

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
OF MOSBY MOUNTAIN**

THIS AMENDED AND RESTATED DECLARATION (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by MOSBY MOUNTAIN COMMUNITY ASSOCIATION, INC. (“Association”), grantor/grantee for indexing purposes.

WITNESSETH:

WHEREAS, the declarant, Evergreen Land Company (“Company”) executed the Declaration of Covenants and Restrictions of Mosby Mountain (“Original Declaration”) for purposes of creating the planned residential community known as “Mosby Mountain,” and caused said Original Declaration to be recorded on January 30, 2004 in the Albemarle County, Virginia land records (“Land Records”), at Deed Book 2682, Page 491, et seq.; and

WHEREAS, by First Amendment to Declaration recorded in the Land Records on December 19, 2007 at Deed Book 3529, Page 672, et seq. (“First Amendment”) and by Second Amendment to Declaration recorded in the Land Records on December 19, 2007 at Deed Book 3529, Page 676, et seq. (“Second Amendment”), the Original Declaration was amended by the Association; and

WHEREAS, Article X, Section 2 of the Original Declaration provides that it may be amended at a duly called meeting of the Association if two-thirds of the votes cast at such meeting are voted in favor of the amendment;

NOW THEREFORE, in accordance with Article X, Section 2 of the Original Declaration, the Original Declaration, as subsequently amended by the First Amendment and Second Amendment, is hereby amended and restated in its entirety as follows:

**ARTICLE I  
DEFINITIONS**

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) “Association” shall mean and refer to Mosby Mountain Community Association, Inc., a Virginia non-stock corporation, its successors and assigns.

(b) “Common Areas” shall mean and refer to those tracts or parcels of land with any improvements thereon which are deeded to the Association and designated in said deed or lease as “Open Spaces” or as “Common Areas.” The term “Common Areas” shall also include any personal property acquired or leased by the Association if said property is designated “Common Area.” All Common Areas are to be devoted to and intended for the common use and enjoyment

of the Members of the Association, their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the Declaration, and fee schedules and Rules and Regulations adopted by the Association.

(c) “Company” shall mean Evergreen Land Company, a Virginia corporation, its successors and assigns.

(d) “Conservation Areas” shall mean and refer to those certain portions of the Existing Property shown as “Conservation Areas” on the Subdivision Plat.

(e) “Development Unit Parcel” shall mean and refer to any parcel or tract of land within the Properties, conveyed by the Company to any third party under Covenants and Restrictions permitting the division of such parcel or tract into smaller land units. For the purposes of this Declaration, a parcel of land shall not be deemed a “Development Unit Parcel” until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a Development Unit Parcel is recorded in the Clerk’s Office of the Circuit Court of Albemarle County, Virginia. A Development Unit Parcel, or portions thereof, shall remain classified as such until further subdivided and classifiable as a Residential Lot or Lots or Common Area.

(f) “Family Dwelling Unit” shall mean and refer to any improved property or any property formerly classified a Residential Lot for which a building permit has been issued by the appropriate governmental authorities, which property is located within the Properties and intended for use, or being used, as a site for a single family dwelling. The term “Family Dwelling Unit” includes the subdivided Lot, the dwelling on the Lot and all other structures or improvements on that Lot.

(g) “Mosby Mountain” shall mean and refer to the lands in Albemarle County, Virginia, that are currently or hereafter subjected to this Declaration in accordance with Article II.

(h) “Member” shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section 1 of Article III.

(i) “Owner” shall mean and refer to the record owner as shown by the Land Records, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, or Development Unit Parcel situated within or upon the Properties, including but not limited to contract sellers, and those who have acquired fee simple title to any Lot through inheritance or foreclosure (regardless of whether such ownership is not yet reflected by the Land Records), but excluding those who have such interest merely as security for the performance of an obligation. Notwithstanding any applicable theory of a deed of trust, the term “Owner” shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term “Owner” mean or refer to any lessee or Tenant of an Owner.

(j) “Properties” shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(k) “Residential Lot” shall mean any subdivided parcel of land located within the Properties for which no building permit has been issued by the appropriate governmental authorities and which parcel is intended for use as a site for a single family detached dwelling as shown upon any recorded final subdivision plat on any part of the Properties. No parcel shall, however, be classified as a Residential Lot until the first day of the month following the recording of a plat in the Clerk’s Office of the Circuit Court of Albemarle County, Virginia showing such Residential Lot.

(l) “Subdivision Plat” shall mean that certain plat entitled “Subdivision Plat Mosby Mountain, Samuel Miller Magisterial District – Albemarle Co., VA” prepared by Kirk Hughes & Associates, dated October 31, 2002, last revised January 1, 2004.

(m) “Tenant” shall mean and refer to the lessee under a written agreement for the rental (lease) of a Family Dwelling Unit.

(n) “Unsubdivided Land” shall mean and refer to all land in the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article 11 hereof, which has not been subdivided into and classified as Residential Lots, or Common Area through metes and bounds subdivision plats recorded in the Clerk’s Office of the Circuit Court of Albemarle County, Virginia.

## ARTICLE II EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is subject to this Declaration is described as follows:

All that tract or parcel of land, situated, lying and being in Albemarle County, Virginia, which is more particularly described in Exhibit “A” attached hereto and by specific reference made a part hereof, and all such additional land that has been subjected to the Original Declaration in accordance therewith as reflected in the Land Records.

All of the real property hereinabove described shall sometimes be referred to herein as the “Existing Property”. All Existing Property and such additions thereto as may hereinafter be made pursuant to Section 2 hereof is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the Declaration.

Section 2. Additions to Existing Property. Additional lands may become subject to, but not limited to, this Declaration in the following manner:

(a) Annexation of additional property shall require the approval of at least two-thirds (2/3) of the total Voting Members, with such approval being obtained at an Association meeting duly called for this purpose, written notice of which shall be sent to all Members not less than fourteen (14) days or more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting;

(b) The addition authorized under this subsection shall be made by recording a Supplementary Declaration with respect to the additional property which shall extend the operation and effect of this Declaration to such additional property. The Supplementary Declaration, as approved in accordance with this Section, may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient to reflect the different character, if any, of the added properties, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner and Tenant, unless otherwise specified, shall be a Member of the Association. Every Owner shall be required to submit the names(s) of his Tenant(s) and the duration of their tenancy to the Secretary of the Association. The Association may issue to each Member a membership card which shall expire upon termination of a Tenant's Lease or upon sale by an Owner of his property in Mosby Mountain.

Section 2. Voting Rights. The Association shall have one (1) type of regular voting membership, as follows: Voting Members shall include each Owner of a Residential Lot and/or Family Dwelling Unit. A Voting Member shall be entitled to one (1) vote for each Residential Lot or each Family Dwelling Unit which such Member owns.

