

DECLARATION OF COVENANTS AND RESTRICTIONS<sup>1</sup>

THIS DECLARATION, made this 13th day of December 1968, by COOLFONT DEVELOPMENT COMPANY, INC., hereinafter called Developer.

WITNESSETH:

WHEREAS, Developer has incorporated under the laws of the State of West Virginia, as a non-profit corporation, the COOLFONT MOUNTAINSIDE ASSOCIATION, INC., hereafter "CMA," or "the Association," and has transferred to CMA the real property described in Article II; and

WHEREAS, CMA desires to maintain a recreational community with permanent parks, wilderness, open spaces and other common facilities for the benefit of the said community; and

WHEREAS, CMA desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in 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 lot owner thereof; and

WHEREAS, for the efficient preservation of the values and amenities in said community, CMA exercises the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereafter created;

NOW THEREFORE, CMA declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, 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') hereafter set forth.

---

<sup>1</sup> Reflecting all amendments and modifications recorded on or before December 13, 2005 and effective as of December 13, 2008.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "CMA" or "Association" shall mean and refer to the Coolfont Mountainside Association, Inc.

(b) "The Properties" shall mean and refer to all such existing properties. and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to those areas of land owned or to be owned by Coolfont Mountainside Association, Inc., and intended to be devoted to the common use and enjoyment of the owners of "The Properties."

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

(e) "Living Unit" shall mean and refer to any building situated upon The Properties designed and intended for use and occupancy by a single family.

(f) "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 the mortgage, shall not mean or refer to the mortgagee unless and until mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.



ARTICLE II

Property Subject to This Declaration:  
Additions Thereto

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 Rock Gap and Bath Districts, Morgan County, West Virginia, and is described by the deeds listed below:

Original Deed dated December 29, 1974 comprising sections A, B, C, E, F, G, H, I, J, K, L, M, N and O containing 203.98 acres more or less and recorded in Morgan County Deed Book Number 90 page 647

Section D Deed dated December 29, 1974 containing 8.62 acres more or less and recorded in the Morgan County Deed Book Number 90 page 647

Common Property Deed dated November 29, 1974 comprising the Pool, Barn and Tennis Court areas containing 6.98 acres more or less and recorded in the Morgan County Deed Book Number 90 page 651

Four deeds dated July 26, 1990 comprising extensions of sections K and L, Section P and the "Wachter Error" containing 46.87 acres more or less; the Section O "Factory Tract" containing 4.89 acres more or less; Section Q containing 23.51 acres more or less; and extension of Section D containing 4.73 acres more or less and recorded in Morgan County Deed Book Number 155 page 723

Section R Deed dated April 9, 1992 containing 22.19 acres more or less and recorded in Morgan County Deed Book Number 162 page 223

Section S Deed dated May 12, 1994 containing 22.50 acres more or less and recorded in Morgan County Deed Book Number 169 page 103

Section T Deed dated July 7, 2001 containing 39.62 acres more or less and recorded in Morgan County Deed Book Number 197 page 129

Totaling 383.89 acres, more or less, all of which real property shall hereinafter be referred to as "Existing Property".

(The title to this real estate in 1968 being in Coolfont Development Company, a corporation, and has been transferred to Coolfont Mountainside Association, Inc., less so much of the same as has been developed into lots and sold by said Coolfont Development Company.)

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

(a) Additions in Accordance with the General Plan of Development. Any Developer, its heirs and assigns, shall not have the right to bring within the scheme of this Declaration additional properties unless they obtain the approval of the Association by two-thirds (2/3) of the votes of the Membership; and unless written notice of the proposed action of bringing in additional properties by formal vote is sent to every Member at least ninety (90) days in advance of any action taken.

(b) Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of the 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 Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property 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 this Declaration within the Existing Property except as hereinafter provided and referred to in Section 2(a) above.

### 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.

Section 2. Voting Rights. Members shall be all those owners as defined in Section 1 and shall be entitled to one vote for each lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any lot all 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 vote be cast with respect to any such Lot.

#### Article IV

##### Property Rights In the Common Properties

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 2, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot.

