

**Amended and Restated  
DECLARATION OF RESTRICTIONS  
of the  
ALPINE LAKE PROPERTY OWNERS ASSOCIATION, INC.**

THIS AMENDED DECLARATION, made this \_\_\_\_ day of June, 2019, by ~~MOUNTAINTOP DEVELOPMENT COMPANY~~, the Alpine Lake Property Owners Association, Inc., a West Virginia Corporation, herein referred to as "Association".

**WITNESSETH**

WHEREAS, the Alpine Lake Property Owners Association, Inc. is the homeowners' association for a common interest community consisting of numbered residential and commercial lots located in the Alpine Lake subdivision near Terra Alta, West Virginia ("the Subdivision"); and

WHEREAS, on the 1st day of March 1971, Mountaintop Development Company, as "Declarant" adopted a Declaration of Restrictions to create and govern the common interest community; and

WHEREAS, the original Declaration of Restrictions are of record in the Office of the Clerk of the County Commission of Preston County, West Virginia, in Deed Book 419 at page 21; and

WHEREAS, pursuant to the terms of the Declaration of Restrictions and the Uniform Common Interest Ownership Act, codified at W. Va. Code §§ 368-1-101, *et seq.*, the members of the Association wish to amend and restate the Declaration of Restrictions in their entirety as set forth herein.

NOW THEREFORE, all of the lots located within the Alpine Lake subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented used, occupied and improved subject to the following ~~Declarations~~ Restrictions, all of which are declared and agreed to be in furtherance of a plan for the Subdivision, improvement and sale of said lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the plat and of the Subdivision as a whole. All of the ~~Declarations~~ Restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to the real property or any part of parts thereof subject to such Restrictions.

## Section 1. DEFINITIONS AND GENERAL PROVISIONS

### A. Definitions for this Declaration of Restrictions: (NEW SECTION)

1. "ALPUC": the Alpine Lake Public Utilities Company, a government regulated, licensed, not for profit public utility. A separate, completely independent corporate entity from the Alpine Lake Property Owners Association. \*\*from ALPUC website\*\*
2. "Assessment": an annual or special payment levied pursuant to the Governing Documents, which includes an assessment for operating expenses and the capital fund contribution. \*\*Bylaws\*\*
3. "ATV": All-terrain vehicle, any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure or nonhighway tires, fifty inches or less in width and intended by the manufacturer to be used by a single operator or is specifically designed by the manufacturer with seating for each passenger. \*\*from WV Code\*\*
4. "Association": the Alpine Lake Property Owners Association, Inc., a West Virginia nonprofit corporation. \*\*Bylaws\*\*
5. "Board": the Board of Directors of the Alpine Lake Property Owners Association, Inc.
6. "Director": an elected member of the Board of Directors. \*\*5 & 6 from Bylaws\*\*
7. "Committee" or "ECC": the Environmental Control Committee.
8. "Declarations": the Declaration of Restrictions document.
9. "Fees": monetary consideration, other than Assessments, required for certain permits or to use certain facilities and services of the Association, as established by the Board of Directors. \*\*Bylaws\*\*
10. "Fines": monetary consideration, other than Assessments, for infractions of the Governing Documents. \*\*Bylaws\*\*
11. "Governing Documents": the Articles of Incorporation, Bylaws, Declaration of Restrictions of the Association, and Policies, Procedures, and Rules approved by the Board of Directors. \*\*Bylaws\*\*
12. "Grantee": the recipient of a legal transfer. \*\*dictionary\*\*
13. "Guest": an individual, who is not a renter, staying in the residence of a member, or a person staying in the Association's Lodge or Hotel. \*\*Bylaws\*\*
14. "In good standing": up-to-date on payment of Assessments and any applicable Fees and Fines assessed on any lot(s) and not declared to be in violation of the Association's restrictive covenants and rules. \*\*Bylaws\*\*
15. "Lot on the right": the next lot on one's right hand as one faces the rear of one's own lot. \*\*15 & 16 from previous document\*\*
16. "Lot on the left": the next lot on one's left hand as one faces the rear of one's own lot.
17. "Motor vehicle": every self-propelled device in, upon, or by which any person or property is or may be transported or drawn upon a highway. \*\*WV Code\*\*
18. "Numbered lot": an individual, subdivided property which is described in the plat entitled Alpine Lake, and recorded in the office of the County Clerk of Preston County, West Virginia. \*\*Bylaws\*\*
19. "Plat": all real property entitled Alpine Lake.
20. "Restrictions": the Declaration of Restrictions document.

