

**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS FOR THE CREATION OF THE PLANNED
COMMUNITY KNOWN AS MYSTIC MOUNTAIN ESTATES, A FLEXIBLE
PLANNED COMMUNITY WITH COVENANTS AND AGREEMENTS ON
TRANSITION OF OWNERSHIP AND CONTROL OF THE PLANNED
COMMUNITY**

THIS DECLARATION, made this ___ day of December, 2015, by The Southern Columbia Corp, a Pennsylvania corporation, hereafter referred to as the "Declarant."

WITNESSETH THAT:

WHEREAS, Declarant is the legal owner by virtue of a deed dated March 17, 1983 and recorded in the Columbia County Recorder of Deeds Office in Record Book 315, page 1079 of real property known as the Mystic Mountain Estates, which is more fully described in **Exhibit "A"** of this Declaration, and desires to opt-in the residential community to be known as "Mystic Mountain Estates" as a flexible planned community organized pursuant to the *Uniform Planned Community Act*;

WHEREAS, to date, The Southern Columbia Corp (the "TSCC") is the legal owner of all portions of Mystic Mountain that have not been conveyed to third-party purchasers;

WHEREAS, to date, TSCC has been responsible for maintaining all the open area and common area of Mystic Mountain Estates;

WHEREAS, each lot within Mystic Mountain Estates sold to a third-party purchaser was transferred subject to a common set of Deed Covenants (the "Existing Deed Covenants"). A copy of the Existing Deed Covenants is set forth in Article II herein;

WHEREAS, TSCC successfully defended itself and the existing legal structure of the Mystic Mountain Estates as a private planned community in a civil action known as Little Mountain Community Ass'n, Inc. v. Southern Columbia Corp., 92 A.3d 1191 (Pa.Super.2014), wherein the Pennsylvania Superior Court upheld the legal structure of Mystic Mountain Estates as a private planned community operated by a private corporation (TSCC) and without a mandatory unit owners association;

WHEREAS, it is the intention of Declarant and no less than 80% of all existing lots owners to restructure the Mystic Mountain Estates into a planned community organized pursuant to the *UPCA* and the Existing Deed Covenants and controlled by an independently elected mandatory unit owners association;

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of said Common Elements, including, but not limited to the Community's roadways, recreation facilities, storm water management facilities, and open spaces, and, to this end, desires to 'opt in' to the *UPCA* statutory scheme pursuant to Section 5102

and 5220 of the *UPCA*, as amended, 68 Pa.C.S.A. § 5102, which allows for such a wholesale implementation of the *UPCA* by a pre-*UPCA* community in a manner that does not conflict with existing law or governing documents;

WHEREAS, on September 10, 2015, the Locust Township Board of Supervisors granted conditional approval for a Subdivision Plan and Common Area Plan intended to, *inter alia*, create the common elements for a planned community organized under the *UPCA*. The Plan creates certain common elements for the Community from the existing roadway and lots that cannot reasonably be developed. A copy of the three sheet Subdivision Plan and Common Area Plan is attached hereto and incorporated herein as **Exhibit “B.”**

WHEREAS, the 112.63 acres referenced on the Subdivision Plan (sheets 1 and 2) attached hereto as part of Exhibit “B” will not become part of the planned community being organized pursuant to this Declaration.

WHEREAS, the real property being subject to the planned community reorganized pursuant to the *UPCA* and the Existing Deed Covenants is referred to in Article II and described in **Exhibit “C”** of this Declaration, 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 subsequent owner thereof or any portion thereof;

WHEREAS, Declarant, and over eighty percent of the lot owners, has deemed it desirable, for the efficient preservation of the values and amenities in the Community, to create the entity to be known as "Mystic Mountain Estates Property Owners Association" to which shall be delegated and assigned the duty and the powers of maintaining and administering the Common Elements, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created;

WHEREAS, Declarant has incorporated under the laws of the Commonwealth of Pennsylvania as a non-profit corporation known as "Mystic Mountain Estates Property Owners Association, Inc." for the purposes of exercising the powers, duties and functions aforesaid;

WHEREAS, this Declaration is intended to create the legal structure necessary for the Association to, *inter alia*, own the Common Elements, control the Association and enforce applicable restrictions and legal obligations governing the ownership and use of all of the Units (as defined below) and Common Elements which collectively constitute the Property;

WHEREAS, Declarant presented its proposal on forming a mandatory unit owners association that could assume ownership and the common areas of Mystic Mountain Estates;

WHEREAS, based upon a written vote of over eighty (80%) of the lot owners of the Community, Declarant is authorized to request final approval from the Columbia County Planning Commission and the Locust Township Board of Supervisors for final approval of the Subdivision and Common Area Plan and record this Declaration with the Columbia County Record of Deeds and formally transition the Mystic Mountain Estates from a “private community” organized and operated by Declarant to a “planned community” organized and

operated pursuant to Pennsylvania *Uniform Planned Community Act* (“UPCA”), as amended, 68 Pa. C.S.A. § 5101, *et seq*;

WHEREAS, a copy of the written vote of each lot owner shall be made available upon written request of any interested person;

WHEREAS, until transition is complete, TSCC will operate its business and the private community according to the Existing Deed Covenants;

NOW THEREFORE, the Declarant declares that the real property referred to in Article III hereof and more particularly described in Exhibits “A” and “C” attached hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as the "Covenants and Restrictions") hereinafter set forth. All the provisions of this Declaration shall, as to the Owners of the property, Common Elements and Lots, their heirs, successors or assigns, operate as covenants running with the land for the benefit of each other and all other property, Common Elements and Lots in the development and their respective owners and, as its interests are affected, the Municipality.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. In addition to the definitions set forth in 5103 of the *UPCA*, the following words when used in this Declaration or any supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Act" or "*UPCA*" shall mean and refer to the Pennsylvania *Uniform Planned Community Act*, as amended, 68 Pa. C.S.A. § 5101, *et seq.*

(b) “Additional Real Estate” shall mean real estate that may be added to a planned community as a Development Right pursuant to Section 5211 of the *UPCA* and as set forth herein.

(c) "Association" shall mean and refer to the “Mystic Mountain Estates Property Owners Association, Inc.”, its successors and assigns, organized under Section 5301 of *the UPCA*.

(d) “Common Area Lots” shall mean those one hundred thirty six (136) lots identified as common area on a Common Area Plan for the Mystic Mountain Estates, dated July 24, 2015, which was granted conditional approval by Columbia County Planning Commission decision dated August 18, 2015 and by the Locust Township Board of Supervisors by decision dated September 10, 2015

(e) "Common Elements" shall mean and refer to those areas of land shown on the Plat which are not within Lots. Said areas are depicted on the Plan in Exhibit "B", attached hereto and made a part hereof, and intended to be devoted to the common use

and enjoyment of the members of the Association, their guests and invitees, as further herein defined, and shall also include the Common Facilities and the Controlled Facilities. The Common Elements will be conveyed by Declarant to the Association.

