

**Albemarle County**

TMP# 08900-00-00-073B0  
 TMP# 08900-00-00-073D1  
 TMP# 08900-00-00-073D4  
 TMP# 08900-00-00-073D7  
 TMP# 08900-00-00-073E0  
 TMP# 08900-00-00-073E3  
 TMP# 08900-00-00-073E6  
 TMP# 08900-00-00-073E9  
 TMP# 08900-00-00-073F2  
 TMP# 08900-00-00-073F5  
 TMP# 08900-00-00-073F8  
 TMP# 08900-00-00-073G1  
 TMP# 08900-00-00-073G4

TMP# 08900-00-00-073C1  
 TMP# 08900-00-00-073D2  
 TMP# 08900-00-00-073D5  
 TMP# 08900-00-00-073D8  
 TMP# 08900-00-00-073E1  
 TMP# 08900-00-00-073E4  
 TMP# 08900-00-00-073E7  
 TMP# 08900-00-00-073F0  
 TMP# 08900-00-00-073F3  
 TMP# 08900-00-00-073F6  
 TMP# 08900-00-00-073F9  
 TMP# 08900-00-00-073G2  
 TMP# 08900-00-00-073G5

TMP# 08900-00-00-073D0  
 TMP# 08900-00-00-073D3  
 TMP# 08900-00-00-073D6  
 TMP# 08900-00-00-073D9  
 TMP# 08900-00-00-073E2  
 TMP# 08900-00-00-073E5  
 TMP# 08900-00-00-073E8  
 TMP# 08900-00-00-073F1  
 TMP# 08900-00-00-073F4  
 TMP# 08900-00-00-073F7  
 TMP# 08900-00-00-073G0  
 TMP# 08900-00-00-073G3  
 TMP# 08900-00-00-073G6

Prepared by: McGuireWoods LLP

**AMENDED AND RESTATED DECLARATION OF COVENANTS AND  
 RESTRICTIONS OF MOUNTAIN VALLEY**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS** (the "Restated Declaration") is made this 11<sup>th</sup> day of April 2007, by **EVERGREEN LAND COMPANY**, a Virginia corporation hereinafter called "Company" or "Developer" and **MOUNTAIN VALLEY COMMUNITY ASSOCIATION, INC.**, a Virginia non-stock corporation hereinafter called "Association".

**WITNESSETH:**

WHEREAS, the Company executed a Declaration of Covenants and Restrictions of Mountain Valley dated February 24, 2006, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 3169, page 429; as amended by instrument dated June 21, 2006, of record in the aforesaid Clerk's Office in Deed Book 3247, page 564; as amended by instrument dated November 21, 2006, of record in the aforesaid Clerk's Office in Deed Book 3326, page 564; as amended by instrument dated March 12, 2007, of record in the aforesaid Clerk's Office in Deed Book 3383, page 525; as amended by plat dated December 19, 2006, last revised January 24, 2007, of record in the aforesaid Clerk's Office in Deed Book 3385, page 603; as amended by plat dated March 14, 2007, of record in the aforesaid Clerk's Office in Deed Book 3397, page 726; as amended by plat dated March 14, 2007, of record in the aforesaid Clerk's Office in Deed Book 3397, page 739 (collectively, the "Declaration");

WHEREAS, the Company and the Association desire to amend and restate the Declaration by filing this Restated Declaration;

WHEREAS, the Company is currently the only Owner as defined in the Declaration and hereby waives the requirement of a meeting of the Owners to amend the Declaration;

WHEREAS, the Company is the owner of the real property described in Article II of this Restated Declaration and desires to create thereon a planned residential community with residential and recreational uses to be known as "Mountain Valley";

WHEREAS, the Company desires to provide for the preservation of values and for the maintenance of lakes, trails, facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions; and

WHEREAS, the Company has caused to be incorporated under the laws of the Commonwealth of Virginia, a non-stock corporation, Mountain Valley Community Association, Inc., for the purpose of exercising the functions hereinafter set forth.

NOW THEREFORE, the Company declares that this Restated Declaration restates, supplants and supersedes the Declaration, and that the real property described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, 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 Restated Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Affiliate" shall mean any corporation of which more than fifty percent (50%) of the voting stock is owned by the Company, and any partnership in which the Company has more than a fifty percent (50%) interest in the equity or the cash flow.

(b) "Association" shall mean and refer to Mountain Valley Community Association, Inc., a Virginia non-stock corporation, its successors and assigns.

(c) "Association Property" 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 Association Property. The term "Association Property" shall also include any personal property acquired or leased by the Association if said property is designated Association Property. All Association Property is to be devoted to and intended for the common use and enjoyment of the Members of the Association, their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association.

(d) "Buffer Plat" shall mean that certain plat entitled "Plat Showing Riparian Buffer Preservation Areas 1 Through 14 and Buffer Enhancement Areas 1-A, 2-A & 2-B and Wetland Enhancement Area 2-C Across Mountain Valley, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated December 1, 2006, recorded in the aforesaid Clerk's Office in Deed Book 3383, page 525.

(e) "Company" shall mean Evergreen Land Company, a Virginia corporation, its successors and assigns.

(f) "Easement Plat" shall mean that certain plat entitled "Plat Showing Various Easements Across Mountain Valley and Tax Map 89, Parcel 73B, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated March 14, 2007, recorded in the aforesaid Clerk's Office in Deed Book 3397, page 739.

(g) "Joint Access Easement Plat" shall mean that certain plat entitled "Plat Showing 30' Joint Access Easement Exclusively for Lots 34 and 35, Mountain Valley, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated March 14, 2007, recorded in the aforesaid Clerk's Office in Deed Book 3397, page 726.

