

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

## THE RESERVE AT FAIRYSTONE

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made this \_\_\_\_\_ day of September, 2004, by LAND AND WOOD, LLC, a Virginia limited liability company (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties in a common scheme of development, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration; and

WHEREAS, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the property, and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof; and

WHEREAS, this Declaration does not and is not intended to create a condominium within the meaning of the Virginia Condominium Act, Virginia Code § 55-79.39, et seq.

NOW, THEREFORE, all Cabins, Properties and real property referred to herein shall be sold, held and conveyed as follows:

### ARTICLE I

#### DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

**Section 1. "Area of Common Responsibility"** shall refer to the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration, contract, or agreement with any Neighborhood, become the responsibility of the

Association.

**Section 2.** "Articles of Incorporation" or "Article" shall refer to the Articles of Incorporation of The Reserve At Fairystone Community Association, Inc., as filed with the Secretary of the Virginia State Corporation Commission.

**Section 3.** "Association" shall refer to The Reserve At Fairystone Community Association, Inc., a Virginia nonprofit corporation, its successors or assigns. The use of the term "association" or "associations" in lower case shall refer to any other owners associations having jurisdiction over any part of the Properties.

**Section 4.** "Base Assessment" shall refer to assessments levied on all Cabins subject to assessment under ARTICLE X to fund Common Expenses for the general benefit of all Cabins, as more particularly described in ARTICLE X, Section 1.

**Section 5.** "Benefited Assessment" shall refer to assessments accordance with ARTICLE X, section 6 of this Declaration.

**Section 6.** "Board of Directors" or "Board" shall be the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Virginia corporate law.

**Section 7.** "By-Laws" shall refer to the By-Laws of The Reserve At Fairystone Community Association, Inc., as they may be amended from time-to-time.

**Section 8.** "Cabin" shall refer to a portion of the Properties which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family and shall refer, if appropriate under the context hereof, to the lot on which the Cabin sits as well as any structures constructed thereon. The term shall include within its meaning, by way of illustration but not limitation, platted lots, and single-family, detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

**Section 9.** "Common Area" shall be an inclusive term referring to both General Common Area and Exclusive Common Area.

**Section 10.** "Common Expenses" shall refer to the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Cabin Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association, but shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by a majority of the total Class "A" vote of the Association.

**Section 11.** "Community-Wide Standard" shall refer to the standard of conduct, maintenance, or other activity generally prevailing throughout the properties.

**Section 12.** "Declarant" shall refer to Land and Wood, L.L.C., a Virginia limited liability company, or its successors, successors-in-title, or assigns.

**Section 13.** "Exclusive Common Area" shall refer to that real and personal property which the Association now or hereafter owns or otherwise holds for the exclusive use and benefit of one or more, but less than all, Neighborhoods, as more particularly described in ARTICLE II of this Declaration.

**Section 14.** "General Common Area" shall refer all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

**Section 15.** "Limited Common Area" shall refer to those areas where the Association now or hereafter holds for the exclusive use of one or more, but less than all cabins, and shall include those areas where there is a common or shared well or other utility systems between Cabins.

**Section 16.** "Master Plan" shall refer to the land use plan for the development of the The Reserve At Fairystone prepared by Land and Wood, L.L.C., as it may be amended from time-to-time, which plan includes the property described on Exhibit "A". Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of adjacent property from the Master Plan bar its later annexation in accordance with ARTICLE IX hereof.

**Section 17.** "Member" shall refer to a Person entitled to membership in the Association.

**Section 18.** "Neighborhood" shall refer to each separately developed residential area comprised of one or more housing types subject to this Declaration and in which owners have common interests other than those common to all Association Members.

**Section 19.** "Neighborhood Assessments" shall refer to assessments levied against the Cabins in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in ARTICLE X, Sections 1 and 3 of this Declaration.

**Section 20.** "Neighborhood Expenses" shall refer to and include the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Cabins within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time-to-time by the Board of Directors and as more particularly authorized herein.

**Section 21.** "Owner" shall refer to one or more Persons who hold the record title to any Cabin, but excluding in all cases any party holding an interest merely as security for the

performance of an obligation. If a Cabin is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. The term Owner shall include Declarant unless the context clearly indicates otherwise.

**Section 22.** "Person" shall refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**Section 23.** "Properties" shall refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration in accordance with ARTICLE IX.

**Section 24.** "Service/Commercial Cabin" shall refer to those areas within the Properties upon which commercial, utility and maintenance facilities are located.