(f) "Common Expense Liability" shall mean and refer to the liability for common expenses allocated to each unit in Section 5.5 of this Declaration.

(g) "Common Expenses" shall mean and refer to the expenditures made by, or the financial liabilities of, the Association, together with any allocations to reserves.

(h) "Convertible Real Estate" shall mean the Lots or portions of the Common Elements as shown on the Community Plan for Mystic Mountain Estates that may be converted into Units or Limited Common Elements pursuant to Section 5211 of the *UPCA* and as set forth herein.

(i) "Development" shall mean and refer to all lands, both Lots and Common Elements, which are described in Exhibit "A" or are hereafter made subject to this Declaration.

(j) "Declarant" shall mean and refer to The Southern Columbia Corporation, its successors and assigns and any person who succeeds (under § 5304 of *the UPCA*) to any Special Declarant Rights, subject to the restrictions of § 5304 of *the UPCA*.

(k) "Deed Covenants" shall mean the Existing Deed Covenants set forth in Article II of this Declaration.

(l) "Executive Board" shall mean and refer to the Executive Board of the Association, which shall manage the Association's operations in compliance with, and subject to, the provisions of *the UPCA*.

(m) "Limited Controlled Facilities" shall mean that portion of the Controlled Facilities, if any, that are part of a Lot, but managed or regulated by the Association for the exclusive use of one or more, but fewer than all of the units.

(n) "Lot" shall mean and refer to any plot intended and subdivided for residential use, shown upon the Plat, but shall not include the Common Elements as herein defined. Mystic Mountain Estates was initially approved and subdivided to include a total of four hundred twenty (421) separate lots. Upon the recordation of this Declaration, 231 lots intended for residential use shall be referred to as "Units."

(o) "Member" shall mean and refer to all those owners who are members of the Association; every Owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be mandatory and appurtenant to and may not be separated from ownership of any Lot.

(p) "Municipality" shall mean and refer to the municipality within which the

Property is located, being the Locust Township, Cleveland Township and Conyngham Township, Columbia County, Pennsylvania.

(q) “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of any mortgage, unless or until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(r) “Confirmatory Plan” shall mean and refer to the Plat which was recorded with the Columbia County Record of Deeds on August 4, 2015 at Instrument # 201506202.

(s) “Property” shall mean and refer to all lands, both Lots and Common Elements, which are described in Exhibit "C" or are hereafter made subject to this Declaration.

(t) “Special Declarant Rights” shall mean those rights reserved for the benefit of a declarant to:

- i. complete improvements indicated on plats and plans under section 5210 of the *UPCA* (relating to plats and plans);
- ii. convert convertible real estate in a flexible planned community under section 5211 of the *UPCA* (relating to conversion and expansion of flexible planned communities);
- iii. add additional real estate to a flexible planned community under section 5211 of the *UPCA*;
- iv. withdraw withdrawable real estate from a flexible planned community under section 5212 of the *UPCA* (relating to withdrawal of withdrawable real estate);
- v. convert a unit into two or more Units, common facilities or controlled facilities or into two or more Units and common facilities or controlled facilities;
- vi. maintain offices, signs and models under section 5217 of the *UPCA* (relating to declarant offices, models and signs);
- vii. use easements through the common elements, common facilities or controlled facilities for the purpose of marketing and selling properties, making improvement within the planned community or within any convertible or additional real estate under section 5218 of the *UPCA* (relating to easement to facilitate completion, conversion and expansion);

viii. appoint or remove an officer of the Association or a master association or an executive board member during any period of Declarant Control under section 5303 of the *UPCA* (relating to executive board members and officers).

(u) "Storm Water Management Facilities" shall mean all of the land areas and improvements thereto within the Property devoted to the purposes of detaining, retaining, and/or controlling the volume and/or rate and/or the direction of storm water (including Common Facilities located within the Open Spaces, Controlled Facilities and Limited Controlled Facilities located within certain of the Lots). The portions of the Storm Water Management Facilities located within the Common Facilities are part of the Common Facilities. The portions thereof, if any, located within one or more Lots are Controlled Facilities or Limited Controlled Facilities.

(v) "Withdrawable Real Estate" shall mean real estate that may be withdrawn from a flexible planned community pursuant to Section 5212 of the *UPCA* and as set forth herein.

(w) "Units" shall mean the two hundred thirty-one (231) Lots that are being made subject to this Declaration as shown and identified as "Units" on a Community Plan for Mystic Mountain Estates attached hereto and incorporated herein as Exhibit "C." No Lot converted to common area shall be construed as a Unit.

ARTICLE II

EXISTING DEED COVENANTS

Section 2.1 Intent. It is the intent of this Declaration to maintain, to the greatest degree possible, all restrictions set in the Deed Covenants. Should there be a conflict between any provision of this Declaration and the Deed Covenants, the Existing Deed Covenants shall govern.

Section 2.2 Existing Deed Covenants. For each lot in the Development sold to a third party-purchaser, the Existing Deed Covenants were caused to be recorded against each lot. The Existing Deed Covenants imposed use, management and development for "MYSTIC MOUNTAIN ESTATES a property of The Southern Columbia Corp."

Section 2.3 Language of Pre-Existing Restrictions. The Warranty Deed from Seller (Grantor) to each Purchaser (Grantee) of a Lot in the Development contained the following restrictive covenants:

1. Said lot shall be used exclusively for residential purposes.
2. Not more than one single family dwelling house may be erected or constructed

on this lot, nor more than one building for garage or storage purposes and provided further that no building or structure of any kind shall be erected, prior to the erection of a dwelling house. No accessory or temporary building shall be used or occupied as living quarters. No structure shall have tarpaper, roll brick siding or similar material on outside walls. No house trailers, mobile homes, campers, tents, shacks or similar structures shall be erected or moved to or placed upon said premises. All building exteriors must be completed within six months from the date the construction commences.