(h) "Lake" shall mean and refer to any "LAKE" as shown on the Subdivision Plat.

(i) "Lake Easement Plat" shall mean that certain plat entitled "Plat Showing New Lake Maintenance Easement and a New 20' Lake Maintenance Access Easement Across Lots 14 & 15 and TMP 89-73C1 and a New 50' Stormwater Management Access Easements Across Lot 33 Mountain Valley, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated June 5, 2006, recorded in the aforesaid Clerk's Office in Deed Book 3247, page 564.

(j) "Lot 38" shall mean and refer to Lot 38 as shown on the Lot 38 Plat.

(k) "Lot 38 Lakes" shall mean and refer to the three Lakes located within Lot 38 as shown on the Lot 38 Plat.

(l) "Lot 38 Plat" shall mean that certain plat entitled "Survey Showing Lot 38 Being a Boundary Line Adjustment of Lots 35 Through 37 and the Division of Lot 36, Mountain Valley as Shown Hereon, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated December 19, 2006, last revised January 24, 2007, recorded in the aforesaid Clerk's Office in Deed Book 3385, page 603.

(m) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Mountain Valley. Since the concept of the future development of Mountain Valley is subject to continuing revision and change by the Company, present and future references to the Master Plan shall be references to the latest revision thereof.

(n) "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.

(o) "Mountain Valley" shall mean and refer to the lands in Albemarle County, Virginia, which are shown as a part of Mountain Valley on the Company's Master Plan as revised from time to time.

(p) "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 Albemarle County, Virginia, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any

Residential Lot 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 Albemarle 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.

(q) "Property" or "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Restated Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(r) "Residential Lot" or "Lot" shall mean any subdivided parcel of land located within the Properties 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. Unsubdivided Land shall not be considered a Residential Lot.

(s) "Subdivision Plat" shall mean that certain plat entitled "Subdivision Plat Mountain Valley, Samuel Miller Magisterial District – Albemarle Co., VA" prepared by Kirk Hughes & Associates, dated January 15, 2004, last revised July 22, 2005, of record in the aforesaid Clerk's Office in Deed Book 3128, page 589. Since the concept of the future development of Mountain Valley is subject to continuing revision and change by the Company, present and future references to the Subdivision Plat shall be references to the latest revision thereof.

(t) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Residential Lot.

(u) "Unsubdivided Land" shall mean and refer to all land in the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Restated Declaration or any Supplemental Declaration under the provisions of Article II hereof, which has not been subdivided into and classified as Residential Lots through metes and bounds subdivision plats recorded in the aforesaid Clerk's Office.

## ARTICLE II EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is subject to this Restated Declaration and the Covenants is described as follows:

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

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property." The Company plans to develop the Existing Property in accordance with a master plan. The Company reserves the right to review and modify the Master Plan and this statement shall not bind the Company, its successors and assigns, to adhere to the Master Plan in the development of the Property shown thereon. Subject to its right to modify the Master 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 become Association Property. The Company shall not be required to follow any predetermined sequence or order of improvements and development and it may bring within the plan of this Restated Declaration additional property, and develop the same before completing the development of the Existing Property, subject to any necessary local governmental approvals. The Company shall have full power to add to, subtract from, or make changes in the Master Plan, regardless of the fact that such actions may affect the relative potential voting strength of the various types of membership of the Association, subject to any necessary local governmental approvals.

Section 2. Additions to Existing Property. Additional lands may become subject to, but not limited to, this Restated Declaration in the following manner:

(a) The Company, its successors and assigns, or Gaylon T. Beights shall have the right, without further consent of the Association, to bring within the plan and operation of this Restated Declaration additional property, which property may be owned by a third party. Such property may be subject to this Restated Declaration as one parcel or as several smaller parcels at different times. The additions of such property authorized under this paragraph may increase the number of Residential Lots and, therefore, may alter the relative potential voting strength of the various types of membership of the Association.

(b) The addition authorized under this Section shall be made by recording a Supplemental Declaration with respect to the additional property which shall extend the operation and effect of the Covenants of this Restated Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants contained in this Restated Declaration as may be necessary or convenient, in the sole judgment of the Company, to reflect the different character, if any, of the added properties, but such modifications shall have no material effect upon the Existing Property described in Section 1, Article II above, or upon any other additions to the Properties.

(c) Additional lands which become subject to this Restated Declaration under the provisions of this Section 2 may in the future be referred to as a part of Mountain Valley. Also, the name Mountain Valley may be used by the Company or its assigns to refer to other nearby properties not subject to this Restated Declaration.

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 and Tenant, unless otherwise specified, shall be a Member of the Association. Every Owner shall be required to submit the names(s) of his or her Tenant(s) and the duration of their tenancy to the Secretary of the Association. The Association may issue to each Member a membership card which shall expire upon termination of a Tenant's Lease or upon sale by an Owner of his or her property in Mountain Valley.

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 Residential Lots. A Type "A" Member shall be entitled to one (1) vote for each Residential Lot owned by such Member.

TYPE "B": The Type "B" Member shall be the Company, its successors and assigns. The Type "B" Member shall be entitled to three (3) votes for each Residential Lot owned by such Member.

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 consisting of three (3) members. The term of such Directors is to 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 or she is entitled to based on the number of Residential Lots owned.