21. "Section": subdivided numbered lots described in the plat entitled Alpine Lake, which comprise in the aggregate a single subdivision section, which is one of several sections in the general Alpine Lake subdivision.
22. "Subdivision": the subdivision named "Alpine Lake" in the Portland District, Preston County, West Virginia\*\*Bylaws\*\*
23. "UTV": Utility terrain vehicle, a four-wheeled motor vehicle with four or more low-pressure or nonhighway tires, designed for off-highway use and greater than fifty inches in width.\*\*WV Code\*\*
24. "Vehicle": shall mean and include any mechanical device for the conveyance, drawing or other transportation of persons or property upon the public roads and highways, whether operated on wheels or runners or by other means, except those propelled or drawn by human power or those used exclusively upon tracks. \*\*WV Code\*\*
25. "Visitor": an individual invited by a member in good standing to use association facilities when accompanied by the inviting member.\*\*Bylaws\*\*

B. Captions (#22)

1. The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience and reference only, and none of them shall be used as an aid in the construction of any provisions of the Restrictions.
2. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

C. Applicability (# 1)

These Declarations ~~Restrictions~~ shall apply to all ~~subdivided~~ numbered lots in the ~~Subdivision~~ which are for residential purposes only. ~~but these Restrictions shall not be applicable to such lands now or hereafter designated on the plat or otherwise as parcels or as lands of Declarant the Association, which parcels and lands are intended for commercial, multiple dwellings, condominiums or hotels, or recreational areas.~~

D. Term (#2)

1. These Declarations ~~Restrictions~~ shall affect and run with the land and shall exist and be binding upon ~~all parties lot owners~~ and all persons claiming under them. ~~By accepting a deed to residential property subject to these Restrictions, the residential owners agree that these restrictions shall apply until unless~~ an instrument ~~signed~~ approved by sixty-seven percent (67%) ~~a majority~~ of votes cast by the then owners in good standing of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part.
- ~~2. The Board of Directors of the Association Declarant reserves to itself, its successors and assigns, the right to revoke at any time prior to the sale of any lot within a Section or Subdivision all or any part of these Restrictions and further to vacate any or all of the streets, parks, recreational facilities and any other amenity now or hereafter shown on~~

~~any recorded plans, provided, however, that the Association will not prevent access to or installation of utilities to lots in any other Section of the Subdivision.~~

E. Mutuality of Benefit and Obligation (#3)

1. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the ~~Section and the~~ Subdivision and are intended to create mutual and equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall as to the owner of each such lot, his heirs, successors, or assigns operate as covenants running with the land for the benefit of each and all other lots in the ~~Section and~~ Subdivision and their respective owners. Restrictions substantially the same as those contained herein shall be recorded on all future Sections of the Subdivision in conformity with the general scheme of improvement of all lands to be included therein.

F. Exclusive Residential Use and Improvements (#4)

1. ~~All~~ No numbered lots ~~in the Subdivision~~ shall be used ~~except~~ for single family residential purposes, ~~unless a multifamily purpose building has written approval from the Committee and the Board of Directors.~~ No structure shall be erected, placed or permitted to remain on any lot other than one (1) detached, single family residence dwelling and such outbuildings as are usually accessory to a single family residence dwelling including a private garage and one (1) shed, ~~not to exceed 10' x 12'.~~ ~~Should an owner wish to construct a shed exceeding the 10' x 12' dimensions, approval and a variance must be obtained from the Committee.~~ Portable utility buildings shall not be placed on any lot without prior Committee approval. Approval will consider the size, color, and design of the portable building.
2. ~~When adjacent lots are owned, the outbuilding may be placed on a lot adjacent to the lot containing the single family residence dwelling.~~
3. ~~If the residence dwelling will not be contained on a single lot, all lots containing any part of the residence dwelling must be combined before construction begins.~~

