICLE IV
GENERAL PROVISIONS

Declarant does declare that all Lots shall be and are hereby additionally subject to the following covenants, conditions, restrictions, reservations, and easements:

4.1 Lots shall be used for residential and personal recreational purposes; no business, commercial or professional enterprise which regularly attracts customers, patrons, or clients shall be permitted or conducted thereon, except as approved by Developer.

4.2 Prior to the occupation of any dwelling situated on a Lot, Owner shall, at his or her expense, tap into the water source brought to the Lot, or if water is not available, then by drilling a well as approved by the Monroe County Health Department. Each Owner shall install an approved septic tank and drainage field or sewage disposal system. All toilets, septic tanks, sewage and/or waste disposal systems constructed on a Lot shall conform to the rules and regulations of the Monroe County Health Department. Further, activities or use of a Lot shall not pollute or cause waste to any spring, drain, or stream situated within Walnut Springs Mountain Reserve.

4.3 No house trailers, trucks, buses, dilapidated cars, or unsightly vehicles of any type or description may be stored, used for buildings, left or abandoned on a Lot. Upon prior

approval by the Design Review Board, exceptions will be allowed for the temporary use of a storage trailer during the construction of any buildings.

4.4 No mobile home, house or travel trailer, camper unit, tent, basement, garage, horse stall or other outbuildings shall be used on any Lot at any time as a residence.

4.5 Each Owner shall provide receptacles for trash and garbage in an area not visible from main access road. Each Owner shall be responsible for the removal of trash to a landfill or use of a contracted service.

4.6 No livestock, sheep, swine or poultry shall be kept or raised on a Lot. Pets may be kept if proper fencing or other suitable constraints are installed and approved in advance by the Design Review Board and such animals are not vicious or uncontrollable. Pit bulls and King-Corso breeds must have proof of having been neutered prior to nine months of age to be allowed within the Properties at any time. Horses are permitted subject to the provisions of Article VIII.

4.7 No obnoxious or offensive use shall be made of any Lot, nor shall any offensive or illegal trade or activity be conducted upon a Lot, nor shall any activity of any nature whatsoever be conducted thereon, which may constitute a nuisance. Except as specifically performed or authorized by the Developer, **no construction, mowing, maintenance or operating of noisy equipment may take place from 2:00 p.m. Saturday through 6:30 a.m. Monday, or on Legal Holidays, unless it is an emergency maintenance or repair situation.** All construction during the rest of the time may be performed from 6:30 a.m. to 6:30 p.m. Monday through Friday and from 8:00 a.m. to 2:00 p.m. Saturday, if non-offensive or non-loud activities. Loud activity such as the operation of exterior equipment (saws, drilling, excavating, mowing, hammering, etc.) is to be performed between the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday only.

4.8 In general, no satellite dishes larger than 18" in diameter are allowed, unless otherwise approved by the Design Review Board. The Design Review Board must approve placement of satellite dishes and television receiving devices. No radio towers are permitted.

4.9 All electrical utilities will be brought in from the main transmission lines as installed by the utility to structures and may have poles at the perimeter as feeder line if approved by the developer. Unless impractical due to continuous rock formations, all utility lines will be located underground. In those instances where a utility company requires a deposit to run feeder cable through the area of the development that passes along an Owner's Lot, the Owner of the Lot will be responsible for paying that portion of the deposit allocated by the utility company to the Lot (even if Owner has not yet constructed a dwelling on the Lot). To the extent Developer or another party pays Owner's share of the deposit, Owner shall reimburse Developer or such party for the amount paid plus interest thereon at 10% per annum. To the extent Owner has paid the deposit, he or she will be entitled to such refunds of the deposit that may be due from the utility company under applicable tariffs. If Owner has not paid the deposit, the party paying the deposit will be entitled to the refund. The owner is responsible for all individual utility service lines and all underground excavation and underground utility charges from the termination point of their lot to their residence and structures.

4.10 No Owner may restrict, block, or re-channel any natural drainage within the bounds of his or her Lot unless such action has been reviewed and approved by the Design Review Board.

4.11 No signs of any kind may be displayed for public view on any Lot except that one professional sign of not more than five square feet advertising the property for sale or rent, or such other signs as may be used by the Developer to advertise the property during the construction and sales period shall be permitted. Lot ownership signs may be erected only after prior approval from the Design Review Board.