3. The dwelling house shall have not less than 900 square feet of living space on the ground floor, or first floor, exclusive of porch area. No porch or projection of any building shall extend nearer than 40 feet to any road rights of way, nor nearer than 20 feet to the property line of any abutting property owner. The plans and specifications for any structure or improvement to be erected on or moved upon or to this lot, the proposed location thereof, the tree-removal, the construction material, the roofs and the exterior color schemes, as well as all remodeling, reconstruction, alterations, or additions thereto on this lot shall be subject to and shall require the approval in writing of The Southern Columbia, Corp. or its duly authorized agent before any such work is commenced. The Southern Columbia Corp. shall have the right to disapprove any plans, specifications or details submitted to it. In the event the same are not in accordance with all the provisions of the restrictions or the rules and regulations promulgated by The Southern Columbia Corp. or when (1) the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of this lot or with the adjacent buildings or structures, (2) the plans and specifications submitted are incomplete or (3) The Southern Columbia Corp. deems the plans, specifications or details or any part thereof, to be contrary to the interest, welfare or rights of all or any part of the overall development of which this lot is a part. The decision of The Southern Columbia Corp. shall be final. Neither The Southern Columbia Corp. nor its agents shall be responsible for structural deficiencies or any other defects in plans or specifications submitted, revised or approved in accordance with the foregoing provisions.

4. No outside toilet shall be allowed on the premises. No untreated waste shall be permitted. The dwelling house shall have an individual sanitary unit and the Grantee shall install a type of unit that complies in all respects with the requirements of the Department of Environmental Resources or other governing legal authority. The lot owner shall obtain authority from the appropriate legal authority prior to the installation of any sanitary system and shall further be bound by all orders or recommendations of such authority and/or authorities with regard to water supply to said lot, repair, alteration or replacement of the installed sanitation unit. No drain field or other similar system shall be allowed except where after a determination said water supply, or said sanitary system would be required to be located in an area other than the site purchased, the Purchaser agrees to payment for cost of installing such facilities to supply water or sewer

service for this site.

5. No noxious or offensive trade or activities shall be permitted on this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals or fowl shall be kept or maintained on said lot except customary household pets not exceeding two in number. No signs of any kind shall be displayed on any lot without the written permission of The Southern Columbia Corp. or its successors or assigns. All lots must be kept in a tidy manner. Failure to do so will result in maintenance of said lot by The Southern Columbia Corp. in which event a proper charge for the same will be assessed and collected.

6. The Purchaser agrees to conditions for water or sewer service in accordance with the following: If at any time The Southern Columbia Corp. shall install facilities or contract with a public utility company to supply water or sewer to this lot then Grantee hereby makes application for water or sewer service in connection with the above described lot from the public utility company or other authority and agrees to be a customer of such public utility company or other authority and shall pay the rates prescribed by tariffs filed by such public utility company with the Pennsylvania Public Utility Commission or those established by such other authority.

7. The Southern Columbia Corp. for itself, its successors and licensees reserves an easement of fifteen (15) foot wide on each side of all thirty-three (33) foot wide road rights of way and a five (5) foot wide easement along the side and rear lines of each and every lot for the purpose of installing, operating and maintaining television cables, utility lines and mains thereon, together with the right to trim and/or cut or remove trees and/or brush and the right to locate guy wires, braces and anchors wherever necessary for said installations, operations or maintenance; together with the right to install operate and maintain gas and water mains, sewer lines, culverts and drainage ditches and other services and appurtenances thereto, for the convenience of the overall development, reserving also the right to ingress and egress to such areas for any of the purposes mentioned above. If and when a sewer district is established by any municipal authority it is hereby granted the right, along with other authorized utilities, to use the herein reserved easements to install and maintain such central sewage system.

The Grantee of this lot shall have no cause of action against The Southern Columbia Corp, its successors or assigns, or licensees either at law or in equity excepting in case of willful negligence, by reason of any damage caused said property in installing operating removing or maintaining the above mentioned installations. The Southern Columbia Corp., its successors, assigns and licensees hereby reserves all mineral rights to the subject lot and the rights for installation of Cable Vision.

8. The Grantee hereby agrees to the following conditions and charges which shall be required to maintain those necessary community services as hereinafter described.

A. Grantee shall pay to The Southern Columbia Corp. the sum of [\$684.00]. per annum for the maintenance and snow removal on those roads constructed and upon which egress and ingress is permitted.

B. At such time as Grantee shall have constructed a residence upon this lot there shall be paid to The Southern Columbia Corp. the sum of [\$1,344.00] per annum for the maintenance and snow removal on those roads constructed and upon which egress and ingress is permitted and for the collection and removal of refuse and for the maintenance of a Security Patrol.

C. Grantee may be offered a membership in a proposed resort complex and/or other community or nearby golfing or other association at which time individual assessments and conditions will be set forth in a special agreement covering such eventualities and would be in addition to the foregoing stipulated charges.

The Southern Columbia Corp. reserves the right to adjust those basic charges set forth as items A and B at its sole discretion to maintain the quality of the services required. Nothing contained in this section shall place upon The Southern Columbia Corp. a precise requirement pertaining to the above described services nor does it accept any liability for damages arising thereunder. Further, The Southern Columbia Corp. shall not be responsible or liable for anything occurring upon the private premises as set forth in the deed description but rather the Grantee shall be responsible for his own insurance coverage thereon. It is further agreed that the charges herein set forth shall be and constitute a debt which may be collected by suit in any court of competent jurisdiction or otherwise; and that upon the conveyance of this lot, the Purchaser thereof and each and every successive owner and/or owners shall from the time of acquiring said land covenant and agree to pay all charges past and/or future as provided in, and in strict accordance with the terms and provisions hereof.

The Southern Columbia Corp. retains the right to dedicate any roads, accept municipal police service, accept municipal garbage and trash disposal and otherwise relieve itself of obligations set forth herein at which time the required assessments shall be adjusted accordingly.

9. With regard to the agreement to pay The Southern Columbia Corp. its successors or assigns the amount set forth in paragraph 8, Grantee and each successive owner of the lot authorizes and empowers any attorney of any court of record of the Commonwealth of Pennsylvania, or elsewhere, to appear for the owner of said lot and after one or more declarations filed, confess judgment against the owner as of any term for the sum then due with costs of suit and release of all errors, and without stay of execution and inquisition and extension

upon any levy on real estate is hereby waived, and without stay of execution and inquisition and extension upon any levy on real estate is hereby waived, and condemnation agreed to and the exempt of personal property from levy and sale on any execution hereon is also hereby expressly waived, and no benefit of exemption be claimed under and by virtue of any exemption law now in force or which may hereafter be passed.

10. These restrictions shall be considered as covenants running with the land, and shall bind Grantee, their heirs, executors, administrators, successors, and assigns and if Grantee, their heirs, administrators, executors, successors and assigns shall violate or attempt to violate any of the covenants or restrictions herein contained, it shall be lawful for any person or persons representing The Southern Columbia Corp. to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such covenants or restrictions and to either prevent him or them from doing so or to recover damages for said violation.

11. FENCES - All property lines shall be kept free and open, no fences, hedges or walls shall be constructed except as permitted by The Southern Columbia Corp.