G. Right of First Refusal (#17)

OPTION 1

The right of first refusal, which was included in the 1971 Declarations, shall no longer be required. After July 15, 2019, all lot owners shall be free to sell any lot, either unimproved or improved, to any third (3rd) party at a price and terms acceptable to said seller without offering said lot to the owners of lots on the right and left of the prospective seller's lot. **\*\*Should this option be approved, the Right of First Refusal will no longer be a part of the Declarations.\*\***

OPTION 2

Whenever the owner of any unimproved lot in the subdivision other than the Association shall receive a bona fide offer to purchase said lot, which offer is acceptable to said

owner, or shall independently decide to put said lot on the market, said owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer or (if said owner shall independently shall have decided to put said lot on the market) at the price and on the terms acceptable to said owner, first to the owner of the lot on the right of the prospective seller's lot, next to the owner of the lot on the left of the prospective seller's lot, next to the owner directly behind the prospective seller's lot and finally, to the Association, it's successors or assigns. Such offerings shall be made successively, and each of said offerees shall have ten (10) days within which to accept or refuse such offer. If all said offerees refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, to sell said lot to the party who shall have made said bona fide offer or (if said owner shall have independently decided to put said lot on the market) to any third (3rd) party, in either case at a price and on terms not substantially more favorable to the purchaser than those offered, as aforesaid, to said owner's neighbors and the Association, or its successors and assigns.

### OPTION 3

1. Whenever the owner of any lot lot in the ~~Section or~~ Subdivision other than the ~~Declarant~~ Association shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner, or shall independently decide to put said lot on the market, said owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer or (if said owner shall independently shall have decided to put said lot on the market) at the price and on the terms acceptable to said owner, first to the owner of the lot on the right of the prospective seller's lot, next to the owner of the lot on the left of the prospective seller's lot, next to the owner directly behind the prospective seller's lot and finally, to the Association, it's successors or assigns. Such offerings shall be made successively, and each of said offerees shall have ten (10) days within which to accept or refuse such offer. If all said offerees refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, ~~subject to the limitations contained herein requiring the purchaser to have been approved for membership in the Alpine Lake Association~~ to sell said lot to the party who shall have made said bona fide offer or (if said owner shall have independently decided to put said lot on the market) to any third (3rd) party, in either case at a price and on terms not substantially more favorable to the purchaser than those offered, as aforesaid, to said owner's neighbors and the Association, or its successors and assigns. ~~The lot on the right, for purposes of this Paragraph 17 shall be the next lot on one's right hand as one faces the rear of one's own lot.~~ \*\*Added to definitions\*\*

~~2. In the event that the owner of any lot in the Section or Subdivision should desire to exchange his lot for another lot in the Section or Subdivision, and the Association is agreeable to do so, the provisions for first refusal set forth in G. 1. shall not apply; and the owner shall be free to convey his lot to the Association in exchange for a conveyance to him of the other lot in the Section or Subdivision, without the necessity of making any offerings to said owner's neighbors, upon such terms as the Association and the owner shall then agree.~~ \*\*will become a board policy\*\*

H. Ownership, Use and Enjoyment of Streets, Parks, and Recreational Amenities (#11)

1. Each of the streets in the Subdivisions now or hereafter designated on any plat is a private street, and every park, recreational facility, and other amenity within the Subdivisions is a private park, facility or amenity and neither the Association's execution nor recording of the plat **for the Subdivision** nor any **other** act of the Association with respect to the property is, or is intended to be, or shall be construed as a dedication to the public of any of said streets parks, recreational facilities and amenities other than as reflected therein. An easement for the use and enjoyment of each of said streets and areas designated as parks is reserved to the Association, its successors and assigns, to the persons who are, from time to time, members or associate members of the Association, **their family members, guests, and visitors**; to the members and owners of any recreational facility **located within the subdivision**; **to renters who possess a valid renter identification pass**; to the residents, tenants, and occupants of any multi-family residential buildings, guest house, inn or hotel facility, and all other kinds of residential structures that may be erected within **the Subdivision**, ~~and to the invitees of the Association members~~ and all the afore-mentioned persons, the use of which shall be subject to such rules and regulations as may be prescribed by the Board of Directors of the Association, ~~if the Association is the owner of the facility or property involved.~~
2. The ownership of the recreational amenities within the **Subdivision Property** which may include but shall not be limited to lakes, dams, streets, roads, marinas, beaches, lake access tracts, golf courses, tennis courts, swimming pools, clubhouses and adjacent clubhouse grounds, and campgrounds and any other recreational property whether developed or undeveloped shall be the Association's or its successors or assigns and the use and enjoyment thereof shall be on such terms and conditions as the Association, its successors or assigns, shall from time to time license. ~~provided however, that any one or all of such amenities may be conveyed to the Association, which conveyance shall be accepted by it, provided that the same is free and clear of all financial encumbrances.~~ **\*\*Amenities have been conveyed\*\***