Payment of Special Assessments shall not entitle Members to additional votes. When any property entitling the Owner to membership as a Voting Member of the Association is owned by two (2) or more persons or entities, then the vote for the membership appurtenant to such Owner's property shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Residential Lot or Family Dwelling Unit. One co-Owner's vote shall be binding on all other co-Owners of that property unless a co-Owner submits to the Association written objection to that vote before the polls close, in which event that vote shall not be counted absent those Co-Owners reaching an unanimous agreement as to how their one vote shall be cast and such agreement is transmitted to the Association in writing before the polls close. The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections, and for the purpose of ascertaining the presence of a quorum.

Section 3. Governance.

(a) The Association shall be governed by a Board of Directors consisting of not less than five (5) Directors nor more than seven (7) Directors, of which at least three (3) shall also serve as Officers and no more than four (4) shall be Directors-at-Large.

(b) Directors shall be elected by the Voting Members of the Association and shall serve terms of two (2) years beginning January 1<sup>st</sup> of the year after the annual meeting at which they are elected. The terms of the Directors shall be staggered, with three (3) Directors being elected at the annual meeting in even-numbered years and four (4) Directors being elected at the annual meeting in odd-numbered years (or such similar proportions if the Board consists of less than seven Directors. Directors shall be eligible to serve a maximum of two (2) consecutive terms. A Director appointed to fill an unexpired term shall be eligible for election to two (2) more additional consecutive terms. The election of, terms of, vacancies in, resignation and removal of Directors shall be governed by Article V (“Directors”) of the Bylaws.

(c) The Officers of the Association shall be President, Vice President, and Secretary/Treasurer. No two or more offices may be held by the same person and all Officers must be Voting Members of the Association. Officers shall be elected annually by the Membership of the Association and must also be eligible to serve on and be elected to the Board of Directors. An Officer may serve a maximum of four (4) successive one-year terms. An Officer appointed to fill an unexpired term is eligible for election to a maximum of three (3) additional consecutive terms. Vacancies in, resignation of, and removal of Officers shall be governed by Article VIII (“Officers”) of the Bylaws.

(d) At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall convene the Nominating Committee, consisting of three (3) Members appointed by the Board of Directors, to generate a slate of nominations for the election of Directors and Officers for the annual meeting, in accordance with the provisions of the Declaration and the Bylaws for the Association.

Section 4. Election of the Board of Directors.

(a) Each Voting Member shall be entitled to as many votes as equals the total number of votes he is entitled to be based on the number of Residential Lots and Family Dwelling Units owned.

Each Voting Member may cast the total number of votes to which he is entitled for each vacancy to be filled. Cumulative voting shall not be allowed.

(b) The number of Residential Lots and Family Dwelling Units owned by Voting Members shall be determined by the Board of Directors (based on the Association’s records) as of the date on which notice of the meeting of the Members at which the Board of Directors is to be elected is mailed.

Section 5. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at meetings of the Association shall be as follows:

(a) The first time a meeting of the Members of the Association is called to vote on (i) an increase in the Maximum Regular Annual Assessment greater than that provided for by Section 7 of Article V hereof, (ii) a Special Assessment as provided for by Section 4 of Article V hereof, (iii) the gift or sale of any parcel of land and improvements thereon designated as a Common Area as provided for by subparagraph (f) of Section 3 of Article IV hereof, (iv) an Amendment to this Declaration as provided for by Section 2 of Article X hereof, or (v) the termination of this Declaration as provided in Section 1 of Article X hereof, the presence at the meeting of Members, in person or by proxy, entitled to cast thirty percent (30%) of the total vote of the Membership shall constitute a quorum

(b) The first time a meeting of the Members of the Association is called to vote on any action proposed to be taken by the Association, other than that described in subparagraph (a) above, the presence at the meeting of Members, in person or by proxy, entitled to cast fifteen percent (15%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any meeting described in subparagraphs (a) or (b) above, with the exception of any meeting called to vote on the termination of this Declaration described in subparagraph (a) above, another meeting or meetings may be called subject to the giving of proper notice and the required quorum at such subsequent meeting or meetings shall be one-half (1/2) of the required quorum at the preceding meeting.

Unless otherwise provided, any reference hereafter to “votes cast at a duly called meeting” shall be construed to be subject to the quorum requirements established by this Article Section 5, and any other requirements for such “duly called meeting” which may be established by the Bylaws of the Association. For the purpose of this section, “proper notice” shall be deemed to be given when given each Voting Member not less than fourteen (14) days prior to the date of the meeting at which any proposed action is to be considered, except as otherwise provided by applicable law.

Section 6. Proxies. All Voting Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

Section 7. Ballots by Mail. When desired by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot on which each Voting Member may vote for or against each such motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 5 of this Article III; provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment in Common Areas. Subject to the provisions of this Declaration, the Rules and Regulations of the Association, and any fees or charges established by the Association, every Member, and every guest of such Member, shall have a right of easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, Development Unit Parcel, or any Unsubdivided Land.

Section 2. Maintenance of Common Areas.

(a) The Association shall be responsible for all maintenance and operation of the Common Area, and for such additional construction of improvements thereon as may be authorized by the Association's Board of Directors.

Section 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 Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Areas and providing services authorized herein and in aid thereof to mortgage said properties provided, however, that any such mortgage is with the prior consent of two-thirds of the Voting Members of the Association, which consent may be evidenced in writing or by an affirmative vote of two-thirds of those Voting Members voting in person or by proxy at a duly called meeting of the Association;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosures;

(c) The right of the Association to suspend the rights and easements of enjoyment of any Owner (including the Owner's Tenant and guests of such Owner and Tenant) if the Owner becomes more than 60 days past due in the payment of any assessment against property owned by such Owner (with such suspension lasting until the Owner's assessment account is brought current), and for any period not to exceed sixty (60) days for each other infraction of the Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any assessment or a breach of the Association's governing documents shall not constitute a waiver or discharge of the Owner's obligation to pay the Assessment.

(d) The right of the Association to charge reasonable admission and other fees and dues for the use of recreational facilities and services on the Common Areas.

(e) The right of the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Areas.

(f) The right of the Association to give or sell all or any part of the Common Areas (except the Conservation Areas), including lease-hold interests, subject to (i) the limitations and restrictions, imposed by this Declaration and (ii) all other restrictions and limitations of record at the time of conveyance, to any public agency, authority, public service district, utility, or private concern for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such gift or sale of any parcel of land and improvements thereon, or determination as to the purposes or as to the conditions thereof, shall be effective unless such dedication, transfers, and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer of any parcel of land and improvements thereon affecting the Common Areas prior to the recording thereto. Such certificates shall be conclusive evidence of authorization by the membership. The gift or sale of any personal property owned by the Association shall be determined by the Board of Directors in its sole discretion.

(g) Notwithstanding anything herein to the contrary, provided that the aggregate acreage of the Open Space remains at least twenty-five percent (25%) of the acreage of the Existing Property, the Board of Directors of the Association shall have the right, in their sole discretion, to cause the Association to grant minor conveyances of Common Areas to resolve setback problems, or to grant easements for the encroachment of initial improvements constructed on parcels adjoining the Common Areas to the extent that such improvements actually encroach on such properties, including but not limited to, overhanging eaves, gutters and downspouts, and walls, such easements to continue only so long as such improvements exist.

## ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Residential Lot or Family Dwelling Unit located within the Properties, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) annual assessments or charges, (b) special assessments or charges for the purposes set forth in this Article, and (c) other charges, costs or fees that are assessed and collected from time to time as hereinafter provided, with such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual and special assessments, together with late fees, interest and costs of collection thereof, including reasonable attorney's fees, shall be a charge and continuing lien on the Owner's Residential Lot or Family Dwelling Unit against which each such assessment is made. Each such assessment, together with such late fees, interest and cost of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot or Family Dwelling Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment. The Association may perfect its lien by recording a memorandum of lien against a



Residential Lot or Family Dwelling Unit, which said lien shall be signed under oath by the Association's president or, in the discretion of the Board, by the Association's treasurer.

Section 2. Purpose of Assessments. The regular annual assessments levied by the Association shall be used for promoting the health, safety and common benefit of the Owner and for the improvement, maintenance, enhancement, enlargement, and operation of the Common Areas, to provide such other services which the Association is authorized to provide, and to otherwise carry out the business and responsibilities of the Association.

Section 3. Creation of Assessments. There are hereby created regular annual assessments as may be from time to time specifically adopted by the Board of Directors. These assessments shall be allocated equally among all Residential Lots and Family Dwelling Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole.

Section 4. Special Assessments for Improvements and Additions. In addition to the regular annual assessments, the Association may levy special assessments for the following purposes:

(a) Construction, reconstruction, repair, or replacement of capital improvements upon the Common Areas, including the necessary fixtures and personal property related thereto.

(b) For additions to the Common Areas;

(c) To provide for the necessary facilities and equipment to offer the service authorized herein; and

(d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Such special assessment, before being charged, must have received the approval of the Members of the Association by the favorable vote of fifty-one percent (51%) of the votes cast at a duly called meeting of the Association.

This provision shall be interpreted to mean that the Association may make in any one (1) year a regular annual assessment plus an additional special assessment.

Section 5. Reserve Funds. The Association shall establish reserve funds from its regular annual assessments to be held in reserve in an interest drawing account or investments as a reserve for:

(a) Repair and replacement of improvements on the Common Area, if any;

(b) Emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss; and

- (c) Initial costs of any new service to be performed by the Association.

Section 6. Due Dates For Assessments. Annual and special assessments shall be billed annually, quarterly, monthly, or on such other basis as may be determined by the Board of Directors. The due date(s) for assessments (or installments thereof) shall be determined by the Board and specified in the Association's written assessment notice sent to every Owner.

Section 7. Duties of the Board of Directors. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year to prepare a budget covering the estimated costs of operating the Association during the next year. The Board may not, without the vote of a majority of the votes cast at duly called meeting of the Association, increase the annual assessment more than (1) ten percent (10%) greater than the annual assessment for the immediately preceding fiscal year or the percentage increase during the previous one (1) year period in the Consumer Price Index (CPI-U), U.S. City Average, All Items (1982-84=100), or if not available, a comparable pricing index, whichever is greater. Once the annual assessment is set, the Board shall direct the preparation of an index of the Properties and regular annual assessments applicable thereto, which shall be kept in the office of the Association and which shall be open to inspection by any Member. Written notice of assessments shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by an Officer of the Association, setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid. If the Board of Directors authorizes an agent of the Association to collect assessments, the Certificate of the said agent shall be conclusive evidence against all but the Owner 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 regular annual assessment or any special assessment (or installment thereof) is not paid within twenty-five (25) days after its applicable due date, then such assessment shall become delinquent and a late fee shall be assessed in the amount of \$25.00 (or such other amount as may be established by the Board, but in no event less than 10% of the assessment or, if applicable, installment amount). In addition, the unpaid assessments (including, e.g., annual and special assessments and other charges assessed per this Declaration) may bear interest at the rate of twelve percent (12%) per annum from the applicable due date(s) until paid, and the remaining unpaid installments for that assessment, if any, may be accelerated such that the full balance is immediately due and payable in full. Delinquent Owners are responsible for reimbursing the Association for all costs of collection incurred by the Association as a result of that Owner's delinquency, including reasonable attorney's fees if the account is referred to the Association's legal counsel for collection.

If the assessment is not paid within sixty (60) days after the applicable due date, the Association may take any action available under the law against the Owner personally and/or the Owner's Residential Lot or Family Dwelling Unit against which such delinquent assessments are

charged, including but not limited to filing suit against the Owner to obtain a money judgment and/or foreclosing the lien against such lot or unit, and all resulting interest, late fees, collection costs and reasonable attorney's fees shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Residential Lot or Family Dwelling Unit.

Section 9. Subordination of the Lien. In accordance with Section 55-516(A) of the Virginia Property Owners' Association Act ("POA Act"), the continuing lien of the assessments provided for herein shall be subordinate to the lien of any prior first or second deed of trust now or hereafter placed upon any properties subject to assessment. In the event a creditor acquires title to any property subject to assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to assessments accruing after such acquisition.

Section 10. Annual Statements. The President, Treasurer, or such other Officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association; provided however, that this requirement shall be construed to apply only to creditors of more than One Thousand and no/100 (\$1,000.00) Dollars. Such Officer shall furnish to each Voting Member of the Association who may make a request therefore in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Voting Member either in person or by mail. Any holder of a first or second mortgage on a lot(s) or unit(s) shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year.

Section 11. Annual Budget. The Board of Directors shall make available to all Members, prior to the first day of the next fiscal year, a budget outlining anticipated receipts and expenses for the following fiscal year. The financial books of the Association shall be available for inspection by all Members in good standing in accordance with Section 55-510 of the POA Act.

## ARTICLE VI FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Common Area. The Association shall be authorized to own and/or maintain Common Areas, furnishings, and improvements devoted to, but not limited to, the following uses:

- (a) For roadways, access lanes, roadway medians and parkways along said roadway, or lanes, or cul-de-sac islands, and neighborhood or other area entrances or entrance easements throughout the Properties;
- (b) For sidewalks, walking or jogging paths or trails, or bicycle paths;

- (c) For providing any of the services which the Association is authorized to offer;
- (d) For purposes set out in deeds by which Common Areas are conveyed to the Association, provided that such purposes shall be approved by the Board of the Association;
- (e) For recreational and community facilities; and

Section 2. Services. The Association shall be authorized but not required, except as specified in Section 3 of this Article, to provide the following services:

- (a) Cleaning and maintenance of all sidewalks, walking trails, bike trails, Common Areas, and open space Areas, within the Properties, and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;
- (b) Landscaping and beautification of roadways, access lanes, roadway medians, parkways, cul-de-sac islands, neighborhood and other area entrances, walking paths, bike trails, Common Areas, and open space areas;
- (c) Lighting of roads, sidewalks, walking paths, bike trails, parking lots, and any recreational and community facilities located within the Properties;
- (d) Garbage and trash collection and disposal;
- (e) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;
- (f) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration;
- (g) To take any and all actions necessary to enforce this Declaration and the Association's Bylaws, Articles of Incorporation, Architectural Guidelines, and Rules and Regulations (collectively, the "Governing Documents") and to perform any of the functions or services delegated to the Association in this Declaration;
- (h) To set up and operate an Architectural Review Board for all Common Areas, Residential Lots and Family Dwelling Units;
- (i) To construct improvements on Common Areas, for use for any of the purposes authorized in this Article;
- (j) To provide administrative services for the Association, including, but not limited to, legal, accounting, and financial; and communication services, including, but not limited to,

community newsletters and newspapers to inform Members of activities, notices of meetings, referendums, and other issues and events of community interest;

(k) To provide liability and hazard insurance covering improvements and activities on and within the Common Areas; and

(l) To construct mailboxes, signs, and other standard features for use throughout the Properties.

Section 3. Minimum List of Functions and Services. The “Minimum List of Functions and Services” shall establish and define the minimum level of functions and services which the Association must furnish to its Members. The “Minimum List of Functions and Services” is as follows:

(a) The Association shall provide or procure the administrative services necessary to carry out the Association’s obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association, and the Bylaws of the Association, including, but not limited to, legal, accounting, financial, and communications services.

(b) The Association shall administer and enforce the covenants and restrictions established in this Declaration, and subsequent declarations including, but not limited to, the following:

(1) The Association shall set assessments, levy assessments, notify the Members of such assessments, and collect such assessments;

(2) The Association shall maintain in good condition and operate all Common Areas as obligated to do so under this Declaration;

(3) The Association shall hold annual meetings, and special meetings, as required, hold elections for the Board of Directors as required, and give Members “proper notice” as required; and

(4) The Association shall prepare annual statements and annual budgets, and shall make the financial books of the Association available for inspection by Members at all reasonable times.

(c) The Association shall provide appropriate liability and hazard insurance coverage for improvements and activities on all Common Areas.

(d) The Association shall provide appropriate Directors’ and Officers’ Legal Liability Insurance. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer,

director, or committee member, except where such action, suit or proceeding arises from such officer, director or committee member's own willful misconduct or knowing violation of criminal law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled.

(e) The Association shall keep a complete record of all its acts and corporate affairs.

(f) The Association shall provide regular cleanup and maintenance of all Common Areas, jogging and bike trails throughout the Properties, including, but not limited to mowing grass on Common Area and fulfilling any maintenance obligations within any easement areas for which the Association is responsible.

(g) The Association shall provide general maintenance of all jogging and bike trail signs, and neighborhood and other area signs, including, but not limited to, maintaining, repair work, replacement as needed, and landscaping within Common Areas and within any sign easement on any lot. Easements for signs and access easements for the maintenance and landscaping around the sign as shown on any recorded plat shall be for the benefit of the Company, the Association, and their assigns.

(h) The Association shall provide regular and thorough maintenance and cleanup of all Common Areas, including, but not limited to, mowing of grass, fertilization as needed, landscape maintenance as needed, pickup and disposal of trash, washing down of picnic tables and benches as needed, and painting, repairs to and replacement of all improvements as needed.

(i) The Association shall allow the Conservation Areas to remain in their natural state, subject to the requirements of Section 13.4.1 of the Albemarle County Zoning Ordinance in effect as of the date of this Declaration.

(j) The Association shall maintain the Landscape and Planting Easements shown as "20' LP/E" along the rear of lots 21 through 23 and lots 57-61 on the Subdivision Plat (the "Landscape and Planting Easement Areas"), including the replacement of any damaged, dead, or dying vegetation located within the Landscape and Planting Easements.

(k) The Association shall plant additional landscaping within the Landscape and Planting Easement Areas, in the specific locations shown on the Mosby Mountain Planting Plan prepared by The Cox Company, dated January 20, 2004, and labeled Exhibit "B", which Exhibit B is attached hereto and by specific reference made a part hereof (the "Planting Plan"). Such

planting shall be carried out pursuant to the specifications described on the Planting Plan, and the Association shall maintain all landscaping planted pursuant to the Planting Plan, which obligation shall include the replacement of any damaged, dead, or dying landscaping planted pursuant to the Planting Plan.

(1) Insurance coverage on the Property shall be governed by the following provisions:

(1) Ownership of Policies. All insurance policies upon the Common Areas shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees as their security interest may appear.

(2) Coverage. All buildings and improvements upon the land and all personal property included in the Common Areas and its facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined periodically by the Board of Directors of the Association. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazard covered by standard extended coverage endorsement;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses provided for waiver of subordination.

(3) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(4) Premiums. Premiums for insurance policies purchased by the Association shall be paid by Association and charged to the Owners as part of the regular annual assessment.

(5) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws.

(6) Proceeds of insurance policies received by the Association as insurance trustee shall be placed in the Association's treasury for the following:

(i) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefore.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be retained by the Association.

(7) All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall be covered by a fidelity bond or employee dishonesty policy in an amount equal to the greater of (a) six (6) months' assessments plus reserves accumulated, or (2) the amount required by applicable law.

Section 4. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 3 of this Article. The functions and services, other than those set in Section 3 of this Article, may be carried out or offered by the Association at any particular time and shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. .

Section 5. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions and services; provided that any such mortgage is with the prior consent of two-thirds of the Voting Members of the Association, which consent may be evidenced in writing or by an affirmative vote of two-thirds of those Voting Members voting in person or by proxy at a duly called meeting of the Association.

Section 6. Maintenance or Protection of Property Not Owned by the Association. The Association shall be authorized to render services of a governmental nature not furnished by the local government in the case of maintenance or protection of property not owned by it.

## ARTICLE VII

### ARCHITECTURAL CONTROL AND GENERAL PROPERTY COVENANTS

Section 1. Architectural Approval For Residential Lots and Family Dwelling Units. No building, fence, or other structure shall be erected, placed, or altered, nor shall a building permit for such improvement be applied for on any Residential Lot or Family Dwelling Unit until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas), and construction schedule shall have been approved in writing by the Association (acting through the Board of Directors or, if applicable, the Board-authorized Architectural Review Board ("ARB")). The Board of Directors further reserves the right to promulgate and amend from time to time architectural guidelines (hereinafter referred to as the "Architectural Guidelines") for Properties within Mosby Mountain, and such Architectural Guidelines shall establish, define, and expressly limit those standards and specifications that will be approved including, but not limited to,



architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design, and construction technique. Refusal or approval of plans, location, exterior color or finish, or specifications by the Association may be based upon any ground, including purely aesthetic considerations, which in the sole discretion of the Board (or the ARB) shall seem sufficient in promoting the general scheme of development for Mosby Mountain and the intent of the Declaration and Architectural Guidelines. No alteration in the exterior appearance of any building, fence or other structure, including exterior color or finish, shall be made without like prior written approval by the Association. One (1) copy of all plans and related data shall be furnished by the Owner to the Association for its records. In the event approval of such plans (as submitted in accordance with all applicable provisions of the Declaration and the Architectural Guidelines) is neither granted nor denied within thirty (30) days following receipt by the Association of the Owner's written demand for approval, approval shall be deemed to have been granted except to the extent such plans are in direct conflict with an express covenant or restriction contained in the Declaration.