4.12 No fuel tanks or similar storage receptacles may be maintained on any Lot so as to be visible to the public.

4.13 No motorized trail bikes, mini-bikes, or similar all-terrain vehicles or snowmobiles shall be permitted to be driven upon the Common Areas and/or trails or roads in Walnut Springs Mountain Reserve, excepting Electric ATV's Electric Carts, & Developer's Utility ATV vehicles and/or a Developers designated exit entry ATV trail to and from the property.

4.14 No trees with a butt diameter of ten (10) inches or more measured one foot above the ground (including without limitation, any tree that dies from natural causes and still remains standing) may be cut down without permission of the Design Review Board unless said tree is within ten (10) feet of the dwelling or other approved building.

4.15 The roads within Walnut Springs Mountain Reserve are private roads and provide the sole means of access to and from the Lots. Each Owner, as evidenced by his or her acceptance of the deed to his or her respective Lot, acknowledges that the roads are private and the portion of any road that crosses the Owner's Lot shall remain unobstructed at all times and shall be subject to the rights of other Owners in Walnut Springs Mountain Reserve to use the roads. Roads shall be available for the Developer and the community at all times. Each Owner acknowledges that it is in his or her best interest that all roads be maintained in a good and passable condition at all times and that he or she agrees to share equally in the cost of maintaining said roads regardless of the size or location of his or her Lot, or the distance traveled over the roads to provide access to his or her respective Lot.

4.16 Each Owner shall be responsible for maintaining his or her Lot, facilities and buildings in a working, tidy and well-kept manner and to not allow his or her Lot maintenance or appearance to have a negative impact on any other Owner. All Lots shall be kept clean and free of garbage, junk, debris, non-operating vehicles, or any substance that might contribute to a health hazard or significantly detracts from the aesthetics of Walnut Springs Mountain Reserve. Failure to maintain any Lot, residence, outbuildings, facilities,

or fences, in a good state of repair will entitle the Design Review Board, after fourteen (14) days written notice to the Owner, to have the necessary services or repairs performed at the expense of the Owner, which charge shall be levied against the Owner as a Specific Assessment and shall constitute a lien against his or her property until said expense is paid. Neither the Design Review Board, nor any of its agents, employees, or contractors shall be liable for any damage, which may result from any maintenance work performed under this provision, except in the case of gross negligence.

ARTICLE V

HOMEOWNERS' ASSOCIATION

5.1 The Association shall be responsible for management, operation and control of the Common Areas, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Association may hire and terminate managing agents and other employees, agents and independent contractors. The Board may adopt such reasonable rules regulating use of the Common Areas, as it deems appropriate, subject to the rights of the Declarant and the Owners set forth herein. The Association also is the primary entity responsible for enforcement of the Governing Documents. Upon the expiration of the Declarant Control Period, or at any time prior thereto at the discretion of the Developer, all rights and responsibilities contained and reserved in this Declaration to Declarant or Developer will be delegated to the Association.

5.2 The Association shall be a non-profit corporation formed under the corporation laws of the State of West Virginia.

5.3 Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the Governing Documents, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner, which is not a natural person, may be exercised by any officer, director, partner or trustee, or by the individual

designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

5.4. The Association shall have two classes of membership, Class “A” and Class “B”.

(a) Class “A”. Class “A” Members shall be all of the Owners except the Class “B” Members, if any. Class “A” Members shall have one equal vote for each Lot in which they hold the interest, except that there shall be only one vote per Lot. All Class “A” votes shall be cast as provided below.

(b) The sole Class “B” Member shall be the Developer. The Class “B” Member may appoint and remove all of the members of the Board during the Declarant Control Period. Additional rights of the Class “B” Member are specified in the relevant sections of the Governing Documents. Until termination of the Declarant Control Period, the Class “B” Member shall have a right to disapprove actions of the Board and committees as provided herein and in the Governing Documents.

The Class “B” membership shall terminate upon the earlier of:

(i) Two years after expiration of the Declarant Control Period; or

(ii) When, in its discretion, Developer so determines and declares in a Recorded instrument.

Upon termination of the Class “B” membership, Developer shall be a Class “A” Member entitled to one Class “A” vote for each Lot which is owned by a Declarant.

In any situation where a Member is entitled to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one person seeks to exercise it.