**Section 25.** "Special Assessment" shall refer to assessments levied in accordance with ARTICLE X, Section 5 of this Declaration.

**Section 26.** "Supplemental Declaration" shall mean an amendment or supplement to this Declaration filed pursuant to ARTICLE IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Common Area.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration and any other applicable covenants as they may be amended from time-to-time and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;

(c) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (I) for any period during which any charge against such Owner's Cabin remains delinquent, and (II) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or Rules of the Association;

(d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area;

(e) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

(f) The rights of certain Owners to the exclusive use of portions of the Common Area, designated Limited or Exclusive Common Areas, as more particularly described in Section 2 below.

Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Cabin shall be deemed to have delegated all such rights to the Cabin's lessee.

**Section 2. Exclusive Common Area.** Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use of Owners and occupants of Cabins within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Cabins in those Neighborhoods to which the Exclusive Common Areas are assigned.

**Section 3. Limited Common Area.** Expenses incurred for the maintenance and repair or reconstruction of a Limited Common Area shall be deemed Common Expenses payable from general funds of the Association; provided, however, that every Owner shall be responsible for such Owner's damage to such Limited Common Area caused by negligence or mis-use of the Owner or his family, guests and invitees. The Association shall have a perpetual easement for access to and maintenance/repair of such Limited Common Areas.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership in the Association.** Every Owner shall be deemed to have a membership.

No Owner, whether one or more Persons, shall have more than one membership per Cabin owned. In the event a Cabin is owned by more than one Person all Co-Owners shall be entitled to the privileges of membership subject to the restrictions on voting set forth in Section 2 of this Article and in the By-Laws.

All such Co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Cabin owned by a corporation or partnership shall be exercised by the individual designated from time-to-time by the Owner in a written instrument provided to the Secretary of the Association.

**Section 2. Management of Association Affairs.** The affairs of this Association shall be managed by a Board of three (3) to five (5) directors, who need not be members of the Association, provided, however that until the first of the following to occur:

- (a) Ninety (90%) percent of the Property described on Exhibit A and any additional property hereinafter annexed hereto have been conveyed by Declarant; or
- (b) December 31, 2015; or
- (c) the Declarant specifically waives this provision in writing. Until such time, the Board shall consist of three (3) Directors designated by Declarant.

**Section 3. Voting.** The Association shall have two classes of membership: Class "A" and Class "B", if any.

- (a) **Class "A".** Class "A" Members shall be all Owners except the Class "B" Member, if any.

In any situation where a Member is entitled personally to exercise the vote for his Cabin and there is more than one Owner of a particular Cabin, the vote for such Cabin shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Cabin's vote shall be suspended if more than one Person seeks to exercise it.

- (b) **Class "B".** The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to ten (10) equal votes for each Cabin in which it holds the interest required for membership under Section 1 hereof. The Class "B" Membership shall terminate and be converted to Class "A" membership upon the earlier of:

- (i) thirty days following the date on which the Class A votes have continuously outnumbered the Class B votes for three hundred and sixty (360) days;
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument; or
- (iii) December 31, 2025

**Section 4. Neighborhoods.**

- (a) **Neighborhoods.** Cabins may be located within a particular Neighborhood which is subject to additional covenants and the Cabin Owners within that Neighborhood may all be members of another owners association ("Neighborhood Association") in addition to the Association. Such additional covenants shall apply to every Cabin within that

Neighborhood and shall set forth a general plan of development for that Neighborhood. Those covenants shall be enforceable by each Cabin within that Neighborhood. The Association shall also be empowered by this Declaration and by the separate Neighborhood covenants to enforce the provisions of those covenants.

Each Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Cabins in such Neighborhood if so provided in the additional covenants for that Neighborhood, or upon the affirmative vote, written consent, or a combination thereof of a majority of Owners within the Neighborhood. The cost of such services shall be assessed against the Cabins within such Neighborhood as a Neighborhood Assessment pursuant to ARTICLE X hereof.

## ARTICLE IV

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**Section 1. Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, roadways and common landscaped areas), and shall keep it in good repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

**Section 2. Personal Property and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

**Section 3. Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of the members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

**Section 4. Enforcement.** The Association shall be authorized to impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any recreational facilities on the Common Area. In addition, the Association shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Cabin in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate

nuisances. Sanctions shall be imposed as provided in the By-Laws.

**Section 5. Governmental Interests.** For so long as the Declarant has the right to annex additional properties in accordance with ARTICLE IX, the Association shall permit the Declarant to designate sites within the Properties for fire, police, water, and sewer facilities, public schools and parks, and other public facilities. The sites may include Common Areas owned by the Association.

