

WILKES COUNTY  
NORTH CAROLINA

RICHARD L. WOODRUFF  
REGISTER OF DEEDS  
WILKES COUNTY, N.C.

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DECLARATION OF COVENANTS AND CONDITIONS

W I T N E S S E T H:

WHEREAS, MOUNTAIN RESOURCE COMPANY, a NORTH CAROLINA CORPORATION, herein called the "Declarant", is the fee simple owner of certain real property located in ELK TOWNSHIP, WILKES COUNTY, NORTH CAROLINA, and desires to establish on a portion thereof a roadway to be maintained by TURKEY HEN ROAD PROPERTY OWNERS ASSOC., INC., and further desires that said roadway maintained for the benefit and welfare of owners of property in and around TURKEY HEN ROAD at DEER CROSSING, PHASES 4 AND 5; and

WHEREAS, the Declarant desires to provide for the continued maintenance and operation of the private roads in the community, and

WHEREAS, the Declarant has deemed it desirable for the maintenance and operation of the private roads that certain easements, assessments, and liens be established and declared to be covenants running with the land; and that an agency be created to which will be delegated the powers and duties of maintaining the roads, and collecting and disbursing assessments;

NOW, THEREFORE, in consideration of the premises, the Declarant hereby declares that property hereafter made subject to this Declaration of Covenants and Conditions (hereafter called the "Covenants") shall be held, and matters hereinafter set forth, said Covenants and matters to be construed as covenants running with the land which shall be binding on each tract, or any part thereof, and which shall inure to the benefit of each owner thereof, for and during the time hereinafter specified. Every party hereafter acquiring any tract, or portion thereof, by acceptance of a deed conveying title with specific reference to these Covenants or by execution of a contract of the purchase thereof, whether from the Declarant or a subsequent owner of such tract, shall accept such deed or contract subject to each and all of the covenants and agreements contained within these Covenants, as well as any additions or amendments hereto, and also subject to the jurisdiction, rights and powers of the Declarant, the Turkey Hen Road Property Owners Association, Inc., and their successors and assigns. Each grantee of any tract subject to these Covenants, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, the Association, and with grantees and subsequent owners of each of the tracts within the Association to keep, observe, comply with and perform said Covenants and agreements.

ARTICLE I  
DEFINITIONS

1. "Association" shall mean and refer to the Turkey Hen Road Property Owners Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns.
2. "Tract" shall mean and refer to any plot of land identified as a tract on any deed of conveyance from the Declarant specifically subjecting it to these Covenants.
3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any tract as herein defined, excluding however, those parties having such interest merely as a security interest for the performance of any obligation.
4. "Turkey Hen Road" shall mean those rights of way in Elk Township which is shown on those plats of Deer Crossing, Phase 4 and 5, which are recorded in the Wilkes County Registry at Map Book 9, Pages 74-77.
5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

including the acts required by the Declaration and the Bylaws, shall be performed by the Association. The Association shall be required to maintain those roads as shown on recorded map at Map Book 9, Pages 74-77, Wilkes County Registry, which serve as access to a tract, and those roads which serve as access to any additional tracts which may be added later to this association by Declarant. Any road which is wholly within a tract, and which does not serve as access to another tract, shall not be maintained by the Association.

2. **Rules and Regulations.** The Association may also adopt and enforce rules and regulations not inconsistent with these Covenants or the Bylaws of the Association for the operation and administration of the Association of its roads.

3. **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any tract that is subjected to these covenants by reference by Declarant on their individual deeds, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any tract, and shall be transferred automatically when the owner conveys, devises, gives or otherwise transfers his tract, even though such conveyance, devise or gift does not make mention of the membership rights of the Association.

Such membership is not intended to apply to those persons or entities who hold an interest in any tract merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such secured party should realize upon his security and become the fee owner of a tract, he and his assigns of the tract will then be subject to all the requirements and limitations imposed in these Covenants on owners of tracts within Turkey Hen Road Property Owners Association and on members of the Association, including those provisions with respect to payment of annual charges. The Board of Directors may include reasonable rules relating to the proof of ownership of a tract in the Turkey Hen Road Property Owners Association, Inc. Any two or more tracts that are combined or recombined by deed into one tract, shall be one member of the Association.

4. **Voting Rights and Membership.**

a. **Membership.** Every person or entity who is a record owner of a fee simple interest in any tract or dwelling unit which is subjected to these covenants by reference by Declarant on his individual deed, is subject by this Declaration to assessment by the Association and shall be a member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of any obligation shall not be a member.

b. **Voting Rights.** Any member shall be entitled to one vote for each dwelling unit or for each tract which he owns. When more than one person or entity holds an interest in any tract or dwelling unit, all such persons or entities shall be members. The vote for such tract or dwelling unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any tract, nor shall any vote be fractionalized.