5.5 The Association, through action of its Board, may (i) acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of this Declaration, including without limitation, the easement rights granted to the Declarant and Owners set forth herein; (ii) enter into leases, licenses or operating agreements for portions of the Common Areas, for such consideration or no consideration as the Board deems appropriate; (iii) permit use of such portions of the Common Areas by community organizations and by others, whether nonprofit or for profit; (iv) acquire, sell, lease and grant easements over, across and through Common Areas; (v) may borrow monies and grant security interests in the Common Areas and in the assets of the Association as collateral therefore; and (vi) make capital improvements, repairs and replacements to the Common Areas.

5.6 Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any of the Properties. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Areas, which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

5.7 Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

(a) Imposing reasonable monetary fines, which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) Suspending an Owner's right to vote;

(c) suspending any person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(f) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Lot, remove the violation and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article III and the Architectural Guidelines from continuing or performing any further activities in the Property; and

(h) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

(a) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(b) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner fourteen (14) days written notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative with any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

5.8 The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action.

ARTICLE VI
ASSOCIATION FINANCES

6.1 Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 6.2. The budget also shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments, Specific Assessments and Special Assessments against the Lots..

The Association is authorized to levy Base Assessments equally against all Lots subject to assessment under Section 6.5 to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, or a loan, in Declarant's discretion. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget to each Owner. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association entitled to vote and by the Class "B" Member, if such exists; provided that any budget which increases the Base Assessment such that it is in excess of \$500 per lot annually shall require the approval of 66²/₃% of the Class "A" Members and the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of

the Members as provided for in the Bylaws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

6.2 The Board shall prepare and review at least annually a reserve budget for the Common Areas. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 6.1 a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect to both amount and timing by annual contributions over the budget period.

6.3 In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing more than 50% of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

6.4 The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection.

6.5 Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to a Lot sold by a Declarant to an Owner on the one-year anniversary date of the date that an access road (which may be unpaved) to the Lot is constructed and available for use. The first annual Base Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessment may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

6.6 Except for Declarant or any assignee of all or part of Declarant's rights hereunder, each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. Declarant is exempt from the collection of assessments regardless of the number of Lots it owns. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of West Virginia law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

6.7 The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of West Virginia law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which

by law would be superior; and (b) the lien or charge of any Recorded purchase money mortgage made in good faith and for value.

The lien shall become effective upon the Recordation by the Association or its authorized agent of a notice of lien to the Owner in the manner set forth in W.Va. Code § 56-2-1, or by registered or certified mail, return receipt requested and in a form reasonably calculated to inform the Owner of his, her or its liability for payment of the assessment. The Association acting through the Board shall cause such notice of its lien to be recorded in the Office of the Clerk of the County Commission of Monroe County, West Virginia, which notice shall contain the following:

- (a) A legally sufficient description of the Lot.
- (b) The name or names of the Owner or Owners of the Lot; and
- (c) The amount of unpaid assessments due together with the date when each fell due.

The notice of lien shall be signed by an authorized representative of the Association. The lien shall relate only to the individual Lot and improvements thereon against which the assessment was levied and not to the Lots in Walnut Springs Mountain Reserve as a whole. Upon payment to the Association of the full amount claimed in the notice of lien, or other satisfaction thereof, the Association shall execute a written release of the lien in the manner set forth in W.Va. Code § 38-12-1. The Association may demand and receive from the applicable Owner a reasonable charge for the preparation and Recordation of the release, which shall be recorded in the Office of the Clerk of the County Commission of Monroe County, West Virginia, wherein the notice of lien was filed.

6.8 The Association's lien may be foreclosed in like manner as a mortgage on real estate or a power of sale under a deed of trust. In addition, all fees, charges, late charges, fines and interest charged pursuant to this Declaration are enforceable as assessments. The

Association is hereby authorized and empowered to appoint by an instrument Recorded in the Office of the Clerk of the County Commission of Monroe County, West Virginia, a trustee or trustees who shall have all of the rights, powers and authority and shall be charged with all of the duties that are conferred or charged upon them by this Declaration and by the provisions of Chapter 38 of the West Virginia Code, as amended. Upon default in the payment of such assessment for which a lien has been perfected as provided in this Declaration, the Association may direct the trustee or trustees to proceed to foreclose on and sell the Lot and improvements thereon against which the assessment was levied, or so much thereof as the trustee or trustees may deem necessary to satisfy the secured indebtedness, at public auction at the Courthouse of Monroe County, in the City of Union, West Virginia, for cash in hand on the day of sale and out of the proceeds of such sale the said Trustees shall promptly pay:

(a) The necessary cost and expenses attending the execution of this trust, including a commission to the said trustee or trustees in the amount of \$500.