**Section 6. Indemnification.** 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 member shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith.

**Section 7. Powers of the Association with Respect to Neighborhoods.** The Association shall have the power to enforce Community-wide standards and thus the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties.

## ARTICLE V

### MAINTENANCE

**Section 1. Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to all landscaping and other flora, structures, roadways and improvements, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association, including any contract or covenant to share cost between the Association and a Neighborhood Association.

The Association shall also be responsible for maintenance, repair and replacement of property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Cabins within the Neighborhood to which the services are provided.

The provision of services in accordance with this Section shall not constitute discrimination within a class.



The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, roads owned by the County, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Cabins as part of the Base Assessment, subject to the right of the Association to seek reimbursement from the owner(s) of, or other persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the Owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Cabins within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

**Section 2. Owner's Responsibility.** Each Owner shall maintain his or her Cabin and all structures, parking areas, and other improvements comprising the Cabin in a manner consistent with the Community-Wide Standard and all applicable covenants, unless, such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Cabin. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Cabin and the Owner in accordance with ARTICLE X, Section 5(b) of this Declaration. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**Section 3. Neighborhood's Responsibility.** The Owners of Cabins within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring costs of the Exclusive Common Areas within such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of the fact that such maintenance may be performed by the Association.

**Section 4. Standard of Performance.** Unless otherwise specifically provided herein, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

**Section 5. Party Driveways.**

(a) **General Rules of Law to Apply.** Each driveway built as a part of the original construction on the Cabins which shall serve any two or more adjoining Cabins shall constitute a party driveway.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party driveway shall be shared Common Expense.

(c) **Damage and Destruction.** If an Owner has negligently or willfully caused damage or destruction, then such Owner shall reimburse the Association for such damage and destruction.

(d) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**ARTICLE VI**

**INSURANCE AND CASUALTY LOSSES**

**Section 1. Association Insurance.** The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, its employees, agents, or contractors while acting on behalf of the Association.

Except as otherwise provided above with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expense and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas shall be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a

Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of negligence or willful conduct of one or more Cabin Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Cabins pursuant to ARTICLE X, Section 5(b).

In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association may also obtain, as a Common Expense, a fidelity bond or bonds, if reasonably available, covering all persons responsible for handling Association funds.

**Section 2. Individual Insurance.** By virtue of taking title to a Cabin subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on its Cabin(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible), unless either the Neighborhood in which the Cabin is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures comprising his Cabin, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with ARTICLE XI of this Declaration. Alternatively, the Owner shall clear the Cabin of all debris and ruins and thereafter shall maintain the Cabin in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Cabins within the Neighborhood and the standards for clearing and maintaining the Cabins in the event the structures are not rebuilt or reconstructed.

**Section 3. Damage and Destruction.**

(a) Immediately after damage or destruction by fire or other peril to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Owners representing at least seventy-five percent of the total Class "A" votes in the Association decide within sixty days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Cabin Owners representing at least seventy-five percent of the total vote of the Neighborhood Association decide not to repair or reconstruct within sixty days after the damage or destruction to repair or reconstruct.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Properties shall be cleared of all debris and ruins. Thereafter the Properties shall be maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

**Section 4. Disbursement of Proceeds.** Any insurance proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association or the Neighborhood Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Cabin and may be enforced by such Mortgagee.

**Section 5. Repair and Reconstruction.** If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Area or to the common property of a Neighborhood Association, the Board of Directors shall, without the necessity of a vote of Members, levy a special assessment for costs not covered by insurance against those Cabin Owners responsible for the premiums for the applicable insurance coverage under Section 1 of this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE VII

### NO PARTITION

Except as is permitted in this Declaration or amendments hereto, there shall be no judicial partition of the Common Area or any part thereof. No Person acquiring any interest in the Properties or any part thereof shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property.

## ARTICLE VIII (RESERVED)

## ARTICLE IX

### ANNEXATION AND WITHDRAWAL OF PROPERTY

**Section 1. Annexation Without Approval of Membership.** The Declarant shall have the unilateral right, privilege, and option, from time-to-time at any time prior to December 31, 2025 to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of real property being in close proximity to the property described on Exhibit "A".

