

DECLARATION OF COMMON INTEREST COMMUNITY

FOR

FERN RIDGE

THIS DECLARATION, effective the 1st day of January, 2005, made by MOUNTAIN STATE DEVELOPMENT, INC., a West Virginia corporation, (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements thereon and appurtenances thereto, as designated on the plats herein referred to, for DECLARANT and DECLARANT grantees and assigns, hereby makes the following Declaration:

I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP

DECLARANT does hereby submit as a Planned Community the real estate as described herein, together with all roadways, improvements and other permanent fixtures now and later situated thereon, and all rights and privileges pertaining thereto (hereinafter referred to as "SUBDIVISION"), to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended (the "Uniform Common Interest Ownership Act").

The name of the Subdivision is "FERN RIDGE". The property comprising the SUBDIVISION is located in Leadsville District, Randolph County, West Virginia.

II. THE LAND

The land submitted to the CIC form of ownership by this instrument is more fully shown and described on the Plat recorded in the Office of the Clerk of the County Commission of Randolph County, West Virginia, in Map Cabinet D, Envelope No. 37, said plat references and any later amendments are hereby made a part for all pertinent purposes, and being the same parcel of real estate conveyed to the DECLARANT by the following Deed of record in the Office of the Clerk of the County Commission of Randolph County, West Virginia:

| <u>Grantor</u> | <u>Date</u> | <u>Deed Book & Page</u> | <u>Acreage</u> |
|-----------------------|-------------|-----------------------------|----------------|
| William Kenneth James | 07/06/04 | 497/162 | 24.51 |

The legal description of the SUBDIVISION real estate being as more fully set forth on the aforesaid plat, and further delineated and described hereafter. Said Plat is made a part hereof and incorporated into this Declaration by reference.

The Subdivision consists of an original fourteen (14) lots, shown on said plat. The Common Interest Community road, designated as "Fern Ridge Road", begins at County Route 1.

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III. THE ASSOCIATION

A. The lot owners shall form and each lot owner of the CIC shall automatically become a member of Fern Ridge Homeowners Association and shall be bound by the By-Laws and terms, conditions, decisions and actions of Fern Ridge Homeowners Association including, but not limited to being liable for assessments for road maintenance and repairs and snow removal and other potential matters.

B. New Homeowner's Association:

1. Name: Lot owners shall form a non-profit corporation known as Fern Ridge Homeowner's Association, Inc. ("Association") that shall have the general responsibility of managing, maintaining and governing all aspects of the CIC.

2. Membership: Every person or entity who is an owner of a fee interest in any Lot, shall by reason of ownership, automatically be a Member of Association and be subject to the rules, regulations, covenants and restrictions of this Declaration, the Articles of Incorporation, the By-Laws of the Association, and further subject to rule and regulation by the Association in accordance with this Declaration. Ownership of a Lot is the sole qualification for membership in the Association. Membership as defined in the By-Laws shall not be inconsistent with the provisions of this Article.

3. Powers of the Association: The Association shall have the power to take the following actions:

(a) Employ and retain management companies, professionals and other experts whose services may be reasonably required to effectively perform association duties and responsibilities;

(b) Procure and maintain property and liability insurance for FERN RIDGE ROAD in accordance with Article III. Section G of this Declaration;

(c) Subject to other restrictions contained in this Declaration, the Association shall have the authority to take any action described by West Virginia Code Section 36B-3-102, as amended, 1995, so that the Association may satisfy it's general responsibility of governing, maintaining, and managing the CIC; and

(d) The Association shall have all additional powers granted by the terms and conditions of this Declaration.

D. Board Members: The Association shall have a three (3) member Board of Directors, who shall be generally responsible for the day-to-day management of the Association. The Board shall have all of the powers, duties and responsibilities as described by West Virginia Code Section 36B-3-103, as amended, 1995.

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E. Election of Board of Directors: There shall be an initial period of DECLARANT'S control of the Association during which DECLARANT or persons designated by him, may appoint and remove Association Officers and members of the Board. The period of DECLARANT'S control terminates no later than sixty (60) days after conveyance of nine (9) of all Lots, that may be conveyed to Lot Owners other than DECLARANT.

Not later than sixty (60) days after conveyance of five (5) lots that may be conveyed to Lot Owners other than DECLARANT, at least one member of the Board must be elected by Lot Owners other than DECLARANT.