Section 2. Site and Location Approval for Residential Lots and Family Dwelling Units. In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure, and to assure that structures will be located with regard to the topography of each property, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Association (acting through the Board of Directors or, if applicable, the ARB) reserves the right to control absolutely and to decide solely (subject to the provisions of the Zoning Ordinance of the County of Albemarle) the precise site and location of any building or structure on a Residential Lot or Family Dwelling Unit for reasons which may in the sole discretion and judgment of the Association seem sufficient in promoting the general scheme of development for Mosby Mountain and the intent of the Declaration and Architectural Guidelines. Such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight, or breeze available to a building or structure on a given Property shall not be affected by the location of a building or structure on an adjacent Property.

Section 3. Off Street Parking. Each Owner of a Residential Lot or Family Dwelling Unit shall provide space for the parking of automobiles off of public streets prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Association.

Section 4. Maintenance of Property. It shall be the responsibility of each Owner to keep his or her Residential Lot and Family Dwelling Unit well-maintained and in a clean, orderly condition, including but not limited to the maintenance, repair and replacement of all structures, improvements, landscaping and personal property located thereon. The Association's Rules and Regulations may provide for more detailed maintenance standards applicable to the Properties. In the event an Owner shall fail to maintain or repair the Owner's Residential Lot or Family Dwelling Unit, or the exterior of any improvements thereon, in a manner satisfactory to the Board of Directors (for example, maintaining conditions that are unclean, unsightly, unkempt, unhealthy or unsafe or which otherwise tend to decrease the beauty or safety of Mosby

Mountain, the neighborhood as a whole, or the specific area), then the Association (acting through the Board and its authorized agents) shall have the right to enter upon any Property (including Residential Lots and Family Dwelling Units but not including the interior of any dwelling or other structure) for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the property, and the cost of such corrective action shall be paid by the Property's Owner (as a "Cost of Corrective Action" per Article X, Section 6 of the Declaration). Such entry shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such condition pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Association to take any such corrective action.

Section 5. Public Sewer. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made for the disposal of sewage by connection with the sewer mains of the Albemarle County Service Authority which is the only system presently approved by Albemarle County for use in Mosby Mountain, or other means of sewage disposal if other means are approved by Albemarle County for use in Mosby Mountain.

Section 6. Public Water. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions for water shall be made by connection with the water lines of the Albemarle County Service Authority water system which is the only system presently approved by Albemarle County for use in Mosby Mountain, or other water system if other water system is approved by Albemarle County for use in Mosby Mountain.

Section 7. Easement Reservation. The Association reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable, and releasable easement and right, on, over and under the Properties to erect, maintain, and use electric, community antenna television, cable television and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage, or other public conveniences or utilities on, in, or over those portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Company, or (b) be designated as the site for a building on a plot plan for erection of a building which has been filed with the Company and which has been approved in writing by said Company. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance. The Association further reserves the right to locate wells, pumping stations, siltation basins, and tanks within Mosby Mountain in any open space or on any Property designated for such use on the applicable plat of said Property, or to locate same upon any Property with the permission of the Owner of such Property. Such rights may be exercised by any licensee of the Association, but this reservation

shall not create any obligation on the part of the Association to provide or maintain any such utility or service.

Section 8.     Architectural Review Board. As specified above, no building, wall, fence, or other structure shall be commenced, erected, or maintained upon a Residential Lot or Family Dwelling Unit, nor shall any landscaping modifications be done in these areas, nor shall any exterior addition to any existing structure located on these areas or change or alteration therein be made until the plans and specifications therefore showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location with the surrounding structures and topography by the Board of Directors or the Board-appointed Architectural Review Board (or “ARB”).

The Board may appoint the ARB to assist the Board in regulating the exterior appearance of the Common Area, Residential Lots and/or Family Dwelling Units. The ARB, if appointed, shall be composed of at least three (3) but not more than five (5) Members, all of whom shall be appointed by the Board of Directors of the Association. Under no circumstances shall the ARB have the authority to grant a variance or waive any provision of the Declaration or the Architectural Guidelines, and all actions or inactions by the ARB are subject to appeal to, and review by, the Board of Directors in accordance with any applicable deadlines or procedures contained in the Architectural Guidelines and/or Rules and Regulations.

ARTICLE VIII  
ADDITIONAL RESTRICTIONS TO IMPLEMENT EFFECTIVE  
ENVIRONMENTAL AND LAND MANAGEMENT CONTROLS

Section 1.     Landscape Plan. Topographic and vegetation characteristics of Common Areas, Residential Lots and Family Dwelling Units within Mosby Mountain shall not be altered by excavation, grading, removal, reduction, addition, clearing, cutting, pruning, seeding, planting, transplanting, or any other means without the prior written approval of the Association (acting through the Board or, if applicable, the ARB). In addition, the Association may, at its election, require prior written approval of a landscape plan. Refusal or approval of plans or any alteration of topographic or vegetation characteristic(s) by the Association may be based upon any ground, including purely aesthetic considerations, which in the sole discretion of the Association seems sufficient in promoting the general scheme of development for Mosby Mountain and the intent of the Declaration and Architectural Guidelines. Written approval will be granted for the minimum amount of earth movement and vegetation reduction required in plans and specifications approved pursuant to the provisions of the Declaration. Should written notice be served by the Association upon any Owner requiring corrective alteration of topographic and vegetation characteristics pursuant to paragraphs 3 and 4 of this Article, such notice shall be deemed to constitute written approval by the Association for such corrective alteration under the provisions of this paragraph 1.

Section 2.     Landscape Guidelines. Notwithstanding anything in the foregoing to the contrary, the Association reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the “Landscape Guidelines”) as part of the Rules

and Regulations, which shall establish approved standards, methods, and procedures for landscape management on specific Properties in Mosby Mountain, and such authorized standards, methods, and procedures may be utilized by the Owners without prior written approval by the Association; provided, however, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed from Residential Lots and Family Dwelling Units without the prior written approval of the Association. Notwithstanding the prior sentence to the contrary, only the Association has the authority to plant, remove or otherwise alter trees, shrubs, grass or other landscaping on the Common Area, and no trees may be removed from the Conservation Areas by the Association or any Member other than dead, diseased, or dying trees. Approval for the removal of trees located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property. The provisions of this paragraph 2 shall in no way constitute a waiver of the requirement to receive prior written approval for any alteration of topographic or vegetation characteristics, pursuant to the provisions of paragraph 1 of this Article, other than for those alterations specifically authorized in said Landscape Guidelines.