5. **Violation or Delinquency.** During any period in which a member shall be in default in the payment of any annual, special or other assessment levied by the Association, his rights to vote and all other rights and in the Association may be suspended by the Board of Directors until such assessment is paid. A member's voting and use rights may also be suspended for violation of the Association's published rules and regulations; that prior to any suspension for such violation, the Board of Directors (or a committee thereof) shall conduct a hearing regarding the alleged violation after giving the accused member at least ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. At the hearing, the accused member shall have the right to call and question his own witnesses as well as any opposing witnesses. A determination of violation as well as the terms of any suspension shall be made only by a majority vote of the Board.

**ARTICLE V**

**COVENANTS FOR MAINTENANCE ASSESSMENTS**

1. **Creation of Lien and Personal Obligation for Assessments.** The owner of each tract in Turkey Hen Road Property Owners Association,

Inc., by acceptance of a deed now or previously subjected to these covenants by Declarant, therefor, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was owner of such property at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall not pass to his successors in title (other than as the continuing lien on the land) unless expressly assumed by such successor.

2. **Purpose of Assessments.** All assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine are for the benefit of its members. Such purposes may include, but are not limited to: maintenance of the roads; construction, repair and replacement of improvements upon the roads; the cost of labor, equipment, materials, management and supervision thereof; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; and such other needs as may arise.

3. **Determination of Assessment Amount.** Prior to December 31 of each year the Board of Directors shall prepare a budget for the next calendar year and based upon such budget, the Board shall fix the assessment amount for each class of property owned upon the following basis:

a. Each tract upon which is situated a completed, habitable dwelling shall be assessed one (1) share; and

b. All other tracts shall each be assessed one-half (1/2) of one share.

4. **Payment of Assessments.** All annual and special assessments provided for herein shall commence as to all tracts on the first day of the month following the transfer of title to owner. The annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, payment of assessments shall be made annually to the Association or its designee, on or before the due date established by the Board; however, that the Board may elect to receive payments on a quarterly basis. The Board of Directors shall fix the amount of the annual assessment at least thirty days before the due date and written notice of the charge so fixed shall be sent to each member.

5. **Special Assessments.** In addition to the annual assessment authorized above, the association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any roads. Prior to the imposition of any such special assessment, two-thirds (2/3) of each class of members voting at a meeting called to consider such assessment and at which a quorum was present, must vote their assent to its imposition.

6. **Annual Meeting.** The regular annual meeting of the members shall be held during May or June of each year, unless otherwise provided by the Board of Directors.

7. **Special Meeting.** Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any three or more members of the Board of Directors, or upon written petition of twenty-five percent of the members. Any such written petition by the members must be submitted to the Association's Secretary or President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting to all members.

8. **Notice and Quorum.** Except for a vote to amend the covenants contained herein, the notice and quorum required for any sections of the Association authorized by Article IV and V of this Declaration or as otherwise in the Bylaws or by law provided, shall be as follows:

a. Written notice of any meeting called for the purpose of taking any action authorized under Articles IV and V of these Covenants shall be sent to all members not less than ten (10) days nor more than

sixty (60) days in advance of the meeting. The notice shall state the purpose of any special meeting. No business shall be transacted at a special meeting except as stated in the notice. Each member shall designate in writing his address for notice of meetings to the Secretary. The mailing of notice to this address shall be considered proper service of notice.

b. Members may attend and may vote in person or by proxy executed in writing by a member. No proxy shall be valid after eleven (11) months from the date of its execution, or after conveyance by the member of his tract.

c. At any meeting called for the purpose of taking some action by the Association membership the presence in person or by proxy of members entitled to cast 20% of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and any number of members attending such subsequent meeting, so long as such number represents at least 10% of all the outstanding votes shall constitute a quorum. No such subsequent meeting shall be held more than six (6) months following the scheduled date of the preceding meeting.

7. **Board of Directors.** The members of the Board of Directors shall be elected at the annual meeting of the members, and their terms may be staggered for one, two, or three years. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Members present or represented by proxy, a quorum being present, and there be elected a successor director to fill the vacancy thus created. Moreover, any Director who has had three consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty days past due in the payment of any assessment may be removed by the vote of a majority of the other Directors. Any Director whose removal has been proposed shall be given at least ten days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting. Vacancies in the Board of Directors caused by any reason, except the removal of a Director by vote of the membership, shall be filled by a vote of the majority of the remaining Directors, even though less than a quorum, at any meeting of the Board of Directors. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members. Any officer may be removed with or without cause by a vote of a majority of the members of the Board of Directors, and a successor may be elected.