Not later than the termination of any period of DECLARANT control, the Lot Owners shall elect a Board of at least three (3) members. The Board shall elect the officers. The Board and officers shall take office upon election.

F. By-Laws: The By-Laws of the Association, and all amendments thereof, in addition to other matters, and shall provide:

- (1) That number of members of the board is to be three (3) in number;
- (2) For the election by the Board of a president, treasurer, secretary and other officers of the Association;
- (3) The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling vacancies;
- (4) For the delegation by the Board or officers of duties to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify and record Amendments to the Declaration on behalf of the Association; and
- (6) A method for amending the By-Laws.

G. Insurance: The Association shall maintain, to the extent reasonably available, property and liability insurance in amounts determined by the Board that complies with the requirements of West Virginia Code Section 36B-3-113.

If the insurance described in this subsection is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Lot Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Lot Owners.

H. Miscellaneous Provisions Regarding Governance of the Association and the C.I.C.: The rights, responsibilities, rules and regulations of the Association regarding C.I.C. upkeep, association meetings, quorums, voting, tort and contract liability, and conveyance or encumbrance of Common Elements shall be governed by the provisions of Chapter 36B, Article 3, of the West

Virginia Code, as amended, 1995, unless otherwise provided for in this Declaration.

IV. ASSESSMENTS, LIENS AND RECORDS

A. Initial Assessment: The initial assessment for each Unit in the SUBDIVISION shall be determined by the Association, and shall be paid to the Association.

B. Assessment for Common Expenses:

(1) After an assessment has been made by the Association, assessments must be made at least annually, based on a budget adopted at least annually by the Association.

(1) A. A monthly assessment shall be determined by the Association; the monthly assessment may change yearly based on budget and expenditures approved by the Association.

(2) Any past due assessment or installment thereof shall bear interest at a rate established by the Association not exceeding ten percent (10%) per year.

(2)A. Each Lot Owner who owns more than one lot, but not more than two, and dwells only on one lot, shall be responsible for one initial and one monthly assessment.

(3) Fern Ridge Road within the CIC is considered a Common Element benefitting all Lot Owners equally; thus, the Common Expense of road maintenance shall be shared equally by all Lot Owners.

(4) If any Association expenses or Common Expenses are caused by the misconduct of any Lot Owner or his invitees, lessees or tenants, the Association may assess that expense against that Lot Owner's unit.

(5) Assessments to pay a judgement against the Association may be made only against the Lots in the CIC at the time the judgment was entered, in proportion to their Common Expense liabilities.

(6) If Common Expense liabilities are reallocated, Common Expense assessments and any installments thereof not yet due must be recalculated in accordance with the reallocated Common Expense liabilities.

D. Lien for Assessments: The Association has a lien on a Lot for any assessment levied against that Unit or fines imposed against the Lot Owner from the time the assessment or fine becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

The Association shall have the right to perfect, preserve, and enforce any lien created by this section as described by West Virginia Code section 36B-3-116, as amended, 1995.

E. Association Records: The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing CIC assets and to permit the Association, upon receipt of a fee, as determined by the Association, relative to each Unit, to provide a Lot Resale Summary setting forth information required by a Lot Owner selling his Lot pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended.

V. THE PLAT

A. The plat set forth the measurements, locations and other required data with respect to (1) the lots and their exterior boundaries (referred to herein as "Lots"); (2) the Fern Ridge Road, and (3) the exterior boundaries of the CIC. DECLARANT reserves the right to cause to be recorded from time to time amended plat or plans showing the actual locations and dimensions of the above described boundaries, for which amended plats or plans are completed after the date hereof. In this Declaration, whenever the terms "plats" or "plans" appear, they shall be deemed to include such amended plats or plans as may hereafter be recorded pursuant to this paragraph.

VI. THE UNIT - USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS

A. Legal Description: The legal description of each Lot is generally designated by the identifying number of such Lot as shown on the Plats of the CIC. The identifying number for each Unit shall always be deemed to include all of that Lot's appurtenant ownership interest in all appurtenant rights, duties, covenants and restrictions herein set forth or referenced.