Section 3. Erosion Control. In order to implement effective and adequate erosion control, the Association and its agents shall have the right to enter upon any Property before or after a building or structure has been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its right to enter upon the Properties for the purpose of performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Association shall give the Owner of the Property the opportunity to take any corrective action required by giving the Owner of the Property written notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by the Owner. If the Owner of the Property fails to take the corrective action specified immediately, the Association or its agent may then exercise its right to enter upon the Property in order to take the necessary corrective action. The cost of such erosion prevention measures, when performed by the Association or its agent, shall be kept as low as reasonably possible. The cost of such work, when performed by the Association or its agent on Property, shall be paid by the Owner thereof as a Cost of Corrective Action per Article X, Section 6. The provisions in this paragraph shall not create any obligation on the part of the Association to perform such work or corrective action.

Section 4. Rights of Association to Clear Property. In order to implement effective insect, reptile, rodent, and woods fire control, the Association and its agents have the right to enter upon any Property for the purpose of moving, removing, clearing, cutting, or pruning underbrush, weeds, or other unsightly growth which in the opinion of the Association detracts from the overall beauty, setting, and safety of Mosby Mountain. The cost of this vegetation control shall be kept as low as reasonably possible, shall be paid by the Owner of the Property as a Cost of Corrective Action per Article X, Section 6. Such entry shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need of such work and unless such Owner fails to perform the work within said thirty (30) day period. The provisions in this paragraph shall not create any obligation on the part of the Association to mow, clear, cut or prune any Property.

Section 5. Easement Reservation. In addition, the Association reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable, and releasable easement and right on, over, and under any Property to dispense pesticides and take other actions which in the opinion of the Association are necessary or desirable to control insects and vermin, and to cut fire breaks and take other actions which in the opinion of the Association are necessary or desirable to control fires on any Property or any improvements thereon, and for purposes of erosion control allowed in paragraph 3 above.

The rights reserved unto the Association or the Company, and its successors and assigns, and its agents, in paragraphs 3, 4 and 5 above shall not be unreasonably employed and shall be used only where necessary to affect the stated intents and purposes of said paragraphs.

ARTICLE IX  
ADDITIONAL RESTRICTIONS AFFECTING  
RESIDENTIAL PROPERTIES

Section 1. Residential Properties. “Residential Properties” as used in this Article shall mean and refer to all those parcels or tracts of land within the Properties defined as “Single Family Lots”.

Section 2. Single Family Lots. “Single Family Lots” or “Lots” as used in this Article shall mean and refer to all those parcels or tracts of land within the Properties intended for subdivision or subdivided into properties or lots intended for the construction of, or containing, detached single family dwelling units.

Section 3. Residential Property Use.

(a) All Residential Properties shall be used for residential purposes, recreational purposes incidental thereto, and for customary accessory uses. The use of a portion of a dwelling unit on a Residential Property as an office by the Owner or tenant thereof shall be considered a residential use if such use does not create undue customer or client traffic, as determined by the Board in its sole and uncontrolled discretion, to and from the unit or the Property, subject to the Albemarle County Zoning ordinance. Businesses that bring customers, clients or employees to the house are not allowed.

(b) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on a Single Family Lot other than one (1) detached single family dwelling and one (1) small accessory building, and one (1) detached private garage, provided the use of such accessory building and/or garage does not overcrowd the property, as determined by the Association in its sole discretion, and provided, further, that such building is not used for any activity normally conducted as a business. No accessory building may be constructed prior to the construction of the main building.

(c) A guest suite or like facility without a kitchen may be included as part of the main dwelling or an accessory building on any Single Family Lot, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such suite would not result in overcrowding the Property, as determined by the Association in its sole discretion.

Section 4. Completion of Improvements.

(a) The exterior of each house, and all other structures must be completed within one (1) year after the construction of same shall have commenced on all Single Family Lots except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. Houses may not be temporarily or permanently occupied until the exteriors thereof have been completed. During the continuance of construction, the Owner of the Lot shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition, pursuant to the provisions of the Declaration and Rules and Regulations.

Section 5. Screened Area and Other Matters.

(a) An Owner of a Residential Property shall provide a screened area to hide from view from the road and adjacent properties, garbage receptacles, fuel tanks or similar unsightly objects as determined by the Association. Plans for such screened area delineating the size, design, specifications, exterior color or finish, and location must be approved by the Association prior to construction. No alteration in the exterior appearance of any screened area shall be made without like prior written approval by the Association. Garbage receptacles and fuel tanks may be located outside of screened area only if located underground, and such underground garbage receptacles and fuel tanks and their location must likewise be approved by the Association prior to construction.

(b) Garbage and/or recycling storage and pickup shall be governed by the Association's Rules and Regulations.

(c) No mobile homes, school buses, trailers, campers, recreational vehicles, dune buggies, boats, trailers, tow trucks, ambulances, off road vehicles, farm vehicles, or any vehicle not considered primarily a passenger vehicle as determined solely by the Association, shall be parked on any Residential Property (except wholly within an enclosed garage) or Common Area. However, when and if there is an area or lot in Mosby Mountain designated by the Association for recreational vehicle parking and storage, the vehicles listed in the preceding sentence may be parked within the confines of the designated area or lot. Use of the parking and storage lot shall be subject to such rules, regulations and fees as set by the Association. Except during construction periods, no trucks shall be parked on a Residential Property except within the confines of a garage nor shall they be parked on any road or Common Area.

(d) No clothing, laundry or wash shall be aired or dried on the exterior portion of any Residential Property.

(e) All toys, bicycles, tricycles, motorcycles, mopeds, and such other similar items located on Residential Property or adjacent streets shall be removed each evening to an area not exposed to view from any other property or street. No animals, livestock or poultry of any kind shall be raised, bred or kept on, except that dogs, cats or other household pets may be kept on Residential Properties subject to the Association's Rules and Regulations. All pets not on the property of the owner shall be under leash or totally controlled in a similar manner at all times by the owner.

Section 6. Prohibited Structures.

(a) No mobile home, trailer or barn shall be placed on any Residential Property at any time, either temporarily or permanently.

(b) No structure of a temporary character shall be placed upon any Residential Property at any time, provided, however, that this prohibition shall not apply to trailers, shelters or temporary structures used by the contractor during the construction of the main dwelling unit, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Property after completion of construction. The design, location and color of structures temporarily placed on a Residential Property by a contractor must be approved in advance in writing by the Association. The use of PODS or similar storage devices, and industrial/commercial garbage dumpsters shall be governed by the Association's Rules and Regulations and require ARB Approval.

