

DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS
WHITETAIL MOUNTAIN

THIS DECLARATION, made this 2nd day of September, 1994, by HUNTER COMPANY OF VIRGINIA, a Virginia Corporation, its successors and assigns ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a primarily residential community, with Roads and Other Common Facilities (as hereafter defined) for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance, including snow removal, of all Roads and any Other Common Facilities (as hereafter defined), and to this end, desires to subject the real property described in said Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community program and facilities, and administering and enforcing the covenants and restrictions, and collecting the disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer will or has incorporated under the laws of the State of West Virginia as a non-profit, non-stock corporation, The Whitetail Mountain Property Owners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer declares that the real property described in Article II hereunder is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to The Whitetail Mountain Property Owners Association, Inc.
- (b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, or any supplemental Declaration, as described in Article II, Section 1, hereof.
- (c) "Roads and Other Common Facilities" shall mean the areas of land shown on any recorded subdivision plat(s) of The Properties which are intended to be devoted to the common use of the owners of the Properties.
- (d) "Lot" shall mean and refer to any numbered tract or plot of land, except a Common Area as shown upon any recorded subdivision plat of The Properties.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure.
- (f) "Member" shall mean and refer to all those Owners who are or become members of the Association as provided in Article III, Section I, hereof.

ARTICLE II
PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Romney District, Hampshire County, West Virginia, and is more particularly described as follows:

Lots 1 through and including Lot 32 of "Whitetail Mountain" subdivision as are more fully shown upon a plat thereof prepared by L & W Enterprises, Inc., dated September 2, 1994, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Map Book 7 at page 123, and any subsequent re-plats or re-surveys thereof.

AND BEING the same real estate conveyed to Hunter Company of Virginia, a Virginia corporation, by Deed dated August 26, 1994, and recorded in the aforesaid Clerk's office in Deed Book 354 at page 541, and

for the distinctions set forth herein, be equal in all respects.

Class A. Class A members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one (1) person holds such interest or interests in any Lot, such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B membership shall be limited to the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 1. The Class B membership shall cease when the Developer owns no more Lots in The Properties.

Section 3. Members' Voting Rights Subject to Assessment. Each Member's right to vote is subject to that Member's good standing with the Association. Every Member of the Association shall ensure that the assessment due for each Lot owned is current with the Association. In the event of a default continuing in excess of two (2) months from the due date of an annual assessment, delinquent payers or Members shall automatically be prohibited from voting privileges on issues exclusively concerning monetary expenditures. Voting privileges shall be reinstated upon delinquent assessments being brought current with the Association, which assessments may then include statutory interest due for the period of default. Delinquent Members must apply to the Association Board of Directors for reinstatement, and the Association Minutes shall reflect the default and reinstatement of the Board. This provision shall not supersede the right of the Association to attach a lien to any Lot with overdue assessments, and shall not prevent the Association from pursuing any other available remedy against delinquent Lot owners.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Every Member of the Association, including Developer, its employees and assigns, shall have a right and easement of enjoyment in and to the Roads and Other Common Facilities. A right of use of same and like easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, that the Developer, its officers and its employees shall enjoy said easements and rights of use and enjoyment perpetually, regardless of whether the Developer owns any Lots. Developer reserves an easement to maintain sales offices within The Properties, and to erect sales signs within The Properties in locations chosen by Developer. An easement to complete construction of all facilities and utilities in The Properties is also reserved by Developer and is assignable at Developer's discretion. Developer may permit the use of the Roads and Other Common Facilities by purchasers or potential purchasers at Developer's discretion.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the right of the Association to dedicate or transfer the maintenance responsibilities for the Roads and Other Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, or determination as to the purposes for the same or as to the conditions thereof, shall be effective unless the provisions in the Articles of Incorporation for the Association as to such transfer are complied with.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except the Developer, each Owner of a lot in The Properties, by acceptance of a Deed therefore, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the annual assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with legal interest thereon and the cost of collection thereof, shall also be the personal obligation of each person who was the owner of such property at the time when the assessment fell due. Nothing herein shall be construed as requiring the Developer to maintain the roads or any Lots after Developer ceases to own the same, and in consideration of the initial construction, said Developer shall be exempt from collection of assessments regardless of the number of Lots owned by Developer.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Owners of real estate within The Properties, the improvement and maintenance of Roads and Other Common Facilities, devoted to this purpose and related to the use and enjoyment of the common facilities. Such levies may be expended specifically to include, but are not limited

further by Deed dated August 26, 1994, and recorded in the aforesaid Clerk's office in Deed Book 354 at page 545, all of which real property shall hereafter be referred to as "Existing Property."