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

(b) The number of Residential Lots 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 regular annual assessment greater than that provided for by Section 7 of Article V hereof, (ii) a special assessment as provided for by Section 4 of Article V hereof, (iii) the gift or sale of any parcel of land and improvements thereon designated as a Association Property as provided for by subparagraph (f) of Section 3 of Article IV hereof, (iv) an Amendment to this Restated Declaration as provided for by Section 2 of Article X hereof, or (v) the termination of this Restated Declaration as provided in Section 1 of Article X 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 thirty percent (30%) 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 Restated 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 ASSOCIATION PROPERTY

Section 1. Members' Easements of Enjoyment in the Association Property. Subject to the provisions of this Restated Declaration, the rules and regulations of the Association, and any fees or 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 Association Property and such easement shall be appurtenant to and shall pass with the title of every Residential Lot.

Employees of the Type "B" Member shall have access to and enjoyment of the Association Property subject to rules and regulations and user fees established by the Board of Directors. A Member's spouse, parents, and children who reside with such Member in Mountain Valley shall have the same easement of enjoyment hereunder as a Member.

Section 2. Title to Association Property.

(a) The Company covenants for itself, its successors and assigns, that it shall convey Association Property by deed to the Association, at no cost to the Association, and subject to (1) all restrictions and limitations imposed by this Restated Declaration, including, without limitation, all rights of easement and rights of entry reserved unto the Company, its successors and assigns, in said Restated Declaration herein, on any subdivision plat or within the deed itself, (ii) all other restrictions and limitations of record at the time of conveyance, (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 Association Property as designated in said deed.

(b) The Association shall not refuse the conveyance to it of any Association Property 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) Upon conveyance of any parcel or land and any improvements thereon as a Association Property by the Company or any other third party, the Association shall immediately become responsible for all maintenance and operation of said property, 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 Association Property.

(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 Association Property, 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 Association Property.

(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 3. 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 Bylaws, to borrow money from the Company or any lender for the purpose of improving and/or maintaining the Association Property 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 of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds of the 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 or 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 any period not to exceed sixty (60) days for each infraction of its published rules and regulations, 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.

(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 Association Property.

(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 Association Property.

(f) The right of the Association to give or sell all or any part of the Association Property, including lease-hold interests, subject to (i) the limitations and restrictions, imposed by this Restated 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 Association Property 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.

## ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Company covenants, and each Owner of any Residential Lot 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 Restated 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, 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 Residential Lot all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The regular annual assessments levied by the Association shall be used for promoting the health, safety and common benefit of the Owner and for the improvement, maintenance, enhancement, enlargement, and operation of the Association Property, and to provide such other services which the Association is authorized to provide.

Section 3. Creation of Assessments. There are hereby created regular annual assessments as may be from time to time specifically authorized by the Board of Directors. These assessments shall be allocated equally among all Residential Lots 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 Residential Lots owned by the Company when the road on which the driveway enters is completed and released from bonding by the County of Albemarle, Virginia. If the assessment has not commenced under the prior sentence the assessment on a Residential Lot shall commence on 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 Association Property, including the necessary fixtures and personal property related thereto.
- (b) For additions to the Association Property;
- (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 fifty-one percent (51%) 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 improvements, if any;

(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. Date of Commencement of Annual Assessments. Notwithstanding anything in the foregoing to the contrary, the regular annual assessments provided for herein shall commence no earlier than January 1, 2007.

Section 7. 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 Board may not, without the vote or written assent of a majority of the voting power of the Association, increase the Assessment more than ten percent (10%) greater than the Assessment 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 8. Effect of Non-Payment of Assessment. If the regular annual assessment or any special assessment is not paid on or before the past-due date specified in Section 7 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 to 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 9. 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 10. 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 00/100 Dollars (\$1,000.00). 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 unit(s) shall be entitled upon written request, to a financial statement for the immediately preceding fiscal year.

Section 11. 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 FUNCTIONS OF ASSOCIATION

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

- (a) For roadways, access lanes, roadway medians and parkways along said roadway, or lanes, or cul-de-sac islands, and neighborhood or other area entrances or entrance easements throughout the Properties;
- (b) For sidewalks, walking or jogging paths or trails, or bicycle paths;
- (c) For providing any of the services which the Association is authorized to offer;
- (d) For purposes set out in deeds by which Association Property is conveyed to the Association, provided that such purposes shall be approved by the Board of the Association; and

- (e) For recreational and community facilities.

**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 sidewalks, walking trails, bike trails, and Association Property 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 roadways, access lanes, roadway medians, parkways, cul-de-sac islands, neighborhood and other area entrances, walking paths, bike trails, and Association Property;

- (c) Lighting of roads, sidewalks, walking paths, bike trails, parking lots, and any recreational and community facilities located within the Properties;

- (d) Garbage and trash collection and disposal;

- (e) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;

- (f) 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 Restated Declaration;

- (g) To take any and all actions necessary to enforce this Restated Declaration and to perform any of the functions or services delegated to the Association in this Restated Declaration;

- (h) To set up and operate an Architectural Review Board for all Association Property and, in the event that the Association is designated by the Company as the agent or the assign of the Company for such purposes, to extend the operation of the Architectural Review Board to other properties within Mountain Valley;

- (i) To construct improvements on Association Property, for use for any of the purposes authorized in this Article;

- (j) To provide administrative services for the Association, including, but not limited to, legal, accounting, and financial; and communication services, including, but not limited to, community newsletters and newspapers to inform members of activities, notices of meetings, referendums, and other issues and events of community interest;

(k) To provide liability and hazard insurance covering improvements and activities on and within the Association Property; and

(l) To construct mailboxes, 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 Restated 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 Restated Declaration, the Articles of Incorporation of the Association, and the Bylaws 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 Restated 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 Association Property once obligated to do so under this Restated 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 and restrictions of this Restated 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 this Restated 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 Association Property.