The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described above and that such transfer is memorialized in a written recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing in the Circuit Court Clerk's Office for Patrick County, Virginia, a Supplemental Declaration annexing such property. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

**Section 2. Annexation With Approval of Membership.** After December 31, 2025, subject to the consent of the owner thereof, the Association may annex real property, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the votes of the Association represented at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 1 of this Article. Such annexation shall be accomplished by filing of record in the Circuit Court Clerks Office for Patrick County, Virginia, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be

effective upon filing unless otherwise provided therein.

**Section 3. Acquisition of Additional Common Area.** The Declarant may convey to the Association additional real estate, improved or unimproved, located within the Properties or annexed hereto. Upon conveyance or dedication to the Association, the real estate shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions or limitations set forth in the deed of conveyance.

**Section 4. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it has the right to unilaterally annex additional properties to this ARTICLE IX, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the properties desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

**Section 5. Additional Covenants and Easements.** The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants, easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property. All additional covenants shall be for the mutual benefit of all Cabins within the Properties and may be enforceable by any Owner.

**Section 6. Amendment.** This Article shall not be amended without the prior written consent of Declarant, prior to the expiration of the Class B Membership.

## ARTICLE X

### ASSESSMENTS

**Section 1. Creation of Assessments.** There are hereby created assessments for Association expenses as may from time-to-time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 8 of this Article. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Cabins; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Cabins within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 5 below; and (d) Benefited Assessments as described in Section 6 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments. This covenant is appurtenant to the land and shall pass to each Owner's successors-in-title. Base Assessments shall be levied equally on all Cabins.

Neighborhood Assessments shall be levied equally against all Cabins in the Neighborhood benefiting from the services supported by such assessments, except as otherwise provided in Section 3 below. Special Assessments shall be levied as provided in Section 5 below. Benefited Assessments shall be levied as provided in Section 6 below.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal quarter.

No Owner may waive or otherwise exempt himself from liability for the assessments, including, by way of illustration and not limitation, by nonuse of Common Area or abandonment of the Cabin. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant may annually elect either to pay regular assessments on its unsold Cabins or to pay to the Association the difference between the amount of assessments collected on all other Cabins subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

**Section 2. Computation of Base Assessment.** It shall be the duty of the Board, at least sixty days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in Section 4 of this Article.

The Base Assessment to be levied against each Cabin for the coming year shall be set at a level which is reasonably expected to produce the total income of the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Cabins subject to assessment under Section 8 hereof on the first day of the fiscal year for which the budget is prepared and the number of Cabins reasonably anticipated to become subject to assessment during the fiscal year. Provided, however, that in no event shall the Base Assessment be

increased more than fifteen percent (15%) in any year without the approval of fifty percent (50%) of the Class A Members at a meeting specially called to consider such increase.

**Section 3. Computation of Neighborhood Assessments.** It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any supplemental Declaration, or the By-laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to the Neighborhood budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated among the Cabins in the benefited Neighborhood in accordance with the Supplemental Declaration recorded for that Neighborhood.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment and any Neighborhood Assessments to be levied against each Cabin for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and Base assessment shall become effective unless disapproved at a meeting by Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and by the Class "B" Member, if such exists. Neighborhood Assessments shall become effective unless disapproved by a majority of the Owners of Cabins in the Neighborhood to which the Neighborhood Assessment applies. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for in the By-Laws, which petition must be presented to the Board within ten (10) days of delivery after the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

**Section 4. Special Assessments.**

(a) **Unbudgeted Expenses.** In addition to the Base Assessments and Neighborhood Assessments authorized hereunder, the Association may levy Special Assessments from time-to-time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessments may be levied against the entire membership, if such Special Assessment is for general Common Expenses, or against the Cabins within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Members representing at least fifty-one percent (51%) of the total votes allocated to Cabins which will be subject to such Special Assessment, and



the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Costs to Cure Noncompliance. The Association may levy a Special Assessment against any Cabin or Neighborhood to reimburse the Association for costs incurred in bringing the Cabin or Neighborhood Association into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and the Association rules and regulations. Such Special Assessments may be levied upon the vote of the Board after notice to the Cabin Owner or Neighborhood Association, if applicable, and an opportunity for a hearing.

Section 5. Benefited Assessments. The Board shall have the power to assess specifically expenses of the Association in the amount of the benefit received against Cabins receiving benefits, items, or services not provided to all Cabins within a Neighborhood or within the Properties (a) that are incurred upon request of the Owner of a Cabin for specific items or services relating to the Cabin, or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests.