(b) To the Association, the full amount due and unpaid thereon, together with all interest thereon to the date of payment.

In the event of the resignation, death, incapacity, disability, removal, court order or absence from the State, for more than 30 days of the trustee or trustees so named, or in the event of his refusal or failure to act when so requested, then and in such event, the Association is hereby authorized and empowered to appoint, by an instrument Recorded in the aforesaid Clerk's office, another trustee (or trustees) in the place and stead of the trustee or trustees so named, which successor trustee or trustees shall have all the rights, powers and authority upon the trustee or trustees so named. In the event of sale by the said trustee or trustees, such sale shall be made in accordance with the laws of the State of West Virginia, at the date hereof, relating to sales under deeds of trust, with the exceptions herein made. The trustee or trustees shall publish a notice of such sale as a Class III Legal Advertisement in compliance with the provisions of W.Va. Code § 59-3-1, and the publication area for such publication shall be Monroe County, West Virginia. In addition, such notice of sale shall be

posted at the front door of the Courthouse of Monroe County, in the City of Union, West Virginia, and in addition, a copy of such notice shall be served on the Owner against which assessment was levied or on his or its personal representative, if he or they be within Monroe County, West Virginia, at least 20 days prior to the sale. Every notice of sale by the trustee or trustees shall show the particulars as provided by W.Va. Code § 38-1-4. The Association, through its agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to remove the occupancy of the defaulting Owner, and the defaulting Owner shall be required to pay the reasonable rental value for such home during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A civil action to recover a money judgment for an unpaid assessment or assessments shall be maintainable by the Association without foreclosing or waiving the lien securing the same, but this provision or any institution of civil action to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a civil action initiated pursuant to this section may include reasonable attorneys' fees as fixed by the Circuit Court of Monroe County, West Virginia.

In the event of such default in the payment of assessments hereunder, the Association shall be entitled to pursue any and all other remedies afforded at law.

6.9 In addition to lots owned by Declarant or any assignee of all or part of Declarant's rights hereunder, the following property shall be exempt from payment of Base Assessments and Special Assessments.

- (a) All Common Areas; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such persons own property subject to this Declaration for purposes listed in Section 501(c).

ARTICLE VII
PROPERTY RIGHTS AND PERMITTED USES
OF THE COMMON PROPERTIES; EASEMENTS

7.1 Declarant or its assigns reserves an easement to maintain a sales office within Walnut Springs Mountain Reserve and to erect sales signs in locations chosen by Developer or its assigns. An easement to complete construction of all facilities and utilities in Walnut Springs Mountain Reserve is also reserved by Declarant and is assignable at Declarant discretion.

7.2 Every Member of the Association, including the Declarant, shall have a right and easement of enjoyment in and to the roads and other Common Areas in Walnut Springs Mountain Reserve, subject to the Governing Documents.

7.3 Declarant may convey to the Association the Common Areas, subject to the Declarant's right to construct improvements thereon, and further subject to the easements set forth in this Article VII. This conveyance shall not inhibit convenient use of the Common Areas by any person or entity hereby entitled to use same. Such conveyance may occur at such time in the future as Declarant, in its sole discretion, deems appropriate. Declarant may at its discretion convey any portion of the Common Areas to the Federal or State government subject to the usage rights of Owners in Walnut Springs Mountain Reserve.

7.4 All Common Areas are provided for the private use and enjoyment of the Members of the Association and their guests. The maintenance of the areas, any improvements located and/or constructed thereon, and rules for their use shall be the responsibility of the Association.

7.5 Declarant reserves for itself and grants to all utility providers, perpetual non-exclusive 30 foot easements around the entire boundary of a Lot and on those areas designated as a utility easement area on any plat attached to a Deed for a Lot or as otherwise reserved in any contract for sale of a Lot to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, drainage systems, street lights and signage;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 7.5 (i); and

(iii) access to read utility meters.

7.6 Declarant reserves for itself and the Association a 60 foot easement around the entire boundary of each Lot and on those areas designated as a road easement area in any plat attached to a Deed for a Lot or as otherwise reserved in any contract for sale of a Lot, for the purposes of installing, constructing, maintaining or landscaping entrance areas, roads, walkways, pathways, bridle paths or trails to provide ingress or egress to or otherwise serve the Properties.