Section 2. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights there under shall be limited to a right, after taking possession of such properties to charge admission and other fees as a condition to continued enjoyment by the Members, and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the

Association and all rights of the Members shall be fully restored; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and

(c) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) the right of the Association to dedicate or transfer all or any part of the Common Properties 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, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by two-thirds (2/3) of the Members entitled to vote has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

## ARTICLE V

### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on

the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties, and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the dwelling units situated upon the Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Establishment of Annual Assessments. The annual assessment for the next fiscal year shall be established by vote of the Members provided that any such change shall have the assent of two thirds of the votes of Members who are voting in person or by proxy, at a meeting duly called for this purpose. Written notice for this meeting shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further, that the limitations of this Section shall not apply to any change in the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under Article II, Section 2 hereof.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy for one or more assessment years a special assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal properties related thereto, provided that any such assessment shall have the assent of two thirds of the votes of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Quorum for Any Action Authorized Under Sections 3 and 4. The quorum required for any action authorized by Sections 3 and 4 hereof shall be as follows:

At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Assessments; Due Dates. The assessments for any year after the first year shall become due and payable on the first day of the fiscal year upon approval by the Membership under the process detailed in Sections 3, 4 and 5 above.

The first annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property that is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall propose the date of approval and the amount of the assessment against each Lot for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to

inspection by any Owner.

Written notice of assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner; The Lien: Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together, with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

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 rate of three (3) percentage points above the prevailing prime interest rate per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, 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's fee to be fixed by the court together with the costs of the action.

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 security interest now or hereafter placed upon the properties subject to assessment; 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 property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Lands as defined in Article I, Section 1 hereof; (c) 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.

Notwithstanding any provisions herein, no land or improvements, devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI

### Specific Limitations

Section 1. Restriction Against Business Use. Construction of improvements and their use within the Coolfont Mountainside Association shall be limited to single family residential homes on single lots and no commercial use shall be made of any lot. Notwithstanding the above, rental use of homes on a daily or longer basis, and the use of such residential homes for artistic endeavors, crafts or a home business shall be permitted subject to rules and regulations established by a two thirds (2/3) majority vote of all the Members.

Section 2. Easement for Public Utilities: Reservation of Right-of-Way. The Association hereby expressly reserves from said premises an easement in a strip of land six (6) feet wide along the perimeter of each lot, for the purpose of the transmission of electricity for lighting and other purposes, and for the construction and maintenance of open culverts for the

conveying of surface water in an amount not to exceed one second foot of water and to construct, operate, and maintain pipe lines, sewers, drains, water pipes, telephone lines, or conduits under the surface of said reservation for any lawful purpose whatsoever; no structure shall be built upon the property affected by said reservation of right-of-way, and said property shall at all times be open to the Developer and any public service corporation which may require the use of said right-of-way.

Section 3. Subdivision. No lots shall be resubdivided.

Section 4. Animals. No animals shall be kept on any lot, except household pets in reasonable numbers that do not remain outdoors overnight and do not cause a nuisance. No animals may be kept for any commercial purpose.

Section 5. Temporary Structures. No trailer, camper, mobile home, manufactured home commonly known as a double-wide mobile home, tent, shed or structure of a temporary nature shall be permitted on any lot, either temporarily or permanently, except for a temporary construction shed during the period of actual exterior construction of any building on any lot. No building other than a fully completed dwelling shall be occupied.

Section 6. Vehicles. No truck, trailer, bus or inoperative or unsightly vehicle of any type may be left or abandoned on any lot. No commercial vehicles or habitable vehicles of any nature shall be kept or stored on any street or road within the common properties or on any lot.

Section 7. Maintenance of Lots. No refuse pile or unsightly objects shall be allowed to be placed or to remain anywhere thereon. Trash, garbage or other waste or refuse shall not be kept except in sanitary and covered containers and in a clean and sanitary condition. Cutting of trees and shrubs shall be limited to maintenance of views as permitted by the DACC Regulations and Guidelines, maintenance of fire safety and emergency vehicle access and elimination of invasive plant species recognized by the West Virginia Extension Service.

Section 8. Signs. No signs or advertising of any nature shall be displayed on any lot except a name and address sign, a directional or informational sign placed by the Association, or a sign advertising the property for sale or rent. All signs shall be subject to approval by the DACC as provided herein.