I. Grantee's Acceptance (#20)

1. The grantee of any lot subject to the coverage of the Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, **whether from the Declarant and the Association or a subsequent owner of such lot**, shall accept such deed or contract upon and subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of the Declarant Association, and by such acceptance shall for himself his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant and the Association, and to and with the grantees and subsequent owners of each of the lots within the Subdivision to keep, observe, and comply with and perform said Restrictions and agreements.
2. Each such grantee also agrees, by such acceptance, to assume, as against the Association, its successors or assigns, all the risks and hazards of ownership or occupancy attendant to such lot, including but not limited to its proximity to any recreational facility, **including the golf course**.

3. Each such grantee whose lots are adjacent to an available underground electrical service, if any, also agrees to complete the underground secondary electrical service to their respective residences.

J. Severability (#21)

1. Every one of the **Declarations** ~~Restrictions~~ is hereby declared to be independent of, and severable from, the rest of the **Declarations** ~~Restrictions~~ and of and from, every other one of the **Declarations** ~~Restrictions~~ and of and from every combination of the **Declarations** ~~Restrictions~~. Therefore, if any of the **Declarations** ~~Restrictions~~ shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the **Declarations** ~~Restrictions~~.

Section 2. ALPINE LAKE PROPERTY OWNERS ASSOCIATION - (#12, #13, #14)

- A. Every person ~~before~~ who acquires ~~acquiring~~ title, legal, or equitable, to any lot in the subdivision ~~must be~~ is a member of the Alpine Lake Property Owners Association, a West Virginia non-profit Corporation, herein referred to as the "Association", ~~and no such person shall acquire such title until he has been approved for Membership in the Association, nor shall the owner of a lot or lots in the Subdivisions convey title to said lot or lots to any person who has not been approved in writing for membership in the Association,~~ provided, however, that Such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However if such person should realize upon his security and become the real owner of a lot, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Subdivision and on Members of the Association, including those provisions with respect to alienation and the payment of an annual charge.
- B. ~~The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivision.~~ \*\*This is a repeat of information included in the Articles of Incorporation, and Association duties go far beyond that general statement\*\*
- C. The Association shall be responsible for ~~insect controls~~, for the maintenance, repair and upkeep of the private streets, and parks within the Subdivision; the appurtenant drainage and slope easements reserved by the Declarant **and now owned by the Association**; all waterways, bulkheads, and other waterfront improvements and shall be responsible for providing ~~fire and police security~~ protection for the residents of the Subdivision. The Association shall also be the means for the promulgation and enforcement of all regulations necessary for the governing of the use and enjoyment of such streets and parks and such other properties within the Subdivision as it may from time to time own. **In the event that the Association at any time fails to properly maintain such streets, parks, easements, waterways and bulkheads and other waterfront improvements or fails to provide adequate fire and police protection, Declarant, its successors and assigns, may in its sole discretion enter upon and make any and all repairs to any such facility which it deems to be necessary**

~~and proper or may adopt measures to provide fire and police protection and may charge the Association for all such repairs or fire and police protection; provided however, that Declarant shall under no circumstances be obligated to take any such action.~~ \*\*Since the Declarant is now the Association, the Association would charge itself to maintain and provide, but is under no circumstances obligated to take any such action\*\*

D. The Association shall have all the powers that are set out in its Articles of Incorporation ~~as the same may be amended and restated from time to time,~~ and all other powers that belong to it by operation of law, (including but not limited to) the power to levy against every member of the Association a uniform annual ~~fee charge per single family residential lot within the Subdivisions, the amount of said charge to be~~ as determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, ~~for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform charge shall in no event be less than \$30.00 per year for road maintenance.~~ No such charge shall ever be made against, or be payable by ~~the Declarant, the Association~~ itself, or any corporation or corporations that may be created to acquire title to, and operate, the water or sewer utilities serving the area, or any lakes dams, beaches, lake access tracts, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, campgrounds, hotels, lodges, motels or other like facilities owned by the ~~Declarant, Association~~ or its assigns.