(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 Association Property, jogging and bike trails throughout the Properties, including, but not limited to mowing grass on all roadsides, cul-de-sac islands, entrances, and jogging and bike trails.

(i) The Association shall provide general maintenance of all jogging and bike trail signs, and neighborhood and other area signs, including, but not limited to, maintaining, repair work, replacement as needed, and landscaping within Association Property 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 bike trails and jogging trails as needed.

(k) The Association shall provide regular and thorough maintenance and cleanup of all Association Property, 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) The Association shall maintain the Sign and Landscaping Easement described in Section 8(a) of Article VIII below, which maintenance shall include the repair and replacement

of Mountain Valley signage, and the installation, maintenance and replacement of landscaping vegetation and structures within the easement.

(m) The Association shall maintain the Lot 38 Lakes and the Lakes lying within Lots 14 and 15, which maintenance shall include the dams and other Lake related structures.

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

(1) Ownership of Policies. All insurance policies upon the Association Property 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 Association Property 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 and shall include an endorsement to cover liability of the Owners as a group to a single Owner. 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 Restated 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 Bylaws 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, may be carried out or offered by the Association at any particular time and 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 fifty-one percent (51%) 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 two-thirds of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds 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 Restated Declaration to the contrary, the Association shall not be allowed to reduce the level of the regular annual assessment at any time there are outstanding any amounts due the Company as repayment of any loans made by the Company to the Association without the express written consent of the Company.

Section 6. Maintenance or Protection of Property Not Owned by the Association. The Association shall be authorized to render services of a governmental nature not furnished by the local government in the case of maintenance or protection of property not owned by it.

ARTICLE VII  
ARCHITECTURAL CONTROL AND GENERAL PROPERTY COVENANTS

Section 1. Architectural Approval For Residential Lots. 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 Residential Lot or Association Property until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas), and construction schedule shall have been approved in writing by the Company. In addition, the Company may, at its election, require prior written approval of a landscape plan. The Company further reserves the right to promulgate and amend from time to time architectural guidelines (hereinafter referred to as the "Architectural Guidelines") for Properties within Mountain Valley, 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. Refusal or approval of plans, location, exterior color or finish, or specifications by the Company may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company shall seem sufficient. 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.

Section 2. Site and Location Approval for Residential Lots. In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure, and to assure that structures will be located with regard to the topography of each property, 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 Albemarle) the precise site and location of any building or structure on a Residential Lot for reasons which may in the sole and uncontrolled discretion and judgment of the Company seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight, or breeze available to a building or structure on a given Property shall not be affected by the location of a building or structure on an adjacent Property.

Section 3. Off Street Parking. Each Owner of a Residential Lot shall provide space for the parking of automobiles off of public streets prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Company.

Section 4. Signs. Except as may be required by legal proceedings and normal and usual sized residential "For-Sale" signs, no sign shall be erected or maintained on any Property by anyone including, but not limited to, an Owner, a tenant, a contractor, or a subcontractor, until the proposed sign size, color, content, number of signs, and location of sign(s) shall have been approved in writing by the Company. Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Company upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company seems sufficient. The Company further reserves the right to promulgate and amend from time to time uniform sign regulations that shall establish standard design criteria for all signs, erected upon any Property in Mountain Valley.

The Company and its agent shall have the right, whenever there shall have been placed or constructed on any Property in Mountain Valley any sign which is in violation of these restrictions, to enter immediately upon such Property where such violation exists and summarily remove the same at the expense of the Property Owner.

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 Mountain Valley, the neighborhood as a whole, or the specific area. 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 Owner of the Property. 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 such 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. Mailboxes. No mailbox shall be erected or maintained on any Property until the proposed mailbox design, color and location have been approved in writing by the Company. Refusal or approval of design, color, or location may be based by the Company upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company seems sufficient. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Company. The Company further reserves the right to establish uniform mailbox regulations which shall define standard design criteria for all mailboxes erected upon any Property in Mountain Valley.

Section 7. Septic Systems. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made for the disposal of sewage by installation of a private septic system. Mountain Valley will not be served by the Albemarle County Service Authority sewer system or any other municipal sewer system.

Section 8. Private Wells. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions for water shall be made by installation of a private well. Mountain Valley will not be served by the Albemarle County Service Authority water system or any other municipal water system.

Section 9. Easement Reservation for Utilities. 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 access, erect, maintain, and use electric, community antenna television, cable television and telephone poles, wires, cables, conduits, drainage ways, inlets, sewers, water mains, and other suitable equipment and structures 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 and drainage purposes; provided, however, that no such utility or drainage easement shall be applicable to any portion of such Property as may (a) 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, or (b) be designated as the site for a building on a plot plan for erection of a building which has been filed with the Company and which has been approved in writing by said 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 drainage and 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, storm water management structures and tanks within Mountain Valley on any Property designated for such use on the a recorded subdivision plat, or to locate the 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 10. Architectural Review of Association Property. No building, wall, fence, or other structure shall be commenced, erected, or maintained upon the Association Property, 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 by the Company pursuant to the provisions of this Restated Declaration.

The Architectural Review Board shall be composed of at least three (3) but not more than five (5) Members, all of whom shall be appointed by the Board of Directors of the Association. At least one (1) Member of the Association other than representatives of the Company shall be a Member of the Architectural Review Board once there are twenty (20) Members of the Association.

