

**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 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 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. "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 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 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. No numbered lot in the Subdivision shall be used except for single family residential purposes. 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, a 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 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, its 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 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 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, its 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 facilities, 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 Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from, every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the 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 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.