1. An initial payment of every such ~~assessed~~ charge, ~~based on the lot owner's selected payment plan,~~ so made, shall be paid by the Member to the Association or its designee on or before the ~~fifteenth (15th)~~ day of May of each year, for the ensuing year, ~~as determined from time to time by the Board of Directors of the Association.~~ ~~The Board of Directors of the Association~~ shall fix the amount of the annual charge per lot on or before ~~the first day of April~~ ~~the third Saturday of April~~ ~~\*\*Bylaws\*\*~~ of each year, and written notice of the charge so fixed shall be sent to each Member.
2. If any such ~~assessed~~ charge shall not be paid when due, it shall bear interest from the date of delinquency ~~following a schedule approved by the Board of Director's of the Association,~~ at a rate of up to ten percent (10%) per annum. ~~six per cent (6%) per annum.~~ The annual ~~assessed~~ charge shall, if unpaid within ~~thirty~~ (30) days of its due date, become a lien or encumbrance upon the land and acceptance of each deed, not including acceptance by a mortgagee or deed of trust shall be construed to be a covenant to pay the charge.
  - a) The Association may publish the names of the delinquent members and may record a lien to secure payment of the unpaid charge plus costs and reasonable attorneys' fees. Such lien shall become an encumbrance upon the subject lot when recorded in the office of the Clerk of the County ~~Court Commission~~ of Preston County, West Virginia. Every such lien may be foreclosed at any time.
  - b) In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest costs, and reasonable attorneys' fees, ~~in any court of competent jurisdiction as for a debt owed by any delinquent member of the Association.~~
  - c) Every person who shall become the owner of the title (legal or equitable) to any lot in the Subdivision by any means shall be conclusively held to have covenanted to



pay the Association or its designee all charges that the Association shall make pursuant to any paragraph or subparagraph of these Restrictions or its Articles of Incorporation or Bylaws. Any lot **so** acquired is taken subject to the lien for any prior unpaid charges.

3. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any charges therein stated to have been paid.
- E. The fund accumulated as the result of the charges levied by the Association shall be used exclusively to promote the recreational facilities of, and the health, safety and welfare of the members of the Association and in particular for the improvement and maintenance of the streets, those areas designated as parks, and other property with the Subdivisions which shall have been conveyed to or acquired by the Association
- F. The lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement therein recorded in accordance with the laws of West Virginia, shall be, from the date of recordation, superior to any and all such liens provided for herein.
- G. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association ~~or of Declarant~~ of any member:
1. For any period during which any Association charge (including the charges and the fines, if any, assessed under ~~paragraphs 12 D, 13, and 14 of~~ these Restrictions) owed by the member remains unpaid.
  2. During the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association.
  3. ~~During the period that any utility bill for water or sewer service or garbage collection or Cable Television service rendered to the member or associate member shall remain unpaid.~~
- H. ~~In the event an owner of any lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the association shall have the right, through its agents and employees, to enter upon said lot and repair, maintain, and restore the lot and the exterior of the buildings and any other improvements thereon.~~ In the event an owner of any lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association shall give written notice to the lot owner, at the address registered with the Association, of the maintenance issues which are deemed unsatisfactory to the Board of Directors. The lot owner shall have 21 days to fix the issues addressed by the Board of Directors in the written notice. After notice has been given and the 21 day period has elapsed, and the lot owner still has not performed the necessary maintenance, the Association shall have the right, through its agents and employees, to enter upon said lot and repair, maintain, and restore the lot and the exterior of the buildings and any other

improvements thereon. Such right shall not be exercised unless two-thirds (2/3) of such Board of directors shall have voted in favor of its being exercised. The cost of such exterior maintenance shall be added to and become part of the annual charge to which such lot is subject and until paid shall be a lien on said lot.

