

**NINTH AMENDMENT TO THE
DECLARATION OF PROTECTIVE COVENANTS AND RESERVATIONS FOR
SUNSET MOUNTAIN VILLAGE, SUNSET NORTH SECTION, SUNSET PASS
SECTION, SUMMIT RIDGE SECTION and SUMMIT HIGHLANDS SECTIONS,
A RESIDENTIAL SUBDIVISION IN POCAHONTAS COUNTY, WEST VIRGINIA**

THIS AMENDMENT, made on this _____ day of January, 2009, by the SUNSET MOUNTAIN VILLAGE HOMEOWNER'S ASSOCIATION, hereinafter referred to as the "Association", a West Virginia corporation, **as to certain real estate known as SUNSET MOUNTAIN VILLAGE, hereinafter referred to as "SMV", developed by SUNSET MOUNTAIN ENTERPRISES, INC., hereinafter referred to as "Declarant".**

WITNESSETH:

WHEREAS, Declarant is the owner and developer of a certain tract or parcel of real estate situated near Mace, in Pocahontas County, West Virginia designated as **Sunset Mountain Village (SMV), including all existing and future sections derived therefrom; and**

WHEREAS, the Declarant has laid out a general plan for subdividing said real estate into lots and streets, which is known as Sunset Mountain Village, as shown upon six certain maps entitled, **"SUNSET MOUNTAIN VILLAGE, SUNSET NORTH - PHASE ONE, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT - POCAHONTAS COUNTY, WEST VIRGINIA"**, dated February 15, 2001, revised July 19, 2001, and **"SUNSET MOUNTAIN VILLAGE, SUNSET NORTH - PHASE TWO, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT - POCAHONTAS COUNTY, WEST VIRGINIA"**, dated February 15, 2001, revised July 19, 2001, and **"REVISED LOT 111, SUNSET MOUNTAIN VILLAGE, SUNSET NORTH - PHASE ONE, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT - POCAHONTAS COUNTY, WEST VIRGINIA"**, revised May 9, 2002, all prepared by Calhoun Engineering & Surveying, P.E. 4782, P.S. 1011, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Plat Book 12, page 3, and in Plat Book 12, page 4, and in Plat Book 12, page 37 respectively, and **"SUNSET MOUNTAIN VILLAGE, SUNSET PASS SECTION, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT - POCAHONTAS COUNTY, WEST VIRGINIA"**, dated May 9, 2002, prepared by Calhoun Engineering & Surveying, P.E. 4782, P.S. 1001, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Plat Book 12, page 36, and **"SUNSET MOUNTAIN VILLAGE, SUMMIT RIDGE SECTION AND REVISED LOTS 117 & 118 SUNSET NORTH SECTION, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT - POCAHONTAS COUNTY, WEST VIRGINIA"**, dated June 20, 2005, prepared by Calhoun Engineering & Surveying, P.E. 4782, P.S. 1001, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Hanging File A, and **"SUNSET MOUNTAIN VILLAGE, SUMMIT HIGHLANDS , PHASE ONE SECTION, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT - POCAHONTAS COUNTY, WEST VIRGINIA"**, dated August 28, 2006, revised November 12, 2007, prepared by Calhoun Engineering & Surveying, P.E. 4782, P.S. 1001, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia in Hanging File G, and **"SUNSET MOUNTAIN VILLAGE, SUMMIT HIGHLANDS, PHASE TWO SECTION, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT-POCAHONTAS COUNTY, WEST VIRGINIA, SHEET TWO OF TWO"**, dated August 2, 2007, revised November 28, 2007, and **"SUNSET MOUNTAIN VILLAGE, SUMMIT HIGHLANDS, PHASE TWO SECTION, DEVELOPED BY SUNSET MOUNTAIN ENTERPRISES, INC., EDRAV DISTRICT-POCAHONTAS COUNTY, WEST VIRGINIA, SHEET ONE OF TWO"**, dated August 2, 2007, revised June 5, 2008, prepared by Calhoun Engineering & Surveying, P.E. 4782, P.S. 1001, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia in Hanging File G, hereby referred and incorporated into this document to provide an accurate description of the property subject to this "Eighth Amendment to the Declaration of Protective Covenants and Reservations" and to provide a description of lots and boundaries of such lots; and