8. **Exempt Property.** All tracts owned by the Declarant shall be exempt from the assessments and charges created herein. In addition, the lien of a mortgage or deed of trust representing a first lien placed upon any tract for the purpose of purchasing the tract or for permanent financing and/or constructing a residence or the improvement thereon recorded in accordance with the applicable state laws from the date of recordation, shall be superior to any and all liens provided for herein. The sale or transfer of any tract by foreclosure of any first mortgage or any proceeding in lieu thereof, shall not extinguish the lien of such assessments as to payments due prior to such sale or transfer, provided such transfer shall not have been made for the purpose of defeating the lien.

9. **Continuance of Lien.**

a. The assessments and charges created herein shall constitute a continuing lien upon all tracts in Turkey Hen Road Property Owners Association and no owner may waive or in any way reduce his liability for the assessment by non-use of road or abandonment of his tract.

b. In the event that any charge or assessment created in this Declaration remains unpaid by an Association member for thirty (30) days after the due date announced by the Board of Directors, the Association, through its agents and employees, may record with the Wilkes County Clerk of court a notice of the lien created by this Declaration.

10. **Effect of Nonpayment of Assessments: Remedies of the Association.** In the event that any assessment or charge created herein remains unpaid for thirty (30) days after the due date announced by the



Board of Directors, such unpaid assessment shall bear interest from the date of delinquency, said interest rate to be set by the Board of Directors from time to time, but in no event shall it exceed the maximum interest rate allowed by law. The Association, its agent or representative, may bring an action by law against the owner personally obligated to pay the same and/or foreclose the lien against the tract subject to the unpaid assessment in either case, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment to the extent allowed by law. Any foreclosure conducted pursuant to this section shall comply fully with the North Carolina procedure for judicial foreclosure.

11. **Certificate of Payment.** 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 tract have been paid or that certain charges against said tract 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. For the purposes of obtaining a certificate, interested parties should contact the Association at its address.

#### ARTICLE VI ARCHITECTURAL REVIEW

1. The Declarant shall have the responsibility of enforcing the requirements set forth in this Article until such time as it passes such responsibility to the Architectural Review Committee (the "Committee") which thereafter, shall assume and be responsible for enforcement. Reference in this Article to the Declarant shall mean the Committee after such time as the responsibility is passed to the Committee. The following provisions regarding architectural review shall apply to each and every tract now or hereafter subject to this Declaration.

2. No construction, reconstruction, remodeling, alteration, or addition to any building, improvement, or structure of any kind, upon any tract in the Development, shall be commenced without the prior written approval of the Declarant of the proposed site location, plans and specifications.

3. There shall be submitted to the Declarant two (2) complete sets of the final plans and specifications for any and all proposed improvements, 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 tract unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the tract of the building, wall, fence or other structure proposed to be constructed, altered, placed or maintained, together with specifications for the proposed construction material, color schemes for roofs and exteriors thereof and proposed grading and landscaping.

4. The Declarant shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. In the event the Declarant fails to approve or disapprove such plans and specifications within thirty (30) days, approval will not be required and the requirements of this Section will be deemed to have been fulfilled. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon, shall be returned to the persons submitting them and the other copy thereof shall be retained by the Declarant for its permanent files. The Declarant shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an amount not to exceed \$50.00.

5. At such time as the Declarant elects to transfer to the Association the architectural review responsibilities, the Association's Board of Directors shall appoint a standing committee of the Board, to be called the Architectural Review Committee, which shall initially consist of three (3) members to be appointed from among the Association's members. Upon its appointment, the Committee shall assume from the Declarant all authority to review and approve plans, specifications, and details as otherwise provided herein. The initial

committee shall serve for a term of two (2) years, after which the committeemen shall be appointed by the Association's Board of Directors, pursuant to its Bylaws, and shall serve for a term of one (1) year; provided further that the number of committeemen may be increased from three (3) to five (5) by a resolution of the Association's Board of Directors.

6. After its appointment, the Architectural Review Committee shall establish written architectural and aesthetic criteria to be used in reviewing all plans, specifications, and details submitted for approval, and copies of such criteria may be obtained upon request from the Committee. Such written criteria shall be subject to revision or amendment by the Committee at all times; provided, however, that no amendment to or change in such criteria shall become effective until committed to writing and approved by the Committee in the same manner as the previously controlling criteria; and that no amendment or change in such criteria shall have retroactive application.

7. The purpose of the Architectural Review provisions set forth herein is to protect the value of all real property subject to this Declaration and to promote the interest, welfare, and rights of all development property owners. Decisions of the Declarant or Architectural Review Committee approving or disapproving of plans and specifications shall be based on criteria it establishes for the Development, consistently applied, but such decisions shall be final and not subject to review or appeal.

#### ARTICLE VII RESTRICTIONS AND REQUIREMENTS

1. **Residential Use.** No tract shall be occupied or used except for residential purposes. No structure shall be erected, placed or permitted to remain on any tract other than one detached, single-family residence dwelling and such outbuildings as are usually accessory to a single-family residence dwelling including a private garage or barn facility. No obnoxious or offensive activity shall be carried on upon the properties which may be or may become a nuisance or annoyance to the neighborhood.