### Section 3. ENVIRONMENTAL CONTROL COMMITTEE - (#5)

- A. The Committee shall be composed of three (3) members to be appointed by ~~Declarant~~ the Board of Directors of the Association. Committee members shall be subject to removal by ~~Declarant~~ the Board of Directors and any vacancies from time to time existing shall be filled by appointment of the ~~Declarant~~ Board of Directors. ~~or in the event of Declarant's failure to so appoint within two (2) months after any such vacancy, then by the Board of Directors of the Alpine Lake Property Owners Association (herein called the "Association"); provided, however, that at any time hereafter, the Declarant may at its sole option, relinquish to the Board of Directors of the Association the power of appointment and removal reserved herein to the Declarant. Such transfer of power must be evidenced in writing.~~
- B. The Committee may allow reasonable variances and adjustments to these Restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided however, that such is done in conformity with the intent 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 neighborhood or the Subdivision. General variances may be granted through publication of said variance through currently available print and electronic media so that individual written permission from the Committee is not needed for covered items. The Committee reserves the right to determine if an individual action under a general variance complies with the variance.

### Section 4. STRUCTURES, SETBACKS, AND EASEMENTS (#6, #7, #10, #15, #16)

- A. Size and Placement of Residences and Structures (#6)
1. Every residence dwelling constructed on a lot, or lots, shall contain a minimum of 760 square feet on the first floor of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, carports, and other outbuildings) and not such dwelling shall exceed two and one half (2-1/2) stories in height.
  2. The Committee shall have the authority to establish regulations pertaining to the height and size requirements of all other types of structures, including but not limited to fences walls and copings. Such regulations shall, in the Committee's sole discretion, conform with the general development scheme.
  3. In order to preserve the natural quality and aesthetic appearance of the existing geographic area within the Subdivision, all property lines shall be kept free and open to one another and no fences shall be permitted on any lot or lot lines except where, in the opinion of the Committee, a fence or other enclosure, as a structure or aesthetic feature

of a design concept, will contribute to and be in keeping with the character of the area. Fencing may be erected to keep wildlife from bushes and small trees and may remain up year round. Fencing and supports should be green, brown or black or some other subdued color and be well maintained. Temporary fencing to limit drifting snow may be erected after October 15, with written approval of the Committee, and must be removed no later than April 15. Snow fencing should be green, brown or black.

4. Except as is hereinafter provided in ~~6-E~~, the following minimum dimensions shall govern for front, side and rear setbacks on all lots (except for fences or walls where approved or required by the Committee), with respect to any dwelling house or above grade structure that may be constructed or placed on any lot in the Subdivision:
    - a. Thirty (30) feet from the front line of each lot abutting a street;
    - b. Fifteen (15) feet from each lot side line;
    - c. Twenty (20) feet or twenty-five percent (25%) of the depth of the lot, whichever is greater, from the rear line of each lot.
  5. No change in ground level may be made of any lot in excess of one (1) foot in height over existing grades without the written approval of the Committee obtained prior to the commencement of the work.
- B. Application of Setback Requirements (#7)
1. If the line from which a setback is to be measured is a meandering line, the average length of the two lot lines intersecting the meandering line shall be determined, and using that average length, an imaginary straight line shall be drawn through the meandering line and the setback measurement shall be made along a line perpendicular to such imaginary line.
    - a. The term "side line" defines a lot boundary line that extends from the street on which the lot abuts to the front or rear line of the lot.
    - b. The term "rear line" defines the boundary line of the lot that is farthest from, and substantially parallel to the line of the street on which the lot abuts, except that on corner lots it may be determined from either street line.
    - c. A corner lot shall be deemed to have a front line on each street on which the lot abuts, and such lot need only have one rear yard boundary line as defined by ~~6-D(c)~~ above.
- C. Easements (#10)
1. ~~Declarant~~ The Association reserves for itself, its successors and assigns, for purposes incident to its development of the real property subject to these Restrictions, the following easements and/or rights-of-way:
    - a. A fifteen (15) foot easement and right-of-way over each lot as ~~Declarant~~ the Association may deem necessary for the use and maintenance of storm and sanitary sewers and the installation of all other utility services.
    - b. A ten (10) foot wide easement along each side of all road rights-of-way and a seven and one half (7-1/2) foot wide easement along all other property boundary lines for the purpose of installing, operating and maintaining utility lines and mains. It also reserves the right to trim, cut and remove any trees and brush and to locate guy wires and braces whenever necessary for the installation, operation and maintenance, together with the right to install, operate and maintain electric, cable

television, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto; reserving also the right of ingress and egress to such other areas for any of these purposes.