Section 6. Lien for Assessments. All assessments, together with interest (at a rate not to exceed the highest rate allowed by Virginia law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and be a continuing lien upon the Cabin against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Cabin at the time the assessment arose. In the event of a transfer of title, the grantee shall be jointly and severally liable for such portion as may be due and payable at the time of conveyance. However, no first holder of a deed of trust or mortgagee who obtains title to a Cabin pursuant to the remedies provided in the deed of trust or mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first deed of trust or mortgage of record (meaning any recorded deed of trust with first priority over other deed of trust) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure in accordance with Virginia law.

The Association, acting on behalf of the Owners, shall have the power to bid for the Cabin at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Cabin. During the period in which a Cabin is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Cabin shall be charged, in addition to its usual assessment, its equal pro rate share of the assessment that would have been charged such Cabin had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common

Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 7. Date of Commencement of Assessments.** The obligation to pay the assessments provided for herein shall commence as to each Cabin on the first day of the month following: (a) The month in which the Cabin is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Cabin shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Cabin.

**Section 8. Failure to Assess.** The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the Obligation to pay assessments. In such event, each Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

**Section 9. Capitalization of Association.** Upon acquisition of record title to a Cabin by the first purchaser thereof other than the Declarant, contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Cabin for that year as determined by the Board. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Cabin and shall not be considered an advance payment of any portion thereof.

**Section 10. Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Areas; and
- (b) All property dedicated to and accepted by any governmental authority or public utility, including without limitation public schools, public streets, and public parks, if any.

## ARTICLE XI

### AESTHETICS STANDARDS

**Section 1. General.** No exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs (other than as may be permitted in ARTICLE XII, Section 15) shall take place except in strict compliance with this Article, until the requirements below have been fully met, and approval of the Aesthetics Review Board has been obtained pursuant to Section 2 below. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration

or which may be annexed to this Declaration in accordance with ARTICLE IX.

**Section 2. Aesthetics Review.** Responsibility for administration of the Aesthetic Guidelines, as defined below, and review of all applications for modifications under this Article shall be handled by the Aesthetics Review Board (ARB), as described in the paragraph below of this Section 2. The members of the Aesthetics Review Board need not be Members of the Association.

The Aesthetics Review Board (ARB) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all proposed modifications or alterations made on or to existing Cabins. Until December 31, 2025 or until one hundred percent (100%) of the Properties and Cabins have been developed and conveyed to Owners in the normal course of development and sale, whichever first occurs, the Declarant retains the right to appoint all members of the ARB who shall serve at the discretion of the Declarant or the Declarant's successors in interest. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of ARB who shall serve and may be removed at the discretion of the Board of Directors.

The Board of Directors may establish reasonable fees to be charged by the ARB on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Cabin, or to paint the interior of his Cabin any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a Cabin visible from outside the Cabin shall be subject to approval. No permission or approval shall be required to repaint in accordance with originally approved color scheme, or to rebuild in strict accordance with originally approved plans and specifications.

**Section 3. Guidelines and Procedures.** The ARB shall adopt Aesthetic Guidelines and shall make the Aesthetics Guidelines available to Owners and all such Persons shall conduct their activities in strict accordance with such Aesthetics Guidelines.

**Section 4. Enforcement.** Any work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such work and shall restore the land to the same condition as existed prior to the work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Cabin and collected as a Special Assessment pursuant to ARTICLE X, Section 5(b) hereof.

**Section 5. Appearance.** In addition to any other requirements imposed by the ARB, all Cabins shall be of log construction and all logs, decks and exterior wood surfaces must be

regularly stained and/or treated, be regularly caulked, and all mold and mildew on exterior Cabin surfaces must be removed. The original stain/treatment color must be used on all Cabins unless otherwise approved by the ARB. In addition, no sod or grass may be sewn or planted on the Cabin lots.

## ARTICLE XII

### USE RESTRICTIONS

The properties shall be used for residential, recreational, limited commercial, educational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business or sales offices for the Declarant, Declarant's agents or the Association) as may more particularly be set forth in this Declaration, any Supplemental Declaration, and amendments to either. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

**Section 1. Signs.** No sign of any kind shall be erected or displayed (either in or outside of Cabin) within the Properties, without the written consent of the ARB and the Class B Member, if any. If permission is granted to any Person to erect a sign within the Properties, the ARB reserves the right to restrict the size, color, lettering, and placement of such sign. The Declarant or its duly authorized agent shall have the right to erect signs as it deems appropriate. Except as provided above, no signs, flags, banners, or similar items advertising or providing directional information with respect to activities being conducted within or outside the Properties shall be displayed or posted within the Properties. This provision shall not be construed so as to limit the Declarant or its duly authorized agent from erecting and maintaining whatever signs it determines necessary to promote sales at The Reserve At Fairystone. This provision shall not apply to those flags permitted by VA Code Section 55-513.1.