2. **Size and Placement of Residences and Structures.**

a. The Declarant and its successor Architectural Review Committee, as provided in Article VI, retain the right to withhold approval of plans for any residence where such a structure is unsuited to the proposed tract's terrain, or would not be in keeping with the general development of the surrounding area.

b. The Declarant and its successor Architectural Review Committee shall have the authority to promulgate regulations pertaining to all types of structures, including but not limited to outbuildings, fences, and walls.

3. **Other Requirements.**

a. All structures constructed or placed on any tract shall be built of substantially new materials and no used structures shall be relocated or placed on any such tract, without approval of the Declarant or its successor Architectural Review Committee.

b. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Declarant or Architectural Review Committee. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be screened or so placed and kept as not to be visible from any road, except for common receptacles provided by or with the approval of the Declarant or Architectural Review Committee.

c. Any dwelling or outbuilding on any tract which may be destroyed in whole or in part must be rebuilt or all debris removed and the tract restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than three (3) months.

4. **Prohibitions.**

a. No mobile homes shall be permitted on any tract.

b. No temporary house, camper, trailer, garage, storage shed or other outbuilding shall be placed or erected on any tract, provided, however, that the Declarant or Architectural Review Committee may grant

permission for any such temporary structures.

c. No permanent outdoor lights or permanent light sensitive lights shall be permitted on any tract, if said light or the light from said light is visible from any other tract.

d. No stripped, partially wrecked, or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any road or tract.

e. The restrictions and covenants herein apply to any tracts resulting from any replatting or division therefrom as if the resulting tract or tracts had been originally platted in such manner.

**5. Easements.**

a. Declarant reserves unto itself, its successors and assigns, and for the benefit of all tract owners in the development, the road and road rights-of-way shown on the plats now or hereafter recorded of the development for purposes of ingress and egress, for maintenance of utility lines and mains and for drainage.

**ARTICLE VIII  
GENERAL PROVISIONS**

1. **Enforcement.** The Association shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. **Term.** The Covenants shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2023. By accepting a deed to a tract subject to these Covenants, the tract owners agree that after January 1, 2023, these Covenants shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the members holding more than fifty (50) percent of the voting rights in the Association has been recorded, agreeing to change the covenants in whole or in part; provided, however, that at any time after January 1, 1996, these Covenants may be ended by the vote of two-thirds (2/3) of each Class of members of the Association to make variations in the Covenants but not to make changes that would annul any material rights of owners provided herein.

3. **Mutuality of Benefit and Obligation.** The Covenants and agreements set forth herein are made for the mutual and reciprocal benefit of each and every tract in this Association and are intended to create mutual, equitable servitudes upon each tract in favor of each and all of the other tracts therein; to create a privity of contract and estate between the grantees of said tracts, their heirs, successors and assigns, and to the Association, and shall, as to the owner of each tract, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other tracts in Turkey Hen Road Property Owners Association, Inc., and their respective owners. Declarant, so long as it shall own a tract in its own name, any tract owner or the Association shall have the right to enforce these Covenants.

4. **Severability.** Every part of these Covenants are hereby declared to be independent of, and severable from the rest of the Covenants and of and from every other one of the Covenants and of and from every combination of the covenants. Therefore, if any of the Covenants 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 Covenants.

5. **Captions.** The captions preceding the various paragraphs and subparagraphs of these Covenants are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Covenants. 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 to apply to the feminine or to the neuter.

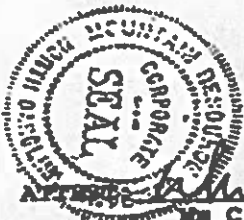
6. **Right of Declarant or Association to Amend to Achieve**

**Tax-Exempt Status.** The Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, in order to qualify the Association or the properties or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wilkes County Registry.

IN WITNESS WHEREOF, MOUNTAIN RESOURCE COMPANY, a North Carolina Corporation has caused this Declaration to be executed, this the 1st day of January, 1995.

MOUNTAIN RESOURCE COMPANY,  
a NORTH CAROLINA CORPORATION

BY: R B Johnston, Jr.  
R B Johnston, Jr., President



NORTH CAROLINA  
WILKES COUNTY

I, a Notary Public of the County and State aforesaid, certify that WM C JOHNSTON personally came before me this day and acknowledged that he is Secretary of MOUNTAIN RESOURCE COMPANY, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary. Witness my hand and official stamp or seal, this 1st day of Jan. 1995.

Vickie Huffman  
Notary Public

My Commission Expires: 3/29/98



NORTH CAROLINA WILKES COUNTY

The foregoing certificate of

Richard L. Hunsall  
Register of Deeds

is certified to be correct.  
Becky Caudill  
Deputy/Asst. Register of Deeds