- c. Such other easements or rights-of-way as may be needed for the natural and orderly development and occupation of the Subdivisions.
  2. ~~Declarant~~ The Association reserves for itself, its successors or assigns an exclusive easement for the installation and maintenance of radio or television transmission cables within the rights-of-way and easement areas reserved and defined above.
  3. On each lot, the rights-of-way and easement areas reserved by the ~~Declarant~~ Association or dedicated to public utilities purposes shall be maintained continuously by the lot owner but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems, provided, existing location of drainage channel would hinder the orderly development of a lot the drainage channel may be relocated, provided such relocation does not cause an encroachment on any other lot in the Subdivision. Improvements within such areas shall also be maintained by the respective lot owner except for those for which a public authority or utility company is responsible. Any driveways structures, plantings or the like that interfere with the exercise of these rights-of-way may be moved or destroyed, without compensation to the owner as is necessary to use the right-of-way. Efforts should be made to inform owners of any interference with rights-of-way before moving or destroying obstructions, giving them the opportunity to remove such obstructions, whenever possible. Excess fees incurred due to an encroachment of rights-of-way and/or easement may be charged to lot owners by the Association, its successors and assigns, or any public utility.
  4. The lots shall be burdened by such additional easements as may be shown on any recorded plats.
  5. Every lot in the Subdivision, if any, that lies contiguous to a lake shall be subject to a flowage easement to an elevation on the lot equal to the high water elevation of such lake.
- D. Provisions in Respect of Lakes and Lots Contiguous Thereto - (#15)
1. ~~The water in, and the land under, Alpine Lake or lakes as shown on the plan is and will be owned by the Declarant Association, its subsidiaries or its successors and assigns.~~ The title that will be acquired by the grantee of the ~~Declarant's Association's title~~ to any lakefront lot ~~fronting on said lake~~ (and by the successors and assigns of such grantee) shall extend only to such point as designated on the plan and in no event shall it extend beyond the shoreline of the lake to which such lot is fronting or contiguous. No such grantee, nor any of such grantee's successors or assigns, shall have any right with respect to any stream, spring or other water source that is a tributary to said lake or with respect to said lake, and the land thereunder, the water therein, or its elevation, use or condition and none of said lots shall have any riparian (riverbank) rights or incidents

appurtenant; provided further, that title shall not pass by reliction (withdrawal of water) or submergence or changing water elevations. ~~The Declarant Association, its successors and assigns shall have the right at any time to dredge or otherwise remove any of the accretion or deposit from any said lots in order that the shoreline of the lake may be moved toward or to, but not inland beyond, the location of said shoreline as it would exist existed as of the date that the new lake and dam now under construction is was completed.~~

- E. Reservation of Easement for Operation of Lake - (#16)
1. ~~The Declarant Association reserves to itself, and its successors and assigns, such an~~ Each lot owner with a lakefront lot acknowledges that third parties may hold an easement upon, across and through the lakefront portion of each of said lots ~~contiguous to said lake~~ as is reasonably necessary in connection with operating said lake. Without limiting the generality of the immediately preceding sentence, it is declared that ~~neither the Declarant the Association nor any successor or assign of the Declarant Association~~ shall not be liable for damages caused by ice, erosion, washing, flooding or other action by the water.

## Section 5. GENERAL REQUIREMENTS FOR CONSTRUCTION AND IMPROVEMENTS (#5, #8, #18)

- ~~A. All plans and specifications for any structure, improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roads and exterior color schemes, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, or additions thereto on any lot shall be subject to and shall require the approval in writing before any such work is commenced of the Environmental Control Committee (herein called "the Committee"), as the same is from time to time composed. No major structure of a permanent nature - decoration, sculpture or other item whatsoever is to be erected on, placed on or moved upon or to any lot without the prior written approval of the Environmental Control Committee (herein called the "Committee"), of the Association's Board of Directors as the same is from time to time composed. If the Committee has not provided approval through a standing variance to the Declarations, an ECC permit must be obtained using the appropriate ECC form. Any later outside changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, improvement, or additions thereto on any lot shall be subject to and shall require the approval of the Committee, in writing, before any such work is commenced.~~
- B. There shall be submitted to the Committee ~~the appropriate ECC form~~, two (2) complete sets of the final plans and specifications for any ~~major structure~~ and all proposed improvements ~~to major structures~~, the erection or alteration of which is desired, and ~~no structures or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefor have received such written approval as herein provided.~~ for their approval. Such plans shall include plot plans showing the location on the lot of the building, wall fence, ~~driveway, drainage culvert~~ or other structure proposed to be constructed, altered, placed or