WHEREAS, the Declarant established a "Declaration of Protective Covenants and Reservations for Sunset

Mountain Village, Sunset North Section, A Residential Subdivision in Pocahontas County, West Virginia" dated February 15, 2001, of record in the aforesaid Clerk's office in Volume 271, page 567; and

WHEREAS, the Declarant established a "First Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North Section, A Residential Subdivision in Pocahontas County, West Virginia" dated August 3, 2001, of record in the aforesaid Clerk's office in Volume 273, page 289; and

WHEREAS, the Declarant established a "Second Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North and Sunset Pass Section, A Residential Subdivision in Pocahontas County, West Virginia" dated May 24, 2002, of record in the aforesaid Clerk's office in Volume 278, page 433; and

WHEREAS, the Declarant established a "Third Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North and Sunset Pass Section, A Residential Subdivision in Pocahontas County, West Virginia" dated January 23, 2003, of record in the aforesaid Clerk's office in Volume 282, page 375; and

WHEREAS, the Declarant established a "Fourth Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North Section, Sunset Pass Section and Summit Ridge Section, A Residential Subdivision in Pocahontas County, West Virginia" dated July 14, 2005, of record in the aforesaid Clerk's office in Volume 296, page 572, and;

WHEREAS, the Declarant established a "Fifth Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One Section, A Residential Subdivision in Pocahontas County, West Virginia" dated October 26, 2006, of record in the aforesaid Clerk's office in Volume 305, page 371, and;

WHEREAS, the Association established a "Sixth Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section, Summit Highlands, Phase One Section, and Summit Highlands, Phase Two Section, A Residential Subdivision in Pocahontas County, West Virginia" dated May 18, 2007, of record in the aforesaid Clerk's office in Volume 310, page 504, and;

WHEREAS, the Association established a "Seventh Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section, Summit Highlands, Phase One Section, and Summit Highlands, Phase Two Section, A Residential Subdivision in Pocahontas County, West Virginia" dated April 4, 2008, of record in the aforesaid Clerk's office in Volume 313, page 543, and

WHEREAS, the Association established an "Eight Amendment to the Declaration of Protective Covenants and Reservations for Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section, Summit Highlands, Phase One Section, and Summit Highlands, Phase Two Section, A Residential Subdivision in Pocahontas County, West Virginia", dated July 30, 2008, of record in the aforesaid Clerk's office in Volume 315, page 661, and

WHEREAS, there shall be created a non-profit corporation called Sunset Mountain Village Homeowner's Association Incorporated, and shall be referred to as Sunset Mountain Village Homeowner's Association, hereinafter referred to as the "Association".

WHEREAS, the Developer shall sell the lots of Sunset Mountain Village, hereinafter referred to as "SMV", and in order to preserve the value and desirability of said real estate, all lots of SMV shall be subject to the following:

ARTICLE I. COVENANT FOR MAINTENANCE ASSESSMENTS

1) CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

The Developer, for each lot within SMV, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands Sections, hereby covenants, and each owner of any lot, by acceptance of a Deed therefore, whether or not it shall be so expressed in such deed is deemed to covenant and agree to accept membership in the Association, and to pay Dues and Assessments to be established and collected as hereinafter provided, and to abide by the provisions of the bylaws or other regulations imposed by said Association. The Dues or annual Assessments of said Association, together with interest, cost and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a

continuing lien upon the property against which each such assessment is made. The Assessments collected by the Association may be used for routine maintenance and upkeep of the streets, improvements, and Common Areas of said subdivision, as well as for any other purpose the Association sees fit to promote the interests of said subdivision. Each such assessment, together with interest, costs and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The Developer shall not be responsible for any annual dues or special assessments on lots or other property owned by it in the subdivision.