**Section 2. Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties except dogs, cats, or other usual and common household pets, not to exceed a total of two pets, may be permitted in a Cabin. The foregoing limitation on the number of pets shall not apply to hamsters, small birds, or fish, nor shall it require the removal of any litter born to a permitted animal prior to the time that the animals in such litter are three months old. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall, at all times whenever outside a Cabin, be confined on a leash held by a responsible person or otherwise confined to a Cabin lot by an electronic device such as an "invisible fence". Each Owner shall immediately pick up and properly dispose of his or her pet's feces when his or her pet produces such feces on a Common Area or any other area.

**Section 3. Quiet Enjoyment.** All portions of a Cabin outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained,

stored, or kept outside of enclosed structures on a Cabin which, in the determination of the Board of Directors, causes an unclean, unhealthy, or untidy condition to exist or is obnoxious to the senses. Nothing shall be done or maintained on any part of a Cabin which emits foul or obnoxious odors outside the Cabin or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Cabins.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Cabins. No outside burning shall be permitted within the Properties. No speaker, horn, whistle, bell, or other sound device, except alarm devices used exclusively for security or fire protection purposes, shall be installed or operated on any Cabin. The use and discharge of firecrackers and other fireworks is prohibited within the Properties.

**Section 4. Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Cabin. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and if conducted outside, are begun and completed within four hours.

No Owner or occupant shall dump leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties.

**Section 5. Antennas.** Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission and reception of television, radio, satellite, or other signals of any kind may only be placed upon the Properties, including any Cabin, at the direction of the ARB.

**Section 6. Basketball Equipment, Clotheslines, Garbage Cans, Tanks, etc.** No basketball hoops and backboards, clotheslines, garbage cans, above-ground storage tanks, and other similar items on Cabins shall be permitted; however, above ground air conditioning units designed for central air systems are permitted. There shall be no garbage cans or garbage disposal containers outside of a Cabin. All garbage shall be taken to garbage receptacle provided by the Association.

**Section 7. Subdivision of Cabin Lot.** No Cabin Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to subdivide, change the boundary line of, and replat any Cabin Lot(s) owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 8. Firearms.** The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

**Section 9. Pools.** No swimming pools shall be erected, constructed or installed on any Cabin.

**Section 10. Tents, Mobile Homes, Temporary Structures and Outbuildings.** Except as may be permitted by the Declarant or the during initial construction within the Properties, no tent, shack, mobile home, structures of a temporary nature, or outbuildings shall be placed upon a Cabin or any part of the Properties. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

**Section 11. Drainage and Septic Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any adjacent property without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Properties.

**Section 12. Removal of Plants and Trees.** No trees or shrubs except for those which are diseased or dead or create a safety hazard, shall be removed except upon prior approval in accordance with ARTICLE XI of this Declaration. In the event of any intentional or unintentional violation of this Section, the violator may be required by the committee having jurisdiction to replace the removed tree with one or more comparable trees of such size and number and in such locations as such committee may determine necessary, in its sole discretion, to mitigate the damage.

**Section 13. Air Conditioning Units.** Except as may be permitted by the Board or the ARB, no window air conditioning units may be installed in any Cabin.

**Section 14. Lighting.** Except for traditional holiday decorative lights, which may be displayed for one month prior to and one month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with ARTICLE XI of this Declaration.

**Section 15. Exterior Sculpture and Similar Items.** No exterior sculpture, fountains, flags and temporary flagpoles, birdhouse, birdbaths, mailboxes, birdfeeders, other decorative embellishments, or similar items shall be permitted unless approved in accordance with ARTICLE XI of this Declaration.

**Section 16. Wetlands, Lakes, and Other Water Bodies.** Certain wetlands, lakes, ponds, and streams within the properties shall be for utility or aesthetic uses only, and no other use including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. The use of other bodies of water on or bordering the Common Areas or structures owned by the Association are subject to rules and regulations promulgated by the Association.