ARTICLE VIII  
ADDITIONAL RESTRICTIONS TO IMPLEMENT EFFECTIVE  
ENVIRONMENTAL AND LAND MANAGEMENT CONTROLS

Section 1. Landscape Plan. Topographic and vegetation characteristics of Residential Lots within Mountain Valley shall not be altered by excavation, grading, removal, reduction, addition, clearing, cutting, pruning, seeding, planting, transplanting, or any other means without the prior written approval of the Company. In addition, the Company may, at its election, require prior written approval of a landscape plan. Refusal or approval of plans or any alteration of topographic or vegetation characteristic(s) by the Company may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company seems sufficient. Written approval will be granted for the minimum amount of earth movement and vegetation reduction required in plans and specifications approved pursuant to the provisions of these Covenants. Should written notice be served by the Company upon any Owner requiring corrective alteration of topographic and vegetation characteristics pursuant to paragraphs 3 and 4 of Article VIII, such notice shall be deemed to constitute written approval by the Company for such corrective alteration under the provisions of this paragraph.

Section 2. Landscape Guidelines. Notwithstanding anything in the foregoing to the contrary, the Company reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods, and procedures for landscape management on specific Properties in Mountain Valley, and such authorized standards, methods, and procedures may be utilized by the Owners of such specified Properties without prior written approval by the Company; provided, however, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed from Residential Lots without the prior written approval of the Company. Approval for the removal of trees located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property. The provisions of this paragraph shall in no way constitute a waiver of the requirement to receive prior written approval for any alteration of topographic or vegetation characteristics, pursuant to the provisions of Section 1 of this Article, other than for those alterations specifically authorized in said Landscape Guidelines.

Section 3. Erosion Control. In order to implement effective and adequate erosion control the Company and its agents shall have the right to enter upon any Property before or after a building or structure has been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its right to enter upon the Properties for the purpose of performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Company shall give the Owner of the Property the opportunity to take any corrective action required by giving the Owner of the Property written notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by the Owner. If the Owner of the Property fails to take the corrective action specified immediately, the Company or its agent may then exercise its right to enter upon the Property in

order to take the necessary corrective action. The cost of such erosion prevention measures, when performed by the Company or its agent, shall be kept as low as reasonably possible. The cost of such work, when performed by the Company or its agent on Property, shall be paid by the Owner thereof.

Section 4. Right of Company to Clear Property. In order to implement effective insect, reptile, rodent, and woods fire control, the Company and its agents have the right to enter upon any Property for the purpose of moving, removing, clearing, cutting, or pruning underbrush, weeds, or other unsightly growth which in the opinion of the Company detracts from the overall beauty, setting, and safety of Mountain Valley. The cost of this vegetation control shall be kept as low as reasonably possible and shall be paid by the Owner of the Property. Such entry shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need of such work and unless such Owner fails to perform the work within said thirty (30) day period. The provisions in this paragraph shall not create any obligation on the part of the Company to mow, clear, cut or prune any Property.

The rights reserved unto the Company, its successors and assigns, and its agents, in paragraphs 3 and 4 above shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of said paragraphs.

Section 5. Water Tank Lot. The area shown on the Subdivision Plat as "TANK LOT 1.8961 ACRES" has been conveyed to the Albemarle County Service Authority by the Company and such Tank Lot shall not be part of Mountain Valley or subject to this Restated Declaration.

Section 6. Easement Reservations for Access. The Company reserves unto itself, its successors and assigns, and its agents a perpetual, alienable, and releasable easement and right, on, over and under the Properties to convey access easements benefiting parcels adjacent to Mountain Valley in the locations designated on a recorded subdivision plat. Specifically, the Company reserves unto itself, its successors and assigns, and its agents a perpetual, alienable, and releasable easement and right, on, over and under Lot 1 in the area shown on the Easement Plat as "CENTERLINE RESERVED 50' ACCESS EASEMENT". Additionally, the Company reserves unto the Owners of Lots 34 and 35 a perpetual, alienable, and releasable easement and right, on and over Lot 33 in the area shown on the Joint Access Easement Plat as "CENTERLINE 30' JOINT ACCESS EASEMENT". These reservations shall not create any obligation on the part of the Company to build or maintain any access or road within such easements. The owners, and their successors in title of the dominant properties benefiting from an easement described in this paragraph shall be equally responsible for building and maintaining any access or road within such easement. The land within the easements described in this paragraph shall remain subject to this Restated Declaration.

Section 7. Use of Lakes.

(a) Use of the Lot 38 Lakes is restricted to Members of the Association and their guests. The Lot 38 Lakes may only be accessed from Lot 38. However, the Owners, and such Owners' family, guests and Tenants, of Lots bordering Lot 38 Lakes may access the Lot 38 Lakes from their respective Lots. Subject to the provisions of this Restated Declaration, the rules

and regulations of the Association, and any fees or 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 whole of the Lot 38 Lakes, but such right of easement excludes the banks of the Lot 38 Lakes located outside of Lot 38. No motorized craft of any type shall be used upon or within any Lake. No dumping or discharge of any type, other than storm water runoff, shall be permitted in any Lake.

(b) Use of the two Lakes located within Lots 14 and 15 is restricted to the Owners of Lots 14 and 15, and such Owners' family, guests and Tenants.

Section 8. Reservation of Sign and Landscaping Easements.

(a) The Company reserves unto itself, its successors, assigns, agents, and the Association the easement shown as "NEW SIGN AND LANDSCAPING EASEMENT (7.3730 ACRES)" on the Easement Plat for the installation, maintenance and replacement of Mountain Valley signage, and the installation, maintenance and replacement of landscaping vegetation and structures located within the easement.