7.7 Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Areas for the purposes of enjoyment, use, access and development of the Properties owned by any Declarant, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

7.8 Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcement of the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Lot Owner.

7.9 Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the property within Walnut Springs Mountain Reserve, including Lots, and a perpetual nonexclusive easement of access throughout Walnut Springs Mountain Reserve to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

7.10 Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easement as may be necessary to evidence the easements reserved and granted in this Article VII.

7.11 All work associated with the exercise of the easements described in this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

ARTICLE VIII EQUESTRIAN PROVISIONS

The right to keep horses on the Properties is subject to the following provisions:

8.1 Horses must have access to a barn and/or shelter out of the rain and wind at all times, must have access to fresh, clean drinking water at all times, will not be beaten or abused in any manner and must be properly vaccinated. Any horse visiting the Properties must provide a Coggins certificate prior to arrival on the Properties, and must have access to a minimum of 2.5 acres per horse when gaining sustenance from foraging on pasture as necessary, hay and grain will be supplemented for nutrition.

8.2 In the event there is question of negligence or abuse regarding horses, the Association may consult with a veterinarian (at the Owner's expense) and have the horses evaluated. After two (2) written warnings, the horses may be seized by the SPCA, Animal Control or a local Horse Rescue. The Owner may then forfeit his or her right to keep horses on its Lot.

8.3 Healthy pasture must be maintained by the Owner at all times through proper pasture maintenance protocols. After heavy rains or during the melting of snow in the spring, horses must be turned out in a small sacrifice area to avoid tearing up the pasture.

Proper pasture maintenance including: mowing to reduce weeds, rotating and resting as well as over-seeding and fertilizing must be followed by the Owner.

8.4 Fencing must be approved by the Design Review Board. Fencing will consist of rustic 3-board oak fencing or other “look alike” products (*i.e.*, Timberclad, Centaur HTP Fence). Any low maintenance vinyl fencing must first have Design Review Board approval. No barbwire, no metal, and no high tensile wire fencing products will be used.

8.5 Manure will be collected, contained and removed from the site. The manure containment and collection structures will be hidden from view and screened by landscaping. Manure will not be piled or dumped anywhere on the Properties. Failure to comply will result in a \$50 fine first offense, \$100 second offense, and \$150 each time thereafter. Multiple fines will result in the Association’s right to deny the Owner the right to keep horses on his or her Lot.

8.6 Each Owner opting to keep horses on his or her Lot shall comply with the West Virginia Code Annotated Chapter 20, Natural Resources Article 4. Equestrian Activities Responsibility Act.

ARTICLE IX
AMENDMENT OF DECLARATION

9.1 In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the

Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

In addition, so long as any Declarant owns property subject to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

9.2 Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 60% of the total Class "A" votes in the Association entitled to vote, including 60% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Article X. In no case may the Members amend any portion of this Declaration affecting the rights of a Owner without the consent of such Owner.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

9.3 No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

9.4 Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Areas, the Association shall consent to such withdrawal.

ARTICLE X EXPANSION

10.1 Declarant may from time to time subject to the provisions of this Declaration additional property by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand Walnut Springs Mountain Reserve pursuant to this Section shall expire 20 years after this Declaration is Recorded. Until then, Declarant may transfer or assign this right to any Person. Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration.

10.2. Declarant may subject any portion of Walnut Springs Mountain Reserve to additional covenants and easements, including covenants obligating the Association to

maintain and insure any Common Areas. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

10.3. A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any Lot subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE XI MISCELLANEOUS

11.1 All covenants, conditions, restrictions, reservations, and easements set forth in this Declaration shall run with the land and be binding on all parties and persons claiming under them for a period of ten (10) years from the date that this Declaration is Recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of Owners is Recorded in the County Clerk's Office agreeing to change, amend, modify, or terminate the restriction in whole or in part.

11.2 The invalidation by any Court of any covenant, condition, restriction, reservation, or easement, or any part thereof in this Declaration, shall in no way affect any of the remaining ones or parts thereof, and they shall remain in full force and effect.

11.3 No person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

11.4 Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons and upon such transfer, the transferor shall have no obligations or liabilities with respect to the transferred rights; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

11.5 No person shall use the name "Walnut Springs Mountain Reserve" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Walnut Springs Mountain Reserve" in printed or promotional matter where such term is used solely to specify that particular property is located within Walnut Springs Mountain Reserve and the Association shall be entitled to use the words "Walnut Springs Mountain Reserve".