**Section 17. Playground.** No jungle gyms, swing sets, or similar playground equipment shall be erected or installed by any Cabin without prior written approval of the ARB in accordance with ARTICLE XI hereof. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user. The Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

**Section 18. Fences.** No hedges, walls, dog runs, animal pens, or fences of any kind shall be permitted on any Cabin.

**Section 19. Business Use.** No business, trade, or similar activity may be conducted in or from any Cabin, except that an Owner or occupant residing in a Cabin may conduct business activities within the Cabin so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Cabin; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Cabin by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the properties; and, (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale and lease of the Properties or its use of any Cabins which it owns or which it leases from an owner(s) within the Properties.

**Section 20. Propane Tanks.** Propane tanks are permitted on a Cabin provided that such tanks serve the Cabin and are buried and not exposed to view. One (1) outside gas grill for cooking meats or other foods shall be allowed, however, the size and condition of the grill and tank may be regulated by Declarant or the ARB.

**Section 21. Compliance with Governing Documents.** Every Owner shall cause all occupants of his or her Cabin to comply with the Declaration, By-Laws, any applicable supplemental Declaration, and rules and regulations. Every Owner shall be responsible for all violations and losses to the Common Area and Limited Common Area caused by such occupants, notwithstanding the fact that such occupants of a Cabin are fully liable and may be sanctioned for any such violation.

**Section 22. Single Family Occupancy.** No Cabin shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption, or marriage living with not more than one person who is not so related as a single household Cabin, or no more than two persons who are not so related living together as a single household Cabin, and the household employees of either such household Cabin; provided, however, temporary house guests and invitees may stay at a Cabin from time to time.

**Section 23. Recreational Vehicles. Boats. Commercial Vehicles.** No recreational vehicles, boats or other commercial vehicles shall be kept on any Cabin or Common Area, unless specifically designated for storage of such vehicles or boats by Declarant.

**Section 24. Window Coverings.** All window coverings visible from the exterior of any Cabin shall be white, off-white or wood-toned in color.

**Section 25. Mobile Homes. Trailers.** Mobile homes and trailers are expressly prohibited except certain temporary construction trailers approved by Declarant.

**Section 26. ATV's, Dirt Bikes, Go-carts, etc.** There shall be no All Terrain Vehicles (ATV's), motorized dirt bikes, go-carts or similar vehicles on the Cabins; provided, however such vehicles may be stored inside a Cabin. In no event, however, shall such vehicles be driven on any portion of the Properties except to store such vehicles within a Cabin.

**Section 27. Hot Tubs.** There shall be no hot tubs, Jacuzzis, spas or similar items on the exterior of any Cabins, including, but not limited to any deck or porch.

**Section 28. Fires, Fireplaces and Woodstoves.** There shall be no fires (either open or closed), fireplaces, firepits, woodstoves, or any other use of fire or apparatus which produces a flame, whether inside or outside of the Cabins; provided, however, up to two (2) inside propane fireplaces are permitted and one (1) outside gas grill for cooking meats or other foods is permitted if said grill is properly attended and maintained.

**Section 29. Outside lights.** Except as otherwise provided herein, no additional outside lighting may be placed on any Cabin without approval of the ARB.

**Section 30. Parking.** No more than two (2) vehicles, both of which must be duly licensed, may be kept on a Cabin at one time.

## ARTICLE XIII

### EASEMENTS

**Section 1. Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Cabin and any adjacent Common Area and between adjacent Cabins due to the unintentional placement or settling or shifting of the improvements constructed,



reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

**Section 2. Easements for Utilities, etc.** There are hereby reserved unto Declarant, so long as the Declarant owns property within The Reserve At Fairystone or has the right to annex additional property to this Declaration, the Association, and the designees of each (which may include, without limitation, Patrick County, Virginia and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, wells, sewers, septic systems, meter boxes, telephone, gas and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Cabin resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Cabin and, except in an emergency, entry onto any Cabin shall be made only after reasonable notice to the Owner or occupant.

**Section 3. Easements for Lake and Pond Maintenance and Flood Water.** The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water and, (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Cabins (but not the dwellings thereon) adjacent to or within fifteen (15) feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and

wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands within the Area of Common Responsibility; and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

**Section 4. Easements to Serve Additional Property.** The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of adjacent properties or other property owned by Declarant (herein referred to as "additional property"). This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on the additional property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the additional property. Declarant further agrees that if the easement is exercised for permanent access to the additional property and such additional property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the additional property. If usage of the easement is for residential purposes, such agreement shall provide for sharing of costs based on the ratio which the number of residential dwellings on that portion of the additional property which is served by the easement and is not made subject to this Declaration bears to the total number of residential dwellings within the Properties and on such portion of the additional property. If usage of the easement is for other than residential purposes, the aforementioned parties shall enter into a reasonable agreement for sharing costs.