B. Use and Occupancy Restrictions and Restrictive and Protective Covenants: The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon Lots in the CIC as shown on the Plats. Said Restrictions shall be binding upon all purchasers or other parties having any interest therein, and are intended to be covenants running with the land:

(1) The premises herein conveyed shall be used solely for the construction of a single family residential home and may consist of dwelling house, garage and other outbuildings ordinarily used in connection with a single family residence provided that such garage or outbuilding be built in such manner as to make its architecture and exterior materials conform with the architecture and exterior materials of the main dwelling house located on the premises and to which they are appurtenant. The premises shall not be used for any business or commercial purposes and no signs or advertising shall be placed thereon.

The house and outbuilding situate on Lot No. 2 and existing before the filing of this Declaration and the establishment of the Homeowner's Association may remain as is and shall not be deemed to be in violation of any provision herein.

(2) No building or other structure shall be erected upon the premises closer than eight (8') feet from any outside property line, nor closer than eight (8') feet from any other exterior boundary line of the property hereby conveyed.

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(3) No barns, sheds or animal shelters of any kind, except for household pets, shall be constructed or placed on the premises, and no animal other than household pets shall be permitted to reside thereon. Household pets shall not be kept for commercial breeding purposes. All pets must be controlled so not to infringe on the rights and privacy of the neighbors.

(4) Mobile home, house trailers, campers and travel trailers shall be prohibited, although the owner shall be permitted to store unoccupied on the premises a camper or small travel trailer for use off the premises. Parking or storage of all motor vehicles shall be only in garages, carports or driveways, and no unlicensed vehicles or parts thereof shall be permitted on the premises unless kept in a garage or enclosed structure.

(5)a Telephone, electric and television signal transmission lines shall, wherever possible, be underground, and all service drops or service entrances shall be placed underground. No television or radio antennas or towers may be erected or maintained upon the premises without the prior written consent of the Grantors, and with consent of adjoining property owners. Provided however, satellite receiving dishes of a diameter of not more than eighteen (18) inches may be erected on the premises without such consent.

(5)b Lot No. 1, Lot No. 2, Lot No. 3 and Lot No. 4 are subject to an existing electric distribution line and Lot No. 3 is further subject to the existence of a power pole. Furthermore, Lot No. 1, Lot No. 2, Lot No. 3 and Lot No. 4 are subject to an existing buried telephone cable. Said existing electric and telephone service lines should not be deemed to be in violation of any provision herein.

(6) All property lines shall be kept free and open to one another, and no fences shall be erected on the front portion of any lot. Any fence constructed on the rear portion of any lot shall extend no closer to the front portion of the lot than rear corners of the dwelling.

(7) The developer shall pave Fern Ridge Road the minimum of three (3) inches of asphalt. Declarant, at its sole discretion, may wait until all lots have been sold and all residences constructed until undertaking the paving of Fern Ridge Road. The Declarant, at its option, may earlier pave, in whole or in part, Fern Ridge Road. Declarant shall deed over to the Association, Fern Ridge Road after the completion of said paving.

During construction of residential units on the lots within the subdivision, the lot owners shall bear responsibility for any damage done to Fern Ridge Road during said construction.

During construction of residential units, the lot owner shall utilize his best efforts to complete construction in a timely manner and to control construction debris and mud and siltation control.

(8) The minimum area of living space of any single family dwelling shall be 1,400 square feet. This shall not include basement, garage, carport or porch areas.

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(9) Lot Owners shall not use Fern Ridge Road and shall not use the individual lots within Fern Ridge Development to provide ingress, egress or regress to and from the properties situate outside the boundaries of the CIC. The Declarant reserves for himself, his successors and assigns, the right to use Fern Ridge Road to provide ingress, egress and regress to and from properties situate outside the boundaries of the subdivision which may be, from time to time, added to the subdivision by pertinent provisions hereunder.

(10) Declarant reserves an easement on Lot No. 1 of the subdivision for the erection of a "Fern Ridge" sign and/or a Declarant's information sign.

(11) Declarant reserves an easement on Lot No. 1 for the placement of "cluster" mailboxes to serve the lots in the subdivision.

(10) The lots shall not be subdivided by lot owners.

(11) Any rental agreements between lot owners and renters shall be subject to all covenants, restrictions, and conditions herein.