(b) The Company reserves unto itself, its successors, assigns, agents, and Mosby Mountain Community Association, Inc. (the "Mosby Association") a fifty foot non-exclusive landscaping easement running along the north side of Ridgetop Drive more particularly shown on the Easement Plat as "NEW 50' LANDSCAPING EASEMENT" for the installation, maintenance and replacement of landscaping vegetation located within the easement. Such easement shall be conveyed to the Mosby Association by deed, but shall remain subject to the Covenants of this Restated Declaration, including but not limited to the Landscape Guidelines.

Section 9. Reservation of Lake Access, Maintenance and Drainage Easements. In order to maintain the Lakes and the structures related thereto, including but not limited to the dams, the Company reserves for itself, its successors, assigns, agents, and the Association, (a) the easement shown on the Subdivision Plat as "SWM/BMP EASEMENT #1", and (b) the following easements, which are more particularly shown on the Lake Easement Plat:

(1) The easement shown on sheet 1 of the Lake Easement Plat as "NEW LAKE MAINTENANCE EASEMENT" lying 20' from the edge of the Lake and 20' feet from the dam's toe of slope, centered on any and all drainage structures that support the function of the dam, including but not limited to culverts, paved ditches and drainage inlets;

(2) The easement shown on sheet 1 of the Lake Easement Plat as "NEW 20' LAKE MAINTENANCE ACCESS EASEMENT" running from Ambrose Commons Drive to the Lake; and

(3) The two easements each shown on sheet 2 of the Lake Easement Plat as "NEW 50' SWM/BMP ACCESS EASEMENT" each running from Ambrose Commons Drive to the Lakes.

Section 10. Reservation of Trail Easement. The Company reserves unto itself, its successors, assigns and agents, the easement shown as "RESERVED 25' TRAIL EASEMENT" on the Easement Plat (the "Trail Easement"). The Company shall not be obligated to build any trail within the Trail Easement.

Section 11. Riparian Buffer Preservation Areas, Buffer Enhancement Areas, and Wetland Enhancement Areas.

(a) Covenants and Restrictions. That portion of the Property shown on the Buffer Plat as Riparian Buffer Preservation Areas, Buffer Enhancement Areas, and Wetland Enhancement Areas (together, hereinafter referred to as the "Preservation Areas") shall be preserved in perpetuity in its natural state, by prohibiting the following activities:

(i) Destruction or alteration of the Preservation Areas other than those alterations authorized by the Norfolk District, U.S. Army Corps of Engineers (the "USACE") and/or the Virginia Department of Environmental Quality ("DEQ") under Permit Number WP4-06-1273, or under subsequent permits or approvals;

(ii) Except as set forth below, construction, maintenance or placement of any structures or fills including but not limited to buildings, mobile homes, fences, and signs other than those which currently exist. Boardwalks, wildlife management structures, observation decks, one informative sign, and unpaved foot trails may be placed within the Preservation Areas provided that any such structure permits the natural movement of water, preserves the natural contour of the ground and has been approved by the USACE and/or DEQ (as applicable) in advance and in writing;

(iii) Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials (except as may be necessary on a case-by-case basis with prior written approval by USACE and/or DEQ); and

(iv) Cultivating, harvesting, cutting, logging, planting, and pruning of trees and plants, or using fertilizers and spraying with biocides (except as may be necessary on a case-by-case basis with prior approval by USACE and/or DEQ).

(b) Amendments. The covenants contained in this Section 11 of Article IV shall not hereafter be altered in any respect without the express written approval and consent of the Declarant or its successor in interest and the USACE and DEQ. The Declarant or its successor may apply to the USACE and DEQ for vacation or modification of this Section 11; however, after recording, the restrictive covenants contained in this Section 11 may only be amended or vacated by a recorded document signed by the USACE and DEQ and the Declarant or its successor in interest.

(c) Compliance Inspections and Enforcement. The USACE, DEQ, and its authorized agents shall have the right to enter and go upon the Property, at reasonable times, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. The

restrictive covenants in this Section 11 shall be enforceable by any proceeding at law or in equity or administrative proceeding by the USACE or DEQ. Failure by any agency to enforce any covenant or restriction contained in this Section 11 shall in no event be deemed a waiver of the right to do so thereafter.

(d) Severability Provision. The provisions of this Section 11 shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

## ARTICLE IX ADDITIONAL RESTRICTIONS AFFECTING RESIDENTIAL LOTS

### Section 1. Residential Property Use.

(a) All Residential 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 Residential 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 unit or the Residential Lot, subject to the Albemarle County zoning ordinance.

(b) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on a Residential Lot other than one (1) detached single family dwelling and one (1) accessory building with a maximum footprint size of 2,500 square feet, and one (1) detached private garage, provided the use of such accessory building and/or garage does not overcrowd the property, as determined by the Company in its sole and uncontrolled discretion, and provided, further, that such building is not used for any activity normally conducted as a business. No accessory building may be constructed prior to the construction of the main building.

(c) A guest suite or like facility may be included as part of the main dwelling or an accessory building on any Residential Lot.

(d) Notwithstanding the provisions of this section or any other articles or sections, this Restated Declaration shall not prohibit the Company or its agent and assigns from using any house, other dwelling units, or accessory buildings as model(s) and/or sales office(s) on a Residential Lot.

### Section 2. Completion of Improvements.

(a) The exterior of each house, and all other structures must be completed within eighteen (18) months after the construction of same shall have commenced on all Residential 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 this Restated Declaration.