A) Dues: The Dues shall be \$225.00 per year for each individual lot owner, and may be, pursuant to the procedures outlined in the Associations bylaws, increased or decreased with the majority consent of all lot owners of SMV. The Dues paid by the lot owners in SMV will be responsible for funding (100%) of the SMV "Common Areas" maintenance including the main entrance area off of WV State Route 219 as it is depicted on the recorded map for SMV, Sunset North Section. Any "Common Area" expenditures, with the exception of annual expenses such as liability insurance, etc., will require the majority consent of the Association. The Association may assess optional fees regarding the use of any common areas developed in the future but only with the majority consent of the said Association.

B) Assessments: In addition to the annual dues, each individual lot owner will be required to pay a Road Assessment fee of \$225.00 per year for each lot owned. The Developer reserves the right to raise or lower the Road Assessment by an amount not greater than 20% annually in order to properly maintain the road way. This Road Assessment will provide for the maintenance, surfacing, and snow removal for Northern Trail Road, Sunset Pass Road, Summit Highlands Trail, Mac-O-Cheek Way, Wildwood Path and Mossy Trail as noted on the recorded maps for SMV, Sunset North Sections, Summit Ridge Section, Sunset Pass Section and Summit Highlands Sections. Other special assessments may be levied against each lot owner for capital improvements as the need arises. The type of capital improvements and levy amounts shall be approved by a majority of property owners within the said Association.

C) It is anticipated that in the future the Northern Trail Road, Sunset Pass Road, Summit Highlands Trail, Mac-O-Cheek Way, Wildwood Path and Mossy Trail, as depicted on the aforementioned recorded plats for SMV, Sunset North Sections, Summit Ridge Section, Sunset Pass Section and Summit Highlands Sections, may be conveyed to said Association and shall be designated as "Common Area" which Dues and Assessments shall be used to develop and maintain said areas. Conveyance of said roads and designation there of as a "Common Area" does not relieve the Association from it's obligation to keep said roads both well maintained and free of all natural impediments including snow removal. If the Association fails to maintain said roads in an orderly manner, the Developer reserves the right, at his/her discretion, to remedy said roads' condition by employing all reasonable methods to upgrade said roads back to their original state. The financial responsibility of this remedy will fall solely on the Association and the collection thereof will be subject to the mandates set forth in Article I, sub-part 2 of this document. Ownership interests in the Common Areas shall be apportioned equally according to the number of lots in SMV, therefore the owners of lots in SMV will have an equal ownership interest in said Common Area. A husband and wife who own one (1) lot in SMV shall have the same ownership interest in said Common Areas as that of a single individual lot owner.

2) EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Any Assessment not paid within sixty (60) days after the due date shall bear interest from the due date at the rate of Ten Percent (10%) per annum. The Association may bring an action at law against the owner personally obligated to

pay the same or file a lien against the lot held by the owner. The lien may be filed ex parte and without notice to the owner. The Association may foreclose on the lien if the debt for it is unpaid ninety days after filing, but foreclosure must be with notice. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the roadways, easements, or abandonment of his/her lot.

3) **SUBORDINATION OF THE LIEN TO MORTGAGES OR DEEDS OF TRUST**

The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage or deed of trust foreclosure or any proceeding or deed in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE II. RESTRICTIVE COVENANTS

The Restrictive Covenants herein established are mandatory for all SMV Homeowners. The formation of a Covenants Compliance Committee, **CCC**, approved by more than 2/3 of the Association members in May, 2007, governs the compliance of these Covenants. The CCC consists of the Developer, who leads the CCC in all areas of its responsibilities, and other members of the Association. If, in the future, the Developer is unable or unwilling to serve on the CCC, the Developer will grant the CCC the authority to act independently of the Developer. Powers of Enforcement regarding the Covenants are at the discretion of an ad hoc committee appointed by the Board of the Directors of the Association.

1) The following guideline lists the minimum construction standards that shall be used in homes constructed in SMV. Sunset Mountain Enterprises, Inc. does not accept any liability for construction defects resulting in the use of these minimum construction standards. The CCC must give permission for any contractor to perform work within the boundaries of SMV. The CCC has the right to disallow incompetent, unlicensed, or uninsured contractors including certain contractors whose reputation for inferior quality work within the State precedes them, from entering and performing work