Section 9. Nuisances. No noxious, offensive or potentially dangerous activity shall be permitted on any lot or within the subdivision, including operation of loud motor vehicles of any kind or firearms of any kind, hunting, open fires, loud parties or pets, fireworks or bright external lights. After 11 pm outside activity that can disturb other residents must be kept to an absolute minimum except in case of emergency.

Section 10. Severability. Invalidation of any of these specific limitations by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 11. Enforcement. Enforcement shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any limitation or covenant herein either to restrain the violation or to recover damages.

## ARTICLE VII

### Architectural Control Committee

Section 1. Review by Committee. No building, fence, wall, sign, exterior light or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, size, materials, and location of the same shall have been submitted to and approved in writing as to safety and

harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. The Board may appoint a Development and Architectural Control Committee composed of three (3) or more representatives to advise the Board on these responsibilities and to approve applications that comply with CMA Restrictions. In the event the Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, the Board shall act on the subject plans at its next meeting. If it does not, approval will not be required and this Article will be deemed to have been fully complied with. The Board of Directors may seek to enjoin any addition, alteration or change for which an application for approval has not been presented or if such an application has been disapproved by the Board, and provided further that such action by the Board shall be commenced not later than thirty days after the identification of such addition, alteration or change.

Section 2. Rules and Regulations Regarding Structures.

CMA shall issue updated Regulations and Guidelines to interpret, administer and enforce these provisions, which shall be established by a majority vote of a quorum of all the Members who are entitled to vote. These Regulations and Guidelines shall include but not be limited to requirements of Sections 3 and 4 below.

Section 3. Sewage disposal. Pending availability of public sewers, sewage disposal shall be effected by means of individual septic tanks (or other equally sanitary structure for the storage or disposal of sewage); the type of tank, its construction, location on lot, and tile disposal field shall be approved in writing by the Board of Directors of the Coolfont Mountainside Association, Inc., or other authorities, if required by law. No cesspools or outside toilets shall be permitted. In the event the individual Lot shall not be sufficient by reason of size or otherwise, to facilitate proper sewage disposal, then said lot owner shall be allowed to use so much of the Common Properties as necessary in order to insure proper sewage disposal.

Section 4. Other Rules and Regulations. The Regulations and Guidelines provided for in this Article, Section 2 may, in

addition to covering the building of structures, also prohibit or govern other uses of or activity on private property including, but not limited to: outside fires, and fireplaces; storage or disposal of boats, storage containers, trailers, garbage and trash; control of pet animals; and tree cutting.

## ARTICLE VIII

### Exterior Maintenance

Section 1. Exterior Maintenance. In addition to maintenance upon the Common properties, the Association may at the request of the owner provide exterior maintenance upon each Lot or Living Unit which is subject to assessment under Article V hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot or Living Unit is subject under Article V hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof. Provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot or Living Unit for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 3. Access at Reasonable Hours. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Saturday or Sunday.

## ARTICLE IX

## General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by The Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of 10 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years, unless an instrument signed by the then-Owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions that shall remain in full force and effect.

COOLFONT DEVELOPMENT COMPANY, INC.

By (signed) Samuel P. Ashelman  
President

STATE OF WEST VIRGINIA  
COUNTY OF Morgan TO WIT:

I, (signed) Clyde M. Graham , a Notary Public in and for the County and State aforesaid, do certify that S. F. Ashelman , President, who signed the writing hereto annexed, bearing date on the 13th day of December, 1968, for COOLFONT DEVELOPMENT COMPANY, INC., a corporation, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this 13th day of December ,1968.

(signed) Clyde M. Graham  
Notary Public

My commission expires 3rd January 1976.

This Declaration was prepared by Joseph F. Wagner, of the firm of Rice, Hannis, Rice & Wagner, Old National Bank Building, Martinsburg, West Virginia.

COOLFONT MOUNTAINSIDE ASSOCIATION, INC.

By (signed) James Thompson  
President

STATE OF WEST VIRGINIA  
COUNTY OF Morgan TO WIT:

I, (signed) xxxxxxxxxxxx , a Notary Public in and for the County and State aforesaid, do certify that James Thompson , President, who signed the writing hereto annexed, bearing date on the 13th day of December, 2005, for COOLFONT MOUNTAINSIDE ASSOCIATION, INC., a corporation, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this 13th day of December ,2005.

(signed) xxxxxx

Notary Public

My commission expires xxxx