Section 2. Additions to Existing Property. Additional land may become subject to this Declaration in the following manner:

- (a) **WITHOUT CONSENT.** Additional land may be annexed by the Developer without the consent of Members, provided, however, that street widths shall remain substantially the same as those initially constructed, and further provided that the land use restrictions shall remain substantially the same as provided for in this said Declaration.
- (b) **OTHER ADDITIONS WITH CONSENT.** Additional property and common areas may be annexed to The Properties with the consent of a majority of each class pursuant to a vote of the Association's Members.
- (c) **SUPPLEMENTARY DECLARATION.** The additions authorized under the two preceding subsections shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property, which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complimentary additions and modifications to the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the Covenants established by this Declaration within the Existing Property after final conveyance by the Developer.
- (d) **MERGERS.** Upon merger or a consolidation of the Association with another Association as provided in the Articles of Incorporation, the properties, rights, and obligations of The Whitetail Mountain Property Owners Association, Inc., may be operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of The Whitetail Mountain Property Owners Association, Inc., as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the Covenants and Restrictions established by this Declaration any supplemental Declaration for The Properties, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by the Declaration(s) within The Properties, except as hereinafter provided. Any such proposed merger or consolidation shall be approved by at least sixty percent (60%) of the membership of The Whitetail Mountain Property Owners Association, Inc., or shall be prohibited.

Section 3. Amendment of Declaration and Conflict. Developer reserves the right to amend, delete or add to this Declaration or any supplemental Declaration on a property-wide or individual basis at any time by subsequent recorded document, but in no event shall such subsequent recordation apply retroactively to eliminate rights previously conveyed by Developer with other Lots except as may be permitted elsewhere in this Declaration. In the event of any conflict between the plat or subsequently recorded subdivision documents, the most restrictive provision shall apply.

Section 4. Plat Amendment. Developer, its representatives and assigns, reserve the right to modify the plans of the subdivision plat, to change the size and shape of blocks, sections and Lots, and the directions and location of streets and other ways shown thereon, or of annulling the same; provided, however, that no change shall be made which shall alter the shape or size of any Lot which has been sold, or the direction of any street or way upon which it abuts so as to cut such Lot off from convenient access to public highways, without the consent of the Owner thereof.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee, or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member, and further provided that the Developer, without regard to the assessments required as set forth herein, shall be entitled to one membership for each Lot for which it is a record Owner of a fee interest.

Section 2. Voting Rights. The Association shall have two classes of voting membership, which shall, except

to, the payment of taxes, insurance and expenses for utilities on any common facilities, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof, and such other purposes as may be set forth in the Articles of Incorporation and the By-Laws of the Association. The Association shall obtain and keep current the insurance required by West Virginia Code 36B-3-113, as amended.

Section 3. Basis and Maximum of Annual Assessments. The maximum annual assessment shall be \$300.00 per Lot, in accordance with West Virginia Code 36B-1-203(2) (1994), as adjusted pursuant to West Virginia Code 36B-1-114 as amended. The assessment may be reduced annually by a vote of the Members as hereinafter provided. The officers and Board of Directors of the Association shall at all times maintain and operate the Association on a non-profit basis. Unless otherwise provided herein, any change in assessments shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a regular or duly called special meeting pursuant to fifteen (15) days advance notice of the purpose for said special meeting, as provided in the Association Articles and By-Laws.

Section 4. Assessment Account Balance. Notwithstanding the above assessment adjustment provision, no decrease in the assessment amounts under on hundred twenty-five dollars (\$125.00) annually per Lot shall occur unless the assessment fund account reflects a balance of at least six thousand dollars (\$6,000.00).

Section 5. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January annually. Lot owners purchasing from Developer will be responsible for payment at closing of the assessment pro-rated to the end of the year in which they purchase, at the initial rate of two hundred dollars (\$200.00) annually. Such pro-rated assessments may be utilized by Developer for the maintenance of the Roads and other Common Facilities during the period of Developer ownership thereof. Developer may collect such annual assessments as are herein provided to fund such maintenance during the ownership period, and Developer shall enjoy all remedies of the Association in the event of non-payment of the assessment by Lot Owners. Assessments paid to the Developer shall be held in an interest-bearing bank account and unused funds shall be transferred to the Association upon its becoming operative, which may occur at the Developer's discretion.