C. VARIANCES. The DECLARANT or the Association may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the interest and purposes of the general development scheme and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

D. DECLARANT'S Development Rights and Special Rights Affecting the Units and the CIC: DECLARANT reserves unto himself, his successors or assigns, the following developments rights and special DECLARANT rights:

(1) DECLARANT reserves the right to develop the Subdivision in separate Phases with each such Phase being designated upon a separate plat or plats of the Subdivision.

(2) DECLARANT reserves the right to (i) add real estate to the CIC; (ii) create Lots, Common Elements or Limited Common Elements within the CIC; (iii) sub-divide Lots or convert Lots into Common Elements; and (iv) withdraw real estate from the CIC, provided that DECLARANT shall not be entitled to designate more than Fourteen (14) Lots within the CIC regardless of the manner in which the Lots are subdivided or allocated to each Phase.

(3) DECLARANT reserves the right to (i) complete all improvements indicated on the official plats of the CIC; (ii) use easements through the Common Elements or Limited Common Elements for the purpose of making improvements within the CIC or within real estate which may be added to or adjoins the CIC; (iii) make the CIC subject to a master Association; or (iv) merge or consolidate a CIC with another CIC of the same form of ownership.

(4) DECLARANT reserves the right to utilize Lots as sales models, sales offices, management offices and Association offices. AT HIS SOLE OPTION, the

DECLARANT may convey said Lots after completing or dispensing with use of the same as a sales or management offices IN WHICH EVENT SUCH CONVEYANCE SHALL BE FOR RESIDENTIAL USE, SUBJECT TO RESIDENTIAL USE RESTRICTIONS hereinafter set forth.

(5) DECLARANT reserves the right to permit others to use the utility rights-of-way for acquiring service.

(6) DECLARANT reserves, prior to the transfer of title by deed of conveyance of the first Lot within a Phase, (i) the right to revoke or modify all or any part of these restrictions and protective covenants; (ii) the right to alter the Phase boundary lines and area; and (iii) the right to vacate and/or modify in size or location all of the streets or utility easements or drainage rights-of-way now designated on the recorded plats of the SUBDIVISION with respect to such Phase.

(7) DECLARANT may include in any contract or deed hereinafter made, modifications or additions to the restrictive covenants with respect to the Lot or Lots thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions must be consistent with the tenor and integrity of those hereinbefore and hereinafter set forth, and in no event shall modifications be made that would alter the residential character of the SUBDIVISION.

(8) These reservations shall remain valid and effective under it until January 1, 2025. DECLARANT'S rights may be renewed and extended for successive periods of ten (10) years each, unless an instrument in writing signed by DECLARANT is delivered to the Association relinquishing DECLARANT'S right.

E. EASEMENTS: There is reserved for the Association, its successors and assigns, and for the use of the DECLARANT in the development of this CIC, the following easements and rights-of-way incident to the development of this property;

(1) The Units shall be burdened by all rights-of-way and easements as may be shown on the recorded maps or plats of said CIC, or as may be placed in any deeds of conveyance for each individual Unit.

(2) The Lots shall be burdened by easements for existing utility lines or utilities that may be installed prior to conveyance of the Lot.

(3) DECLARANT has retained a right of way and easement over the roads of the CIC and may install, repair, replace, extend and maintain cables, conduits, gas lines, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone and television equipment, gas, sewer, water and other public conveniences or utilities within the roads and on any other reserved areas as are shown on the recorded plats of the SUBDIVISION.

F. Covenant of Non-Partition and Non-Division: All Lot Owners, as part of the consideration of the sale and conveyance of a Lot, covenant for and on behalf of themselves, their heirs, successors, executors, administrators and assigns, not to commence or maintain any suit or

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action for the division or partition of any Lot, its corresponding undivided interest in Fern Ridge Road and appurtenant right to use said Road or any one of them except as herein otherwise provided, expressly waiving any and all rights of partition as may now or hereafter be provided for by the common laws and statutes of the State of West Virginia.

G. Allocated Interest, Use and Enjoyment of Common Elements:

(1) Fern Ridge Road in the Subdivision is dedicated to the use of and by the residents of the CIC (subject to the DECLARANT'S right of use) and shall be under the control and supervision of the DECLARANT and the Association. An easement for the use and enjoyment of each of said road is reserved to the Association, its successors and assigns, and the DECLARANT, its successors and assigns; to the persons who are, from time to time, members of the Association, as provided for in the By-Laws of said Association; to the residents, tenants and occupants of any residential dwelling and to the invitees of all the aforementioned persons, the use of which shall be subject to such rules and regulations as may be hereinafter set forth and as may, from time to time, be prescribed by the Association.