(c) No television antenna, satellite dish, radio receiver, radio sender, or other similar device shall be attached to or installed on any Residential Property or on the exterior portion of any building or structure on any Residential Property except as follows: in accordance with any applicable Rules and Regulations, an Owner or occupant of a Residential Lot or Family Dwelling Unit may install wholly within such property's boundaries the type of satellite dishes or antennas that are covered by the Federal Communications Commission's Over-the-Air Reception Devices ("OTARD") rule. As of the date of this Declaration, the OTARD rule covers: (i) "dish" antennas that are one meter (39.37") or less in diameter that are designed to receive direct broadcast satellite service (including direct-to-home satellite service) or to receive or transmit fixed wireless signals via satellite; (ii) antennas that are one meter or less in diameter or diagonal measurement and are designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; and (iii) antennas that are designed to receive local television broadcast signals.

(d) Poles permanently placed in the ground for any use, including flag poles and basketball structures are not allowed.

Section 7. Utility and Drainage Easements. The utility and drainage easements reserved by the Company in these covenants shall be located along the boundary lines of each Single Family Lot, unless otherwise shown on a subdivision plat.

Section 8. Further Subdividing. No Single Family Lot shall be subdivided or its boundary lines changed, nor shall application for same be made to Albemarle County, except

with the prior written consent of the Association. The provisions of this paragraph shall not prohibit the combining of two (2) or more contiguous lots into one (1) larger lot. Following the combining of two (2) or more lots into one (1) larger lot, only the exterior boundary lines of the resulting larger lot shall be considered in the interpretation of the Declaration.

Section 9.     Signs. No sign shall be erected, maintained or allowed on any property by anyone (including, but not limited to, an Owner, a tenant, a realtor, a contractor, or a subcontractor) except for the following:

(a)     One Residential real estate sign no larger than 6 square feet that is metal and does not include hand written text may be placed near the road in the front of the house. The sign shall be removed within 3 days of the property going under contract. ARB approval is not required.

(b)     Home security signs not to exceed 1' x 1' with a limit of 1 sign per side of house that has an entrance. ARB approval is not required.

(c)     Up to two political election signs that do not exceed 6 square feet and do not include hand written text may be placed near the road in the front of the house up to 6 days prior to the election date and shall be removed by midnight on the day after Election Day.

(d)     Event signs: One day event signs such as “yard sale” signs or “birthday party” signs etc. are allowed on the day of the event. ARB approval is not required.

Notwithstanding the above, the Board may in its sole discretion demand any sign be removed from any property or deny permission for any sign to be erected.

Whenever there shall have been placed or constructed on any property within Mosby Mountain any sign which is in violation of the Governing Documents, the Association and its agents shall have the right, upon no less than five (5) days' prior written notice, to enter upon such property where such violation exists and summarily remove the same at the expense of the property's Owner, which shall be paid as a Cost of Corrective Action per Article X, Section 6.

Section 10.     Mailboxes. No mailbox shall be erected or maintained on any Property until the proposed mailbox design, color and location have been approved in writing by the Association. Refusal or approval of design, color, or location may be based by the Association upon any ground, including purely aesthetic considerations, which in the sole discretion of the Association seems sufficient in promoting the general scheme of development for Mosby Mountain and the intent of the Declaration and Architectural Guidelines. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Association. The Association further reserves the right to establish uniform mailbox regulations (the “Uniform Mailbox Regulations”) as part of the Architectural Guidelines which shall define standard design criteria for all mailboxes erected upon any Property in Mosby Mountain.

Section 11.     Rules and Regulations. The Board of Directors shall have the authority to adopt, amend and enforce, on behalf of the Association, reasonable rules and regulations (“Association's Rules and Regulations” or “Rules and Regulations”) relating to the provisions of



this Articles VII through IX and/or to other areas of Association responsibility under the Declaration, Bylaws or Articles of Incorporation.

## ARTICLE X GENERAL PROVISIONS

Section 1.     Duration. The provisions, covenants and restrictions of this Declaration and any Amendments thereto shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and/or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically extended for successive periods of ten (10) years and shall be similarly enforceable. The number of ten (10) year extension periods hereunder shall be unlimited, and this Declaration shall be automatically extended upon the expiration of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year extension period, unless at a duly called meeting of the Association fifty-one percent (51%) or more of the total vote entitled to be cast by all the Members of the Association shall vote in favor of terminating this Declaration at the end of its then current term. The presence at the meeting of the Members or proxies entitled to cast thirty percent (30%) of the total vote of the Membership shall constitute a quorum. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Voting Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the Resolution of Termination adopted by the Association, the date of the meeting of the Association at which such Resolution was adopted, the date the notice of such Meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the total number of votes necessary to adopt a Resolution terminating this Declaration, the total number of votes cast in favor of such Resolution, and the total number of votes cast against such Resolution. Said certificate shall be recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2.     Amendments. All proposed Amendments to this Declaration shall be submitted to a vote of the Voting Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if two-thirds (2/3) of the votes cast at such meeting vote in favor of such proposed amendment, with the Voting Members' approval evidenced by their execution of ratifications of such proposed amendment. Notice shall be given each Voting Member at least fourteen (14) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President of the Association (or Vice President, in the President's absence or inability to act) shall execute the amendment instrument, certifying that the requisite majority of Voting Members approved the amendment and signed ratifications thereof. Any such amendment is not effective until recorded in the Land Records. Notwithstanding the provisions of this Section to the contrary, this Declaration may not be

amended to (a) alter the requirement of Section 3(g) of Article IV which requires that the aggregate acreage of the Open Space constitute at least twenty-five percent (25%) of the acreage of the Existing Property; or (b) alter the requirement of Section 2 of Article VIII which restricts the removal of trees from the Conservation Areas.

Section 3. Notices. Any notice required to be sent to any Voting Member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when delivered personally or sent by mail, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one (1) of two (2) or more co-Owners of a Residential Lot or Family Dwelling Unit shall constitute notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of the Declaration and other Governing Documents shall be by any proceeding at law or in equity, and/or through other means available under the Declaration or applicable law, against any person or persons violating or attempting to violate or circumvent any provision, covenant or restriction, including, but not limited to legal action to restrain a violation and/or to recover damages, and/or to enforce any lien created by the Declaration. Failure by the Association to enforce any provision, covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. The costs of enforcement efforts taken by the Association, together with reasonable attorney's fees incurred by the Association, shall constitute a lien as set forth in Article V and the personal obligation of the responsible Owner and/or Member. Each Owner is responsible for such Owner's own violations of the Governing Documents and for violations by such Owner's family members, tenants, guests, contractors and agents.

In addition to the right of the Association to enforce the Declaration, in the event of a violation or breach of any of the restrictions contained herein by any Owner or Member, or agent or guest of such Owner or Member, each Owner shall have the right to proceed at law or in equity to compel a compliance to the terms hereof.

In addition to any other available action or remedy, the Association may also assess violation charges against Members for violations of this Declaration or the Rules and Regulations (other than for nonpayment of assessments, which are addressed in other provisions of the Declaration), after first giving the responsible Member notice and an opportunity for a hearing in front of the Board of Directors, in accordance with any applicable requirements and limitations in the POA Act and any Board-adopted procedures.