12. APPLICABILITY OF RESTRICTIONS - These restrictions apply only to the lot conveyed by this deed and may or may not in the sole discretion of The Southern Columbia Corp. apply to any other lot now or in the future owned, retained or sold by The Southern Columbia Corp.

13. ASSIGNMENT - The rights and obligations created hereunder may at any time be assigned by The Southern Columbia Corp. when The Southern Columbia Corp. no longer owns a majority of the total number of lots in or planned for the Mystic Mountain Estates subdivision, all lot owners on a one-lot, one-vote basis shall elect a three-member governing commission. The commission members shall serve four-year terms. At the time of the election, the governing commission shall assume all rights which Southern Columbia Corp. may exercise under Paragraphs 3, 5, and 11 of these restrictions.

Section 2.4 Assignment of Rights. Except as otherwise provided herein, Declarant hereby retains all rights set forth in the above-quoted Existing Deed Covenants until such time as its Special Declarant Rights shall expire pursuant to Article VI herein or specifically assigns said rights to the Association before the termination of the Period of Declarant Control. No later than the time Declarant transfers its Special Declarant rights, as set forth in Article VI, Declarant shall assign all rights, set forth in the Existing Deed Covenants to the Association if not already assigned.

Section 2.4.1 Specific Assignment Rights. At the time this Declaration is recorded with the Columbia County Recorder of Deeds, Declarant shall be deemed to have transferred to the Association all rights set forth in Sections 2 and 3 of the Existing Deed Covenants concerning the review and approval of building plans and specifications.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION; **NAME OF THE COMMUNITY**

Section 3.1 Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Locust Township, Cleveland Township and Conyngham Township, Columbia County, Pennsylvania, and is more particularly described in Exhibit "A", being "Mystic Mountain Estates, A Flexible Planned Community" as shown on the Plat, and consisting of 323 acres, more or less.

Section 3.2 Name. The name of the community to be developed within the Property is "Mystic Mountain Estates, a Flexible Planned Community."

ARTICLE IV

DESCRIPTION OF UNITS AND COMMON ELEMENTS

Section 4.1 Boundaries. The boundaries of each Unit are coterminous with the boundaries of each Lot as depicted on the Plat. The identifying number of each Unit is set forth on the Community Plan for Mystic Mountain Estates appended hereto. The identification and description of the Common Area is set forth on the Community Plan for Mystic Mountain Estates appended hereto.

Section 4.2 Maximum Number of Lots. The maximum number of Units that may be created in the Property is two hundred eighty-five (285). No individual units may be further subdivided.

Section 4.3 Description of Common Elements. A description of the Common Elements of the community (including both Common Facilities and Controlled Facilities) is contained in Article I (Definitions). There are no time-share estates created under this Declaration.

Section 4.4 A Flexible Community. The Property is a flexible planned community as such term is contemplated under *the UPCA*. In particular, Declarant reserves the option(s) to create additional units or limited common elements or both, or to convert Convertible Real Estate to units, Common Elements and/or Limited Common Elements, or to add Additional Real Estate to the Community.

ARTICLE V

EMPOWERMENT OF, MEMBERSHIP AND VOTING RIGHTS IN A MANDATORY UNIT OWNER'S ASSOCIATION; PERIOD OF DECLARANT CONTROL

Section 5.1 Empowerment of a Unit Owners' Association. The Mystic Mountain Estates, A Flexible Planned Community, shall be governed by a mandatory unit owner's association known as the Mystic Mountain Estates Property Owners Association, Inc. (the "Association"), pursuant to the scope of authority provided to mandatory unit owners' association by Section 5302 of the *UPCA* and the Nonprofit Corporation Law of 1988, 15 Pa.C.S.A. §§ 1501-6162.

Section 5.2 Membership. Every person who is an Owner (as defined in Article I) of any Unit which is subject by this Declaration to assessment by the Association shall be a member of the Association. However, in the event that a member of the Association should lease his or her Unit to another person then, and only in that event, the lessee shall be entitled to all of the privileges of membership in the Association, except that the Owner will still be responsible for payment of all assessments and will still be entitled to the vote allotted to the particular Unit in question. For the purposes of this Section and the Common Assessment obligation, a person holding an option contract to purchase a Unit and enjoying the right to use a Unit shall assume the direct obligation and personal liability for a duly imposed Common Assessment.

Section 5.3 Adoption of Bylaws for the Association. The Association shall be governed by a set of Bylaws adopted pursuant to Section 5306 of the *UPCA*, which, among other provisions, shall provide for all of the following:

- (1) The number of members of the executive board and the titles of the officers of the Association.
- (2) Election by the executive board of a president, treasurer, secretary and any other officers of the Association the Bylaws specify.
- (3) The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies.
- (4) Setting the date of an annual meeting of the Association.
- (5) Process of approving budgets and setting the level of common assessments.
- (6) After the transition of control of the Association from TSCC to an independently elected Board of Directors and only upon a majority vote of all Units, to assume specified debts and obligations relating to the transition.
- (7) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.

(8) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the Association.

(9) The method of amending the Bylaws.

Section 5.4 Allocation of Voting Rights. Each Unit is allocated one vote in the Association. The voting right allocated to each Lot is equal with respect to all Units.

Section 5.5 Common Expense Liability.

(a) The total Common Expense Liability of the Development initially shall be assessed against all Units and shall be reauthorized at least annually, based on a budget adopted at least annually by the Association.

i. **Ground Liability**: Each Unit shall be liable for a Base Common Expense Liability. The first Base Common Expense Liability shall be assessed at \$684.00, and may be changed by a majority vote of the Executive Board of the Association at the time it adopts an annual budget.

ii. **Use Liability**: Each Unit developed with a residential structure is allocated an equal share of the liability for Common Expenses beyond the aggregate amount of the Ground Liability assessed to all Units and the Limited Common Expense Payments chargeable to particular Units.

iii. **Formula for Calculation of Total Common Expense Liability**:
(Total Assessment for Ground Liability Issued Against All Units) +
(Total Assessment of Use Liability Issued Against Any Developed Unit) + (Total Amount of Limited Common Expense Payments) =
Total Estimate Budget.

(b) Common Expense liability shall only be assessed against Units. No Common Expense assessment may be imposed against any portion of the Common Elements, including areas labeled as Convertible Real Estate. If a Common Expense is caused by the negligence or misconduct of any owner, the Association may assess such expense exclusively against his or her Unit.

(c) For any period pre-dating the recording of this Declaration, it shall not be lawful to seek or impose Common Expense Liability against a Lot or Unit Owner unless that Lot had been specifically made subject to the Existing Deed Covenants set forth in Article II of this Declaration through the recording of those Existing Deed Covenants against said lot or Unit.