(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 the Covenants. The Company hereby reserves unto itself, its successors and assigns, a right on, over, and under all Residential 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 the 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 property 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 Residential 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) Garbage pickup shall take place at such locations as are approved or designated by the Company. If curbside pickup occurs, no Owner shall place the receptacles at the curb 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 Company in its sole discretion.

(c) No mobile homes, school buses, trailers, campers, recreational vehicles, dune buggies, boats, or trailers shall be parked on any Residential Lot except within the confines of a garage, nor shall any such items be parked on any road or Association Property. Except during construction periods, no trucks shall be parked on a Residential Lot except within the confines of a garage nor shall they be parked on any road.

(d) No clothing, laundry or wash shall be aired or dried on the exterior portion of any Residential Lot.

(e) All toys, bicycles, tricycles, motorcycles, mopeds, and such other similar items located on Residential Lots or adjacent streets shall be removed each evening to an area not exposed to view from any other property or street.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept on Residential Lots, except for dogs, cats, other household pets and horses, subject to rules and regulations adopted by the Company, its successors or assigns. All animals not on the property of the owner shall be under leash or totally controlled in a similar manner at all times by the owner. Each Residential Lot shall be limited to no more than four (4) dogs and four (4) cats. Horses may be kept on Residential Lots being five (5) acres or more, and the number of horses shall be restricted to no more than one horse per five (5) acres.

#### Section 4. Prohibited Structures.

(a) No mobile home, trailer, or tent shall be placed on any Residential Lot at any time, except temporary tents approved by the Company or the Association.

(b) No structure of a temporary character shall be placed upon any Residential Lot at any time, provided, however, that this prohibition shall not apply to trailers, shelters or temporary structures used by the contractor during the construction of the main dwelling unit, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Property after completion of construction. The design, location and color of structures temporarily placed on a Residential Lot by a contractor must be approved in advance in writing by the Company.

(c) No television antenna, satellite dish, radio receiver, radio sender, or other similar device shall be attached to or installed on any Residential Lot or on the exterior portion of any building or structure on any Residential Lot without the prior approval of the Company except as follows: The provisions of this paragraph shall not prohibit the Company from installing or approving the installation of equipment necessary for a master antenna system, Community Antenna Television ("C.A.T.V."), mobile radio systems, or other similar systems within the Properties; and 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 dwelling unit, may make written application to the Company for permission to install a television antenna, 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 this Restated Declaration shall be located along the boundary lines of each Lot, unless otherwise shown on a recorded subdivision plat.

Section 6. Further Subdividing. No Residential Lot shall be subdivided or its boundary lines changed, nor shall application for same be made to Albemarle County, except with the prior written consent of the Company. However, the Company hereby expressly reserves unto itself, its successors and assigns, and its agents, the right to re-subdivide or re-plat any Residential Lot(s) and Unsubdivided Land, owned by it and shown on the plat of any subdivision within the Properties in order to create a modified building lot or lots; and to take

such other steps as are reasonably necessary to make such re-platted Lot(s) suitable and fit as a building site including, but not limited to, the relocation of easements, walkways, rights of way, bike trails, bridges, parks, recreational and community facilities, and other amenities to conform to the new boundaries of said re-platted Lot(s). The provisions of this paragraph shall not prohibit the combining of two (2) or more contiguous lots into one (1) larger lot or minor mutual adjustment of lot lines. Following the combining of two (2) or more lots into one (1) larger lot, only the exterior boundary lines of the resulting larger lot shall be considered in the interpretation of this Restated Declaration.

## ARTICLE X GENERAL PROVISIONS

Section 1. Duration. The Covenants of this Restated Declaration and any amendments thereto shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Company, or the Owner of any land subject to this Restated Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Restated Declaration is recorded. Upon the expiration of said thirty (30) year period, this Restated Declaration shall be automatically extended for successive periods of ten (10) years. The number of ten (10) year extension periods hereunder shall be unlimited, and this Restated 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 Restated 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 Restated 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 Restated 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 Restated 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 Albemarle County, Virginia, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Restated Declaration.

Section 2. Amendments. All proposed Amendments to this Restated 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 Restated Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Restated 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 Albemarle County, Virginia.

So long as the Company is a Type "B" Member, no Amendment of this Restated 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 the Covenants. The right to add additional restrictions or to limit the application of the Covenants shall be reasonably exercised.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of this Restated 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 the Covenants and this Restated Declaration 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 this Restated Declaration. Failure by the Association or the Company to enforce any Covenant herein contained for any period of time shall in no event 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 restrictions contained herein by any Owner, tenant of such Owner, or agent of such Owner, the Owners of Properties in Mountain Valley, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof.

In addition to the foregoing, the Company or its agents shall have the right, whenever there shall have been placed or constructed on any Property in Mountain Valley any building, structure, chemical, substance, object, material, or condition which is in violation of the Covenants, to enter upon such Property 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 this Restated Declaration 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 Restated Declaration, to enter immediately (unless otherwise specifically stated) any Property in Mountain Valley 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 Restated 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 Restated 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 effect 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 Restated 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 Restated 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 if 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 this Restated Declaration. 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 Restated 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 Restated 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 Bylaws 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 Owner or to any other person on account of any claim, liability, damage, or expense suffered, incurred by, or threatened against any 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 Albemarle, 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 Restated Declaration to grant approvals (or disapprovals), to establish rules and regulations, to administer and enforce the provisions of this Restated 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 which 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 which shall be recorded in the Clerk's Office of the Circuit Court of Albemarle 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 Restated Declaration, the Company shall retain all rights of easement reserved onto it in this Restated Declaration, and shall, furthermore, retain all rights of entry granted in this Restated 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 Restated Declaration. Such appointment may be temporary or permanent, and shall be subject to any conditions, limitations, or restrictions which 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 which are incident thereto.