Section 6. Assessment Certificates. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by a duly authorized officer of the Association, setting forth whether said assessment has been paid. Such certification so stating shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

Section 7. Assessment as Personal Obligation of the Owner. If an assessment is not paid on the date when due as aforesaid, such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns. If not reduced to a lien as hereinafter provided, the personal obligation of the then Owner to pay such assessment shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

Section 8. Remedies of the Association. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest legal rate. The Association or any Owner may bring an action at law against the payer personally obligated to pay the same, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney fee to be fixed by the Court together with the costs of the action. In addition, the Association may file a lien attaching the Lot of the non-paying Owner without first obtaining a judgment.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter filed; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following special properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use;
- (b) all properties exempted from taxation by the laws of the State of West Virginia, upon the terms and to the extent of such legal exemption;
- (c) all properties owned by Developer during the period of Developer ownership only, whether during initial,

original ownership or pursuant to foreclosure or proceedings in lieu of foreclosure.

ARTICLE VI
SETBACK MINIMUMS

No building or any part thereof shall be erected on any Lot closer or nearer to any street lines, side, rear or boundary lines than forty feet (40'). Any existing structures upon The Properties at the date of this Declaration are exempted from compliance with the provisions of this Article.

ARTICLE VII
UTILITY EASEMENTS

The Developer reserves unto itself, its successors and assigns, the right to construct and maintain all utility and electric lines, or to grant rights-of-way therefore, with the right of ingress and egress for the purpose of installing or maintaining the same on, over or under a strip of land twenty feet (20') from the side and rear lines of each Lot, and forty feet (40') from the rear boundary of the Lots on the perimeter of The Properties, and twenty feet (20') from all street lines. Such utility easements are to include, but are not limited to, telephone or electric light poles, conduits, equipment, sewer, gas and water lines. Within the aforesaid easements, no structures, plantings or improvements or other materials shall be placed or permitted to remain. The easement area shall be kept as lawn so as not to inhibit access to the roadways, and shall be kept free of permanent improvements, trees, shrubbery and/or fences, in order to allow free access to service utilities. Any Lot Owner violating these provisions undertakes to do so at his or her own risk and is deemed to waive and release any and all parties from any and all claims or damages to said improvements if and when maintenance or other work is performed within the easement area. Each road right-of-way is forty feet (40') in total width, being twenty feet (20') on either side of the roadway center line. Street lines shall be measured from the edge of the right-of-way.

ARTICLE VIII
RESIDENTIAL AND AREA USE

All Lots shall be used for residential and recreational purposes only. With the exception of structures existing as of the date hereof, no residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one (1) single-family dwelling containing not less than 700 square feet minimum total area, exclusive of porch, decking, basement and garage or outbuilding.

- (a) A private garage may be built separately or attached to and made part of the dwelling, but must be of the same material and conform in construction to the dwelling. The garage shall not precede the construction of the dwelling.
- (b) All exterior construction must be completed and closed within one (1) year of the commencement date of excavation. All dwellings shall have an enclosed permanent foundation.
- (c) There shall be no single-wide trailers, buses or mobile homes situated on any Lot as a residence or for the storage of materials therein, either temporarily or permanently. Double-wide mobile homes are permitted as residences but must comply with the square footage minimums contained elsewhere herein and shall be situate upon an enclosed permanent foundation.
- (d) Improvements and construction for the maintenance of animals shall be kept in good repair, shall be constructed of new materials and must conform generally in appearance with any dwelling upon a Lot, although such improvements need not be constructed of materials identical to an existing dwelling. No such improvements shall precede the construction of the dwelling. Each Lot Owner shall maintain any such improvements placed upon any Lot and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot.

ARTICLE IX
SEWAGE AND JUNK

No dwelling shall be erected or maintained on any Lot unless there is constructed with it a septic system for disposal of sewage, which must be approved by the West Virginia Division of Health. No outside toilet or closet shall be erected on any Lot. Junk, inoperative or unlicensed vehicles may not be stored or kept on any Lot unless housed in a garage of the type described above.