(d) The budgets of the Association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

ARTICLE VI

ELECTIONS AND TRANSITION OF CONTROL OF THE ASSOCIATION FROM THE DECLARANT AND TRANSFER OF COMMON ELEMENTS TO THE ASSOCIATION

Section 6.1 Period of Declarant Control. Notwithstanding the allocation of voting rights, as set forth in Section 6.2 above, there is hereby declared to be a period of Declarant control, which shall extend from the date of the recording of this Declaration with the Columbia County Recorder of Deeds for a maximum of one year thereafter. During the period of Declarant control, the Declarant or persons designated by the Declarant shall appoint and remove the officers and members of the Executive Board of the Association.

- (a) From the date of the recording of this Declaration with the Columbia County Recorder of Deeds for a maximum of one year thereafter, Declarant shall control and there shall be a transfer of control of the Executive Board as follows:
 - (i). No later than 60 days after the recording of this Declaration with the Columbia County Recorder of Deeds, two of the seven members of the Executive Board shall be elected by Unit Owners. The two Executive Board Members elected pursuant to this Section 6.3(a)(i) shall serve until the first election of the Executive Board held at the annual meeting of the Association following the date of the election of members of the Executive Board described in Section 6.3(a)(ii) below;
 - (ii). No later than one year after the date of the recording of this Declaration with the Columbia County Recorder of Deeds, the period of Declarant control of the Association shall terminate, and a meeting shall be held at which the five remaining members of the Executive Board appointed by the Declarant resign and five additional members of the Executive Board shall be elected by the Unit Owners as a whole (including the Declarant as a Unit Owner) in accordance with the allocation of voting rights set forth in Section 5.2 above, in order to replace the Declarant appointed Executive Board Members who have resigned. Two of the five Executive Board Members elected pursuant to this Section 5.4(a)(ii) shall serve until the second annual meeting of the Association following the date of their election; and, the remaining three of five seats shall serve until the third annual meeting of the Property Owners's Association

Section 6.2 Post-Transition Voting. Subsequent to the resignation of the Declarant appointed Executive Board Members pursuant to Section 6.1(a)(ii) above, all future members of the Executive Board shall be elected by the Unit Owners as a whole (including the Declarant as a Unit Owner) in accordance with the allocation of voting rights set forth in Section 5.2

above.

- (a) Except as hereinabove provided, all members of the Executive Board shall serve for three-year terms.
- (b) No Board Member may serve more than two consecutive terms, but can be elected to more than two non-consecutive terms.

Section 6.3 Pre-Transition Board Members. Prior to the submission of this Declaration for approval by the Unit Owners, Declarant organized a Transition Board to consult with during the pre-transition period.

- (a) The Transition Board consists of seven (7) members.
- (b) Until the election of Board Members and Officers of the Association by Unit Owners at large, the Transition Board members shall serve in an advisory capacity and aid in the transition from a planned community controlled solely by the Declarant to one managed by a mandatory unit owners association controlled by members and officers chosen by the Unit Owners.
- (c) Attendance at meetings of the Transition Board may be in person or through video or telephonic means.
- (d) The scheduling of meetings and issuance of correspondence of the Transition Board shall be made or approved by Declarant.
- (e) In accordance with the standards set forth in Section 5113 of the *UPCA*, the Transition Board members shall each serve in good faith and in support of a successful transition process. All members of the Transition Board must disclose, in writing, any conflict of interest that would keep him or her from acting in the best interests of the Association and the transition process. Should any member not act in good faith, as set forth herein, the Association shall not indemnify or defend him or her in any legal proceeding that may be brought against him or her. Any Transition Board Member that does not act in good faith may be subject to an award of attorney fees and costs in favor of a prevailing party against him or her.

ARTICLE VII

RETENTION OF SPECIAL DECLARANT RIGHTS; DEVELOPMENT RIGHTS

Section 7.1 Development Rights. Declarant shall have the right and reserves the option to create units, limited common elements or both within convertible real estate or to add additional real estate to or withdraw withdrawable real estate from the planned community as identified on the Community Plan for Mystic Mountain Estates and further described herein. There are no limitations on Declarant's right to exercise its Developer Rights or Special

Declarant Rights other than those expressly set forth herein.

Section 7.2 Time Limitation to Exercise Development Rights. Declarant shall have the right to convert or add real estate, as shown and identified on the Community Plan for Mystic Mountain Estates for a period not to exceed seven years after the recording of this Declaration, upon which any option will lapse.

Section 7.3 Adjustment of Voting Rights and Common Expense Liability. Should any unit(s) be added or withdrawn from the Development pursuant to the Special Declarant Rights, the voting strength of all Units shall be reapportioned on a *pro rata* basis.

Section 7.3.1 Liability of Existing Parties to an Option Contract. As set forth in Section 5.2 above, Declarant shall retain the right to file suit and enforce the personal obligation of any party to an option contract to pay any duly imposed Common Assessment.

Section 7.4 Creation of Further Areas of Limited Common Elements. If Declarant exercises its right to further create Limited Common Elements, those areas will be for the creation of sewer and/or water wells to serve Units in a size necessary to serve that purpose. No assurance is made that new Limited Common Elements will be approximately equal to the proportion existing within other parts of the planned community or the size.

Section 7.5 Uniform Limitations on all Convertible or Additional Real Estate. All restrictions in the Declaration affecting use, occupancy and alienation of units will apply to units created within any convertible or additional real estate or a statement of any differentiations that may be made as to those units.

Section 7.6 Third Party Easements. Declarant retains the sole right to subject any portion of the Community to an easement or license in favor of any real estate not included in the Property or in favor of any person who is not an Owner or occupant of a Lot in the Community, until such time as the termination of the period of Declarant control. In such event, in exercising any such right, the use and enjoyment of any Lot by the Lot Owner shall not be adversely affected by the easement rights, nor there be any adverse impact on the budget of the Association.

Section 7.7 Executive Board. Until the termination of the period of Declarant control, Declarant retains the right to appoint or remove all officers of the Association and/or members of the Executive Board, subject to the limitations set forth hereinabove and in the *UPCA*.

Section 7.8 FHA Approval. Declarant may seek to have this planned community certified by the United States Department of Housing and Urban Development for FHA backed loan approval.

ARTICLE VIII

PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 8.1 Members' Easements of Enjoyment. Subject to the provisions of Section 6.3 of this Article VI, every member shall have a right and easement of enjoyment in and to the Common Facilities and Controlled Facilities and such easement shall be appurtenant to and shall pass with the title to every Unit, and shall commence at the time of such member's acquisition of his or her Unit whether or not title to the Common Facilities has been then conveyed to the Association. Such easement shall include the right of access to, ingress to and egress from the Common Facilities. Such easement shall also include the right to make reasonable, lawful passive recreational use of the Common Facilities, and the right to use drainage facilities and utilities placed within the Common Facilities and Controlled Facilities. A lessee shall have all of the rights of this Section belonging to the Owner of the Unit with the exception that they are not permitted to vote and are not required to pay any assessment since the vote and assessment remain with the Unit Owner.