## ARTICLE XIV

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages and/or deeds of trust (used interchangeably herein) on Cabins in the Properties. The provisions of this Article apply to Declaration and to the By-laws, notwithstanding any other provisions therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Cabin to which its Mortgage relates, therefore becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Cabin on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Cabin subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Cabin or the Owner or Occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Cabin of any obligation under the Declaration or By-Laws which is not cured within sixty days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or,

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

**Section 2. Applicability of Article XIV.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Virginia law for any of the acts set out in this Article.

**Section 3. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XV

### DECLARANT'S RIGHTS

This Declaration and the covenants, conditions and restrictions contained herein are intended to promote and maintain a common scheme of development and establish Community Standards. This Declaration, and any amendment hereto, whether made unilaterally by the Declarant or by the Association, shall become a part of this common scheme of development and be enforceable uniformly by and against all Cabins hereunder.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the By-Laws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Registry for Patrick County, Virginia, Circuit Court Clerks Office.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as Declarant owns any of the Properties and initial sales of Cabins shall continue, it shall be expressly permissible for the Declarant to maintain and carry on upon portions of the

Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Cabins, including, but not limited to, business offices, signs, model Cabins, construction trailers, and sales offices. The Declarant and designated agent shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Cabins owned by the Declarant or leased by the Declarant from an owner(s) and any other building which may be owned by the Association, as models and sales offices, respectively.

So long as the Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the public registry.

This Article may not be amended without the express written consent of the Declarant. However, the rights contained in this Article shall terminate upon the earlier of (a) thirty (30) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## ARTICLE XVI

### GENERAL PROVISIONS

**Section 1. Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties, their respective legal representatives, heirs successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

**Section 2. Amendment.**

(a) **By Declarant.** Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. However, such amendment may not exempt any individual Cabins from the requirements of this Declaration or in any other way defeat the common scheme of development for The Reserve At Fairystone which is set forth in this Declaration. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable

governmental statutes, rule, regulation, or judicial determinations (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Cabins (iii) required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on the Cabins: (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Cabins or, (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Cabin unless the Owner shall consent thereto in writing. Until December 31, 2025, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner or the common scheme of development for The Reserve At Fairystone.

(b) By Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the total Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in ARTICLE XIV hereof shall be met if applicable.

So long as Declarant has the right to annex additional properties to this Association, the Declarant must approve any amendments to this Declaration which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) assessments and reserves for maintenance, repair, and replacement of the Common Area;

(iii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;

(iv) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Cabin;

To be effective, any amendment must be recorded in the Circuit Court Clerks office for Patrick County, Virginia.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

Section 3. Severability. Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 4. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 5. Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

**Section 6. Use of the Words "The Reserve At Fairystone".** No Person shall use the words "The Reserve At Fairystone" or any derivative in any printed or promotional material without the prior written consent of the Declarant. However, the Association shall be entitled to use the words "The Reserve At Fairystone" in its name.

**Section 7. Compliance.** Every Owner and occupant of any Cabin shall comply with all lawful provisions of this Declaration, the By-Laws, and the rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by an aggrieved Cabin Owner(s). In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

**Section 8. Enforcement.** These Covenants, including any amendment hereto, may be enforced by the Declarant, by any individual Cabin owner, or by the Association through its Board of Directors. Appropriate remedies include, but are not limited to specific performance.

**Section 9. Notice of Sale or Transfer of Title.** In the even that an Owner desires to sell or otherwise transfer title to his or her Cabin, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Cabin coming due prior to the date upon which such notice is received by the Board of Directors including assessment obligations, notwithstanding the transfer of title to the Cabin.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 30 day of September, 2004.

LAND AND WOOD, L.L.C.  
a Virginia limited liability company

By: *Ernest W. Darby* (SEAL)  
Member

By: *W.G. Carmichael, Sr.* (SEAL)  
Member

STATE OF VIRGINIA

COUNTY OF PATRICK, to wit;

I *Janice C. Smith*, a Notary Public for the aforesaid County and State, do hereby certify that *Ernest W. Darby* and *W.G. Carmichael, Sr.*, personally appeared before me this day and acknowledged that he is Member/Manager of LAND AND WOOD, LLC, a Virginia Limited Liability Company and further acknowledged the due execution of the foregoing Instrument on behalf of the limited liability company.

Witness my hand and seal this *30th* day of *September*, 2004.



*Janice C. Smith*  
Notary Public

My commission expires:  
*8-31-08*