In addition to the foregoing, the Association or its agent shall have the right, whenever there shall have been placed, constructed or maintained on any Property in Mosby Mountain any building, structure, chemical, substance, object, material, or condition which is in violation of the Declaration, to enter upon such Property where such violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner, tenant, or agent of the Owner; provided,

however, that whenever stated in the Declaration that the Association may serve notice requiring immediate corrective action, and such action is not performed immediately by the Owner, tenant, or agent of the Owner, the Association or its agent shall have the right to enter immediately and summarily abate or remove such violation at the expense of the Owner. Any such entry and abatement or removal shall not be deemed trespass.

In addition to the foregoing the Association or its agent shall have the right, whenever permitted by this Declaration, to enter immediately (unless otherwise specifically stated) any Property in Mosby Mountain to implement environmental controls, to take corrective action, or to take any action necessary. The cost of such action, when performed by the Association or its agent shall be paid by the Owner of the Property on which the work is performed. Entrance upon any Property pursuant to the provisions shall not be deemed a trespass.

All such expenses incurred in the exercise of the above-reference rights of entry shall be a Cost of Corrective Action per Section 6 below.

Whenever the Association or its agent is permitted by this Declaration to correct, repair, enhance, improve, clean, preserve, clear out, remove, or take any action on any Property or on the easement areas adjacent thereto, entering the Property and taking such action shall not be deemed a trespass.

Section 5. Severability/Conflict. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any Court of other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such adjudication shall in no way effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. In the event of irreconcilable conflict between the Declaration and other Governing Documents, the provisions of the Declaration shall control.

Section 6. Corrective Action. Whenever the Association or its agent is permitted by this Declaration to correct, repair, enhance, improve, clean, preserve, clear out, remove, or take any action on any Property or on the easement areas adjacent thereto, and whenever it is stated in this Declaration that the cost of such action (hereinafter called the "Cost of Corrective Action") shall be paid by the Owner of the Property on which such corrective action is performed, the Cost of Corrective Action shall be deemed to be and collected as an assessment against the Owner and a continuing lien against the Owner's Residential Lot or Family Dwelling Unit, and shall be subject to the same penalties and remedies for untimely payment as specified in Article V, Section 8. The Cost of Corrective Action shall be billed to the responsible Owner at the completion of such corrective action, and all bills shall be due and payable thirty (30) days from the date of mailing of same.

Section 7. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration, and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or

construction that will best tend toward the consummation of the general plan of development within Mosby Mountain.

Section 8. Authorized Action. All powers, duties and authority vested in or delegated to the Association are exercised by the Board of Directors, acting on behalf of the Association, except where such power, duty or authority is expressly reserved to the Voting Members by the provisions of this Declaration, the Association's Articles of Incorporation or Bylaws, or applicable law, and except where the Board of Directors has delegated certain architectural regulatory functions to the ARB in accordance with the Declaration. All actions which the Association, acting through the Board, is allowed to take under the Declaration shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the Bylaws of the Association, unless the terms of the Declaration provide otherwise.

Section 9. Limited Liability. The Association or its agent shall not be liable to any Owner or to any other person on account of any claim, liability, damage, or expense suffered, incurred by, or threatened against any Owner or such other person arising out of or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the County of Albemarle, Virginia, whether given, granted or withheld.

Section 10. Use of Technology. Notwithstanding anything to the contrary in this Declaration or the Association's Bylaws or Articles of Incorporation, the Board may provide for or allow notices, votes, consents or approvals to be accomplished using the most advanced technology available at the time if such use is a generally accepted business practice, all in accordance with any requirements and limitations imposed by Section 55-515.3 of the POA Act and by the Virginia Nonstock Corporation Act, as may be amended from time to time. If a provision of this Declaration or the Bylaws provides for a vote, approval or consent of Members (or Voting Members) at a meeting, then at the Board of Director's discretion, such vote, approval or consent may also, or in the alternative, be obtained by mail or electronic transmission in accordance with applicable law, and in such event, the minimum total number or percentage of Members (or Voting Members) required to participate in the process shall be equal to the applicable quorum requirement had a meeting been held for that purpose, and such process shall be subject to the same amount of advance notice as would have to be given to Members had a meeting been held for that purpose.

Section 11. Management and Contract Rights of Association. The Association may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Association and Common Area. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract by the Board of Directors. Any such contract shall contain a provision allowing the Association to terminate such contract without cause or justification or penalty on no less than 90 days' written notice.

Section 12. Rights of Noteholders. Any institutional holder of a first mortgage on a Unit, Lot, Tract, Site or Parcel will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

Section 13. The cost of maintaining the Common Areas and repairing or replacing any improvements permitted by the terms of this Declaration to be located in the Common Areas will not be borne by Albemarle County, the Commonwealth of Virginia or any other public agency.

**IN WITNESS WHEREOF**, the president of the Association has executed this Amended and Restated Declaration of Covenants and Restrictions on behalf of the Association.

\_\_\_\_\_  
Mosby Mountain Community Association, Inc. [signature]

BY: \_\_\_\_\_ [printed name]  
President/Director

Date: \_\_\_\_\_, 20\_\_\_\_.

**ADDENDUM / CERTIFICATE  
OF THE PRESIDENT OF MOSBY MOUNTAIN COMMUNITY ASSOCIATION, INC.**

I, the undersigned, as President of Mosby Mountain Community Association, Inc., do hereby swear, affirm and certify that:

- (1) The requisite percentage of the Owners approved for the foregoing Amended and Restated Declaration of Covenants and Restrictions (the "Amendment") and signed written ratifications thereof;
- (2) Notice of the meeting at which the Amendment was approved was given on \_\_\_\_\_, 2013;
- (3) There are a total of \_\_\_\_\_ votes of Members of the Association;
- (4) For quorum, Members entitled to cast at least \_\_\_\_\_ votes were required to

- attend the meeting in person or by proxy, and Members entitled to cast \_\_\_\_\_ votes attended the above-referenced meeting in person or by proxy;
- (5) To approve the Amendment, at least \_\_\_\_\_ votes for the Amendment were required, and a total of \_\_\_\_\_ votes were cast for the Amendment and \_\_\_\_\_ votes were cast against the Amendment; and
- (6) The effective date shall be the date the Amendment is recorded in the county's land records, which shall not be less than 15 days after the date of the meeting at which the Amendment was approved by the membership.

\_\_\_\_\_  
 President

STATE OF VIRGINIA  
 CITY/COUNTY OF \_\_\_\_\_:

I, the undersigned, a Notary Public in and for the City/County and State aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed as president/director of Mosby Mountain Community Association, Inc. to the foregoing amendment instrument, has acknowledged the same before me in my City/County and State aforesaid, and acknowledged the writing was signed pursuant to due and proper authority on behalf of the Association.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Notary Public (SEAL)

My Notary Registration No.: \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_