Section 8.2 Title to Common Facilities. Declarant hereby covenants for itself, its successors and assigns, that it shall convey the Common Facilities by special warranty deed to the Association, free and clear of all liens and encumbrances, but subject to existing building restrictions, ordinances, easements of roads, privileges or rights of public service companies as provided for herein, and any other restrictions or conditions existing of record not later than the termination of the period of Declarant control. Notwithstanding the preceding sentence to the contrary, Declarant does not need the consent of the Association to convey the Common Facilities to the Association. A copy of the metes-and-bounds legal description of the Common Area, per the Common Area Plan attached hereto as Exhibit "B," is attached hereto and incorporated herein as **Exhibit "D."**

Section 8.3 Extent of Members' 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 Facilities and Controlled Facilities and, in aid thereof, to mortgage said Common Facilities, provided that the rights of such mortgagee in said Common Facilities shall be subordinate to the rights of the Owners hereunder;
- (b) the right of the Association to take such steps as are reasonably necessary to protect the Common Facilities against foreclosure;
- (c) the right of the Association, as may be provided in its Articles and Bylaws, to suspend the enjoyment rights to recreational open spaces of any members for any period during which any such member's assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(d) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities within the Common Facilities;

(e) the right of the Declarant, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Facilities, for the installation, maintenance and inspection of the lines and appurtenances for access, ingress and egress, for public or private water, gas, electric, telephone, sewage, drainage, fuel oil, cable television, and other utilities; provided, however, that such easements and rights-of-way will not be contrary to either (i) the Plat, or (ii) the purposes for which the Common Facilities can be utilized under the governing ordinances of the Municipality; and the right of the Association, contingent upon the prior written approval of the Municipality, to dedicate or transfer all or any part of the 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 and transfer or determination as to the purposes or conditions thereof shall be effective unless an instrument executed by the president of the Association and attested to by the secretary thereof certifies that after due notice in accordance with the Articles of Incorporation and Bylaws of the Association, that two-thirds (2/3) of the Owners present, in person or in proxy, voted to approve such action; provided, however, that notwithstanding any such transfer, the Common Facilities are restricted to utilization as open space and for Storm Water Management Facilities or any other compatible use, subject to municipal approval.

(f) the free right and privilege of Declarant at all times hereafter to go upon the Common Facilities to construct, reconstruct, repair, renovate or correct any work heretofore or hereafter done by Declarant, its agents, servants, workmen or contractors.

(g) the free right and privilege of Declarant, its agents, servants, contractors, licensees and invitees to enter upon the Common Facilities at all times for purposes incident to the construction of the residential subdivision and the marketing of Units, dwellings, including, without limitation, the right to complete all improvements denoted on the Plat and/or the Final Subdivision Plans, the right to maintain offices, models and signs, the right to use easements within and through the Common Facilities and Controlled Facilities, as more fully set forth hereinbelow.

(f) the absolute right of Declarant at any time until the conveyance of the last Unit to an Owner other than Declarant to modify the boundary lines of the individual Units; provided, however, that any such change must first be approved by the Municipality.

Section 8.4 Access Easement through Additional Real Estate. Declarant shall ensure that an access easement shall be recorded to insure ingress and egress to State Route No. 0042 for the benefit of the Association and all Unit Owners and requiring that the Association assume all regular and customary costs arising from the use of the easement area by the

Association and the Unit Owners, its guests and invitees, including, but not limited to, insurance, maintenance, repair and replacement costs and obligations.

Section 8.5 No Partial Severance of the Common Element. The Association shall not sell or lease any part of the Common Elements, including, but not limited to, mineral and timber interests in the Common Elements.

ARTICLE IX

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 9.1 Continuation of the Lien Set Forth in the Existing Deed Covenants and Personal Obligation of Assessments.

(a) Pre-Existing Deed Covenants. The obligation of all Unit Owners to pay a maintenance fee to the Declarant, as set forth in paragraph 8 of the Deed Covenant is assigned to the Association.

(b) Assessments. Except for the rights established in Section 5.2. and Section 7.3.1 above, the Declarant, for each Unit owned by it within the Property, hereby covenants and each subsequent owner or current Unit Owner, of any such Unit by acceptance of a deed therefor, 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 (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; and (3) special assessments for maintenance, restoration or repair as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made, as more fully set forth in Section 5315 of *the UPCA*. Each such assessment, together with such interest thereon and costs of collection thereof as are 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.

(c) Notification. The Owner of a Unit intending to sell the same shall notify the Executive Board as to his intent to sell the Unit so that the Resale Certificate required under Section 5407 of *the UPCA* may be prepared.

(d) Resale Certificate. Within ten (10) days of the receipt of such notification, the Board shall prepare a Resale Certificate which shall set forth all information required under Section 5407 of *the UPCA*. This certificate shall be mailed to the place designated by the Owner. No conveyance shall discharge the personal liability of the Owner for unpaid assessments or charges whether or not shown on such certificate. A reasonable fee shall be established from time to time for the cost of preparation of such certificate and shall be paid at the time of request for such certificate. The certificate shall be signed by an officer

of the Association or by an employee of the Association's management company. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as to any purchaser or mortgagee relying thereon in good faith as of the date of its issuance, but shall not relieve the Owner of personal liability.

Section 9.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of paying the Common Expenses of the Association, including, but not limited to, promoting the recreation, health, safety and welfare of the residents of the Community 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 roadways, storm water management facilities, open space and other lands within the Common Facilities. In addition, the Association shall make reasonable and appropriate allocations for Common Expenses relating to the establishment of reasonable and customary reserves, payment of taxes, insurance, the maintenance, repair, replacement and additions to Common Elements, and for the cost of labor, professional fees, legal fees, equipment, materials and the normal, regular, necessary or required costs of operation of the Association.

Section 9.3 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities, including fixtures and personal property related thereto and including Storm Water Management Facilities and roadways, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 9.4 Special Assessment for Maintenance. The Association may make a Special Assessment for the cost associated with maintenance not anticipated in the yearly budget. Any Special Assessment shall be levied equally amongst all Unit Owners, whether those Units are developed with a residential structure or remain vacant.

Section 9.5 Resale Capital Contributions. The Association may require that a capital contribution be made to the Association by any Unit Owner transferring title to a third party. The Resale Certificate provided by the Association to the Unit Owner shall identify this Capital Contribution as an obligation of the seller. Such obligation shall be made consistent in application to all Units.