Section 11. Management and Contract Rights of Association. The Company may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Properties. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by the Company or by the Association while the Type "B Member elects a majority of the Directors of the Association shall contain a provision allowing the Association to terminate such contract without justification or penalty after the Type "B" Member no longer elects a majority of the Directors of the Association.

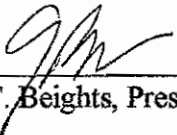
Section 12. Rights of Noteholders. Any institutional holder of a first mortgage on a Residential Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (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 either a material portion of the project or the unit 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 unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

Section 13. Withdrawal of Property. Notwithstanding any other provisions in this Restated Declaration, the Company reserves the right to amend this Restated Declaration at any time without prior notice and without the consent of any person or any Owner, for the purpose of removing portions of the Property then owned by the Company or its Affiliates from the provisions of this Restated Declaration.

Section 14. The cost of maintaining the Association Property and repairing or replacing any improvements permitted by the terms of this Restated Declaration to be located on the Association Property will not be borne by the County of Albemarle, the Commonwealth of Virginia or any other public agency.

**IN WITNESS WHEREOF**, the Company and the Association have caused this instrument to be executed on their behalf.

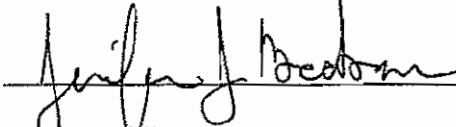
**EVERGREEN LAND COMPANY**, a Virginia corporation

By:  (SEAL)  
Gaylon T. Beights, President


COMMONWEALTH OF VIRGINIA  
COUNTY OF ALBEMARLE, to-wit:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of April 2007, by Gaylon T. Beights, as President of Evergreen Land Company, a Virginia corporation.

My Commission expires: Feb. 28, 2010

  
Notary Public

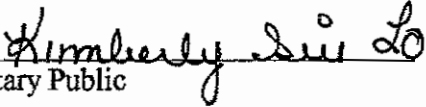
**MOUNTAIN VALLEY COMMUNITY ASSOCIATION, INC.**,  
a Virginia nonstock corporation

By:  (SEAL)  
Gaylon T. Beights, President

COMMONWEALTH OF VIRGINIA  
COUNTY OF ALBEMARLE, to-wit:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April 2007, by Gaylon T. Beights, as President of Mountain Valley Community Association, Inc., a Virginia nonstock corporation.

My Commission expires: 04-30-09

  
Notary Public

**EXHIBIT A**

All those certain lots or parcels of land, with improvements thereon and appurtenances pertaining thereto, situated in Albemarle County, Virginia, more particularly shown as Lots 1-37, on a plat entitled "Subdivision Plat Mountain Valley, Samuel Miller Magisterial District - Albemarle Co., VA" prepared by Kirk Hughes & Associates, dated January 15, 2004, last revised July 22, 2005, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 3128, page 589; as modified by a plat entitled "Plat Showing New Lake Maintenance Easement and a New 20' Lake Maintenance Access Easement Across Lots 14 & 15 and TMP 89-73C1 and a New 50' Stormwater Management Access Easements Across Lot 33 Mountain Valley, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated June 5, 2006, recorded in the aforesaid Clerk's Office in Deed Book 3247, page 564; as modified by a plat entitled "Survey Showing Boundary Adjustment Lots 20, 21, 22, Mountain Valley and the Lands of Benjamin P.A. and Terry G. Warthen, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated September 18, 2006, last revised November 15, 2006, recorded in the aforesaid Clerk's Office in Deed Book 3326, page 564; as modified by a plat entitled "Plat Showing Riparian Buffer Preservation Areas 1 Through 14 and Buffer Enhancement Areas 1-A, 2-A & 2-B and Wetland Enhancement Area 2-C Across Mountain Valley, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated December 1, 2006, recorded in the aforesaid Clerk's Office in Deed Book 3383, page 525; as modified by plat entitled "Survey Showing Lot 38 Being a Boundary Line Adjustment of Lots 35 Through 37 and the Division of Lot 36, Mountain Valley as Shown Hereon, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated December 19, 2006, last revised January 24, 2007, recorded in the aforesaid Clerk's Office in Deed Book 3385, page 603; as modified by plat entitled "Plat Showing 30' Joint Access Easement Exclusively for Lots 34 and 35, Mountain Valley, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated March 14, 2007, recorded in the aforesaid Clerk's Office in Deed Book 3397, page 726; and as modified by plat entitled "Plat Showing Various Easements Across Mountain Valley and Tax Map 89, Parcel 73B, Samuel Miller Magisterial District, Albemarle County, Virginia" prepared by Kirk Hughes & Associates, dated March 14, 2007, recorded in the aforesaid Clerk's Office in Deed Book 3397, page 739.

V4273930.2

RECORDED IN CLERKS OFFICE OF  
ALBEMARLE ON  
April 11, 2007 AT 2:08:30 PM  
\$0.00 GRANTOR TAX PD  
AS REQUIRED BY VA CODE §58.1-802  
STATE: \$0.00 LOCAL: \$0.00  
ALBEMARLE COUNTY, VA  
SHELBY MARSHALL CLERK CIRCUIT COURT  
*Shelby Marshall* DC