maintained, together with the proposed construction material, color schemes for roofs and exteriors thereof and proposed landscape planting. A filling fee, of ~~\$30.00~~ in an amount approved by the Board of Directors, shall accompany the submission of such plans to defray Committee expenses. No additional fee shall be required for resubmission of plans revised in accordance with Committee recommendations.

- C. The Committee shall approve or disprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon, shall be returned to the person submitting them, and the other copy thereof shall be retained by the Committee for its permanent files.
- D. The Committee then shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare or rights of all or any part of the real property subject hereto, or the owners thereof. The decisions of the Committee shall be subject to appeal or review by the Board of Directors of the Association, but the Board's decision is final and not subject to appeal or review.
- E. No structure erected upon any lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained from the Committee. \*\*order\*\*
- F. Requests for any other actions which change the appearance of a lot must be submitted to the Committee using the appropriate ECC forms.
- G. Neither the Committee nor any architect or agent thereof or of Declarant the Association shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions nor for any structural or other defects in any work done to such plans and specifications.
- H. No tree over five (5) inches in diameter, measured at a height of one (1) foot above ground level shall be removed from any lot without the prior written consent of the Committee. There is a no-fee ECC form to request removal of trees over five (5) inches in diameter.
- I. All structures constructed or placed on any lot shall be built of substantially new material and no used structures shall be relocated or placed on any such lot. \*\*change in order\*\*
- J. While construction or remodeling is in progress, no temporary house, trailer, camper travel trailer, motor home, tent, garage, yurt, or other structure, shelter, or outbuilding shall be placed or erected on any lot, provided, however that the Committee may grant permission for any such temporary structure for storage of materials during construction. No such temporary structures as may be approved shall be used at any time as a dwelling place, nor shall any overnight camping be permitted on any lot during the construction/remodeling period.
- K. Once construction of improvements is started on any lot, the improvements must be substantially complete in accordance with its plans and specifications, as approved, within six (6) months twelve (12) months from commencement. After twelve (12) months

additional fees will be assessed following a schedule of fees approved by the Board of Directors until the project is completed.

- L. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications and a certificate of occupancy has been issued by the Committee. Occupancy will not be approved until temporary construction power has been removed and the residence has been connected to the commercial power grid, has a functioning bathroom, kitchen sink, stove, and is free from unsafe conditions. The use of a generator for permanent power is not allowed. A generator can only be used during the duration of commercial power outage to provide temporary power to the residence.
- M. The Preston County, West Virginia E911 Addressing Ordinance requires that all houses display numbers that conform to BOCA National Property Maintenance code, Section PM-303.3, Exterior Structure, Premises. A certificate of occupancy shall not be issued without proper house identification.
- N. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Committee. Home air conditioning units or home generators shall be screened by fencing or shrubbery to the extent possible while still ensuring safe and efficient operation thereof, to the satisfaction of the Committee.
- O. No outside toilet or individual water well shall be constructed on any lot. All plumbing fixtures, dishwashers or toilets shall be connected to the sewage system. Storm water shall not be allowed to flow into the sewage system. **\*\*change in order\*\***
- P. Every owner (legal or equitable) of a lot in the ~~Section or~~ Subdivision shall be conclusively presumed to have covenanted, by acquiring title to his lot (regardless of the means of such title acquisition) **to connect to water and sewer service** provided by the Alpine Lake Public Utilities Company, a West Virginia nonprofit corporation, or its successors by merger or acquisition, as determined pursuant to rates established by the Public Service Commission of West Virginia or its successors in interest having jurisdiction in the premises, before completion of construction of the dwelling on the lot. Easements in addition to those reserved throughout these Declarations and on the recorded plats shall be granted for the practical construction, operation and maintenance of said water and sewer lines. **\*\*Combines A & B of #18 \*\***