Section 9.6 Rate of Assessment. Both annual and special assessments must be fixed as provided for herein and may be collected on a monthly or other periodic basis; provided, however, that in the event that a Common Expense is caused by the negligence or misconduct of an Owner, or tenant or invitee of an Owner, the Association may assess such expense exclusively against such Owner's Unit.

Section 9.7 Effect of Nonpayment of Assessments: Remedies of the Association.

(a) Any assessment not paid within thirty (30) days after the due date shall be subject to such late charge as may be established by the Board, and shall also bear interest

from the due date at the rate of fifteen percent (15%) per annum, unless a lesser rate is required by law, but then at the maximum rate permitted. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the Unit, as set forth in § 5315 of *the UPCA*, or both. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Facilities or abandonment of his Unit.

(b) Each Owner on becoming an Owner of any Unit shall be deemed to covenant and agree to the enforcement of all assessments in the manner specified in this Declaration and in *the UPCA*. Each Owner agrees to pay reasonable attorney fees as established from time to time by the Board and costs incurred in the collection of any assessment against such Owner and/or his Unit, whether by suit or otherwise, or in enforcing compliance with or specific performance of the terms and conditions of this Declaration or other governing documents as against such owner and/or his or her Unit.

(c) Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association may provide notice of such delinquency and may do one or more of (a) declare the entire balance of such annual or special assessment due and payable in full; or (b) charge a late fee in an amount to be set by the Board; or (c) upon registered or certified mail notice to the Owner, suspend the right of such Owner to vote and/or to use the open space portions of the Common Facilities, except roadways, until the assessment and accrued charges are paid in full; or (d) employ other remedies available at law or equity or, without limitation of the foregoing, including either of the following procedures:

(i) *Enforcement by Suit.* The Association may commence and maintain a suit by law against any Owner or Owners for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with late fees, interest thereon at the rate of fifteen (15%) percent per annum from the date of delinquency, costs of collection, court costs and reasonable attorneys' fees in such amount as the Board has established from time to time. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(ii) *Enforcement by Lien.* Pursuant to § 5315 of *the UPCA*, there is hereby created and perfected a claim of lien, with power of sale, on each and every Unit to secure payment to the Association of any and all assessments levied against any and all Owners of such Units pursuant to this Declaration, together with late fees, interest thereon as provided for by this Section, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees, as may from time to time be established by the Board. At any time after the occurrence of any delinquency in the payment of any such assessment, the Association, or an authorized representative thereof, may make a written demand for payment to the delinquent owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim or lien, but any number of defaults may be included within a single demand or claim or

lien on account of prior delinquencies, and any demand, claim or lien shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association, or its duly authorized representative, may thereafter elect to commence foreclosure or other enforcement action in court, as set forth in § 5315 of the *UPCA*. The Board is hereby authorized to appoint any attorney or any officer or director of the Association for the purpose of conducting such proceeding.

(d) All remedies provided herein or in the *UPCA* are cumulative.

Section 9.8 Lien Priority and Divestiture. The priority of any lien for assessments authorized hereunder or by *the UPCA*, shall have such priority as against any and all other liens on a Unit, as is set forth in § 5315 of the *UPCA*. Any such lien shall be subject to divestiture only as set forth in § 5315 of the *UPCA*.

Section 9.9 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: all Convertible Real Estate, Common Lots and Common Facilities as defined in Article I, Section I hereof. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 9.10 Surplus. Notwithstanding the provisions of Section 5313 of the *UPCA*, the Association may allocate any surplus accumulated from general or special assessments to the Association's general reserve fund.

ARTICLE X

EASEMENTS ON COMMON FACILITIES

Section 10.1 Easements. The Open Spaces shall be subject to certain sanitary sewer easements, utility easements and access easements as shown on the Plats and Plans.

ARTICLE XI

MAINTENANCE OF COMMON FACILITIES AND CONTROLLED FACILITIES

Section 11.1 Maintenance Responsibility. The maintenance of the Common Facilities and Controlled Facilities, if any, shall be the responsibility of the Association. The Common Elements shall be maintained in a structurally sound and functional condition. Maintenance shall include, but is not limited to, Storm Water Management Facilities and Recreation Facilities maintenance and repair, snow removal and repairs on roadway, lawn care, liability insurance,

all property taxes, landscaping and planting, construction of any kind and anything else associated with the use and enjoyment of the Common Elements by the Owners.

ARTICLE XII

EFFECT OF NON-MAINTENANCE OF COMMON FACILITIES AND CONTROLLED FACILITIES BY ASSOCIATION

Section 12.1 Right of Municipality. In the event that the Association fails to maintain in structurally sound and functional condition the Common Elements or causes or allows any such Common Element to be altered, removed, or to fail to function as designed and/or as required by applicable regulations and, upon prompt notification by the Municipality, fails to correct the same within the time specified in the Municipality's notice, the Municipality shall have the free right, but not the obligation, to enter upon the Common Elements and provide for the maintenance, replacement, reconstruction or repair to the Common Elements as the Municipality determines to be necessary. The Municipality, before it may exercise the above-mentioned rights, shall notify the Board of Directors of the Association by certified mail of its intention to do so. The notice to the Board of Directors of the Association shall specifically set forth in what manner the Association has neglected the maintenance of or repair to the Common Element and shall provide the time period for correction of the same. If the Association fails to correct or repair the items listed in the notice, within thirty (30) days thereafter the Municipality may exercise its above-mentioned rights.

Section 12.2 Costs of Maintenance. The costs of the Association or the Municipality to maintain and/or repair the Common Elements shall be assessed equally as set forth in Section 5.3 herein. The assessment shall be a charge of the Units and shall be a continuing lien upon the Units.

Section 12.3. If Association is Abolished. In the event that the Association is abandoned or abolished, or otherwise ceases to exist, or the Association proposes to dispose of the Common Facilities as provided herein, such Common Facilities shall first be offered for dedication to the Municipality, at no cost to the Municipality, before any other steps are taken in conformity with these Covenants and Restrictions.

ARTICLE XIII

GENERAL RESTRICTIONS

Section 13.1 Compliance with Confirmatory Subdivision Plan. No use of any Unit shall be made which is contrary to the Confirmatory Subdivision Plan approved by the Municipality, as provided for in the relevant provisions of the Municipality zoning ordinance, or such changes or amendment to such plan as may from time to time be properly approved by the Municipality. Each Owner shall be bound by all provisions of such Confirmatory Subdivision Plans, whether or not

recorded, including but not limited to all Notes shown thereon.

Section 13.2 Unit Size. No Unit shall be subdivided, partitioned, changed or reduced in size except that the Declarant reserves the right to itself, its successors or assigns, to modify the final plan in accordance with the proper consent and approval of the Municipality.