ARTICLE X
PARKING

No automobiles or other motor vehicles shall be parked in or within twenty-five (25) feet from the rights-of-way or roads of the subdivision, and no on-street parking is permitted by Lot Owners. Visitors, guests, delivery vehicles or others legitimately using said roads and streets are excepted and are permitted to temporarily park along said streets.

ARTICLE XI
ADVERTISING

No advertising signs or billboards of any nature shall be erected, placed or maintained on any Lot, with the exception of address, identification signs, builders' job location signs and real estate signs offering the premises for sale, none of which exceptions shall exceed four square feet (4') in size. Developer shall have the right to construct subdivision entrance signs and structures, which shall remain erected on the Lot upon which each is situated. The Property Owners Association shall repair and maintain such signs and structures, and shall have the right to enter upon the property on which the same are affixed as is reasonably necessary for maintenance.

ARTICLE XII
AGRICULTURE

No swine, livestock, horses or poultry shall be raised, bred or kept on any Lot for commercial purposes, but household pets, such as dogs and cats, may be kept provided they are not permitted to run at large so as to become an annoyance to other Lot Owners and further provided that they are not bred or maintained for commercial purposes. With suitable facilities and proper fencing, swine, poultry, horses and livestock shall be permitted on Lots for personal use, provided at least one acre per each grazing animal (i.e., livestock and horses) is fenced for the maintenance of said animal. No more than twenty (20) individual fowl may be kept on any single lot at any one time. No trapping of wildlife shall be permitted within The Property, save that hunting is permitted in accordance with West Virginia law.

ARTICLE XIII
COMMERCIAL USE

No Lot shall be used for commercial purposes, save that Lots may be utilized for in-home occupations although no signs or advertisements thereof will be permitted within The Property. While business invitees thereof all have use of the subdivision roadways, such use shall be for ingress and egress only. Such in-home occupational use shall not be permitted to become a nuisance to other Lot Owners.

ARTICLE XIV
TIMBER

Developer has, prior to Lot sales, clearly and conspicuously marked selected standing timber for harvesting within The Property and shall be permitted the right to do so through September 15, 1996. Such right shall include, but not be limited to, cutting, severance and removal of trees and debris from the land, in accordance with good and accepted logging practices, and Developer shall use its best efforts to fell timber so as not to damage any structure(s) or interfere with any use thereon, but shall not be responsible for such inadvertent damage or interference during the timbering period aforesaid. Appurtenant to such timbering rights, Developer or its assigns shall be permitted ingress and egress and shall have the right to move machinery and equipment upon The Property to further such purposes.

ARTICLE XV
NUISANCE

No noxious, noisy or offensive activity shall be carried on within The Properties, nor shall anything be done therein which may be or which may become an annoyance or nuisance to the neighborhood. No toxic or hazardous materials shall be produced or stored within the Properties at any time.

ARTICLE XVI
WASTE

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such mate-

rials shall be kept in a clean and sanitary condition. All Lots shall be kept free and clear of trash and rubbish at all times and shall be kept mown, and no salvage or junk yard operations are permitted within the Properties. The Association shall ensure that trash collection is provided to each Lot regardless of whether the Lot is occupied, and trash collection charges shall be collectable from Lot Owners not complying with the sanitation requirements of the covenants in addition to the assessment set forth herein. The lien procedure available for delinquent payments shall be utilized in order to ensure the non-accumulation of waste in The Properties.

ARTICLE XVII RECREATION USE

No trail bikes, mini-bikes or similar all terrain vehicles, or snowmobiles shall be permitted to be driven upon the roads within The Properties unless duly licensed, with mufflers, and then only for ingress and egress.

ARTICLE XVIII CAMPING

Temporary camping is permitted upon the subdivision Lots from February 1 through December 31 annually. Only equipment professionally manufactured for the purpose, such as tents, travel trailers/campers and recreational vehicles, are permitted for use as camping shelters.

ARTICLE XIX SWALE AND DRAINAGE AREAS

All drainage patterns and swale areas shown on the plat across Lots within The Properties are reserved and shall not be disturbed, barricaded or filled. Permanent easements are reserved over these natural patterns for storm water runoff.

ARTICLE XX VIOLATIONS

In the event of violations or the Association's enforcement of any of the covenants and restrictions applying to The Property, the costs and expenses attendant thereto shall be paid by the violator as part of any judgment or remedy obtained.