(2) DECLARANT reserves the right to fix and alter the grades and elevations of all streets within the Subdivision.

VII. WARRANTY OF QUALITY

FERN RIDGE is a Common Interest Community created and designed for use as a residential community. Except as otherwise provided herein, DECLARANT makes no express or implied warranties of quality. It is understood that by purchasing a Lot, any and all Lot Owners accept, as excluded, all expressed or implied warranties of quality. Lots are being offered to sale by DECLARANT on an "AS IS" basis.

VIII. REMEDIES

In the event of any violation of the provision of the Declaration or Association, By-Laws or Rules and Regulations by a Lot Owner (either by the Lot Owner's own conduct or by the conduct of any other occupant of the Lot), the DECLARANT or the Association or its successors or assigns, shall have all of the rights and remedies which may be provided for in the West Virginia Acts to which this CIC is submitted, or other like source which may be available at law or in equity.

IX. AMENDMENT

The provisions of this Declaration may be changed, modified or rescinded only as described by West Virginia Code Section 36B-2-117, as amended, 1995, and, subject to the Initial Period of DECLARANT control, by vote or agreement of Lot Owners owning Lots to which not less than sixty seven percent (67%) of the votes in the Association are allocated.

X. NOTICES

Notices are provided for in the aforesaid Act or this Declaration shall be in writing and shall be sent by certified mail, return receipt requested.

XI. SEVERABILITY

If any provision of the Declaration or any section, sentence, clause, phrase, word or the application thereof and any circumstance is held invalid, the validity of the remainder of this Declaration and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

XII. RESTRAINTS ON ALIENATION

DECLARANT does not, in any way, restrict the amount of compensation a Lot Owner may receive from a third party for any unit within the CIC.

XIII. TERMINATION AND EMINENT DOMAIN

A. Termination: The CIC may be terminated only by agreement of owners of Lots to which at least eight percent (80%) of the votes in the Association are allocated. The specific requirements and procedures regarding termination of the CIC are governed by and further described by West Virginia Code Section 36B-2-118, as amended, 1995.

B. Eminent Domain: If a Lot is acquired by eminent domain or any part of any Lot is acquired by eminent domain leaving the Lot Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration. All compensation must be given pursuant to West Virginia Code Section 36B-1-107, as amended, 1995.

XIV. RIGHTS AND OBLIGATIONS OF GRANTEES

Each Grantee of DECLARANT, by the acceptance of a deed of conveyance or of trust, accepts the same SUBJECT TO all restrictions, conditions, covenants, reservations, liens and charges, the jurisdiction, rights and powers created or reserved herein and ALL MATTERS SET FORTH IN THIS DECLARATION. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said land, and shall inure to the benefit of such Grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

XV. HEADINGS AND CAPITALIZED TERMS

The headings or paragraphs and sections in this Declaration are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and

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sections. Unless defined otherwise herein, capitalized terms shall have the meaning defined in Chapter 36B of the West Virginia Code, as amended.

THEREFORE IN EXECUTION AND SUBMISSION OF THE WITHIN DECLARATION, NOW WITNESSETH THE NAME, SEAL AND SIGNATURE OF THE DECLARANT, Robert J. Runkle

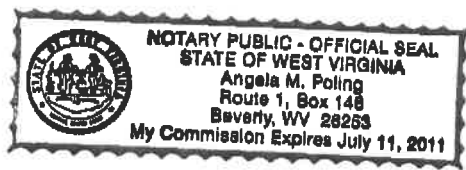
DECLARANT: Robert J. Runkle

STATE OF WEST VIRGINIA,
COUNTY OF RANDOLPH, TO-WIT:

The foregoing instrument was acknowledged before me this 12th day of January, 2005.

My commission expires: July 11, 2011
Angela M. Poling
NOTARY PUBLIC

Prepared by:
David E. Thompson
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WEST VIRGINIA, RANDOLPH COUNTY CLERK'S OFFICE: 1-11-2005

This instrument was this day presented to me in my office, and thereupon, together with the Certificate thereto annexed, is admitted to record.

Teste Sandra Powell Clerk