Section 13.3 Plans and Specifications. No construction, including excavation or site preparation, shall begin upon any Unit, residence or accessory building nor any major alterations made to the exterior of any existing building, until the plans and specifications showing size, shape, floor plans, materials, colors, location, elevations and disposition of fill shall have been submitted to and approved by the Association. The intent of such approval is to insure that all structures at the Property shall exist in general harmony and character with each other and the topography, vegetation and other features, as well as to insure that proper isolation distances are maintained between potable well site and septic fields.

Section 13.4 Occupancy. No dwelling house shall be erected on any Unit which shall be designed for occupancy by more than a single family or housekeeping unit; however, this shall not prohibit quarters for domestic service or in-law suites. On any Unit only one dwelling house shall be permitted.

Section 13.5 No Interference With Right of Way. No grading, landscaping or excavation or driveway installation shall be constructed on any Unit in a manner that encroaches within or that burdens, damages or interferes with drainage along, across or under the road right-of-way, or which interferes with any on Unit drainage swales, pipes, berms, basins or other drainage facilities of any type. Each Unit Owner shall further protect and refrain from damaging or causing any defect in any on-lot drainage swales, pipes, berms, basin or other Storm Water Management Facilities of any type, and failure to so protect and refrain from damaging shall constitute a violation of such Unit Owner's duties to the Association and to the Municipality under and pursuant to the approved subdivision plan for the Property. Hence, each Unit Owner failing to properly protect or causing any damage to any such drainage facilities, after failure to correct such defect or damage within 30 days after notification by either the Association or by the Municipality of the existence of such defect or damage, shall be subject to the penalties set forth in the Pennsylvania Municipalities Planning Code for violation of a Municipal Subdivision and Land Development Ordinance. In addition, the Association shall have the right to enter upon any Unit for the purpose of effecting repairs or rebuilding of any damaged drainage facility, and to assess the cost thereof against the Owner of such Unit, and to enforce such assessment in accordance with the provisions of Articles VII and IX.

Section 13.6 Sewer/Water Isolation Distances. Each Unit owner must comply with applicable regulations and laws concerning safe isolation distances. With specific reference to sewage fields, each Unit Owner shall maintain, at a minimum, an isolation distance of not less than one hundred (100 ft) feet between any sewage field and any potable well, on the same or neighboring Lot. The owners of all adjoining Units and the Association must be contacted prior to any Unit Owner seeking approval to locate a potable well or septic field.

Section 13.7 Restrictions Cumulative. All restrictions provided for herein shall be in addition to any restrictions contained in the Deed Covenants, municipal ordinances, rules or regulations, and in all events, in the case of conflict between such rules and regulations and the restrictions provided for herein, the more stringent of the two shall apply.

Section 13.8 Legal Actions. Except for actions commenced by the Association against a Unit Owner to collect delinquent common assessments, the Executive Board is only empowered to institute a civil action upon a vote of two-thirds (2/3) of the votes of the Owners in the Association voting in person or by proxy at a duly noticed and convened Special Meeting called for the purpose of authorizing the Executive Board to file a legal action in a court of law or before a panel of arbitrators.

Section 13.9 Compliance with Municipal and State Law. All Unit Owner, and their guests and invitees, must comply with all laws enacted by the Commonwealth of Pennsylvania or the local municipality. All Unit Owners, and their guests and invitees, must adhere to the posted traffic control signs posted within the Development. The conviction of any Owners or their guest or invitee of an offense relating to a posted traffic control sign shall provide a basis for the imposition of a reasonable fine by the Association in an amount to be set in the Association's Rules & Regulations.

ARTICLE XIV

GENERAL PROVISIONS

Section 14.1 Duration and Amendment. 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 and the Municipality, perpetually. This Declaration, including the Plat, may be amended only by the affirmative votes (in person or by proxy) or written consent of members representing two-thirds (2/3) of the total voting power of the Association, and approved in writing by the Municipality (to the extent affecting any right of the Municipality), except as otherwise specified below or in *the UPCA*. Any amendment must be recorded in the Columbia County Recorder of Deeds office.

Section 14.2 Exceptions to General Amendment Process. Notwithstanding the provisions of Section 14.1 above, the following exceptions to the general amendment process shall apply:

- (a) unanimous consent of all Unit Owners and the joinder of the Declarant shall be required for all circumstances set forth in § 5219(d) of *the UPCA*;
- (b) amendments may be executed by Declarant under all circumstances set forth in § 5219(a)(3)(i) of *the UPCA*;
- (c) amendments may be executed by the Association under all circumstances set forth in § 5219(a)(3)(ii) of *the UPCA*;

(d) amendments may be executed by certain unit owners under all circumstances set forth in § 5219(a)(3)(iii) of *the UPCA*.

Section 14.3 Recordation of Amendments. Every Amendment to this Declaration must be recorded in the Recorder of Deeds Office of Columbia County, Pennsylvania in order to become effective.

Section 14.4 Technical Corrections. The Executive Board may effect one or more appropriate corrective amendments without the approval of the Unit Owners or the holders of liens, in accordance with the authorization and procedures set forth in § 5219(f) of the *UPCA*.

Section 14.5 Indemnification of Officers, Executive Board and Committee Members. The Association shall indemnify every Executive Board member, officer and committee member, including those members of the Transition Board, his or her heirs, executors and administrators, against all loss, cost and expenses, including attorney fees, reasonably incurred by him or her in connection with any action, suit or proceeding to which he may be made a party by reason of his being, or having been, an Executive Board member, officer or committee member, except as to matters as to which he or she shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or willful misconduct. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason, or arising out of or in connection with, this indemnification provision shall be treated by the Association as common expenses.

Section 14.6 Notices. Any notice required to be sent shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as an Owner on the records of the Association at the time of such mailing.

Section 14.7 Enforcement. Enforcement of these covenants and restrictions shall be by and 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 Municipality 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 14.8 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 14.9 Gender. The use of the masculine gender in these Bylaws is deemed to include the feminine and neuter genders, and the use of the singular is deemed to include the plural, and vice versa, whenever the context so requires.

IN WITNESS WHEREOF, the said Declarant, by its duly authorized officer, upon approval on no less than eighty (80%) of the lot owners, has executed this Declaration the day and year first set forth above.

THE SOUTHERN COLUMBIA CORP

By: _____
Pamela Fraim Kressler,
President,
The Southern Columbia Corp

LIST OF EXHIBITS

Exhibit “A” — Existing Property Interest

Exhibit “B” — Approved Subdivision and Common Area Plans

Exhibit “C” — Community Plan for Mystic Mountain Estates

Exhibit “D” — Metes and Bounds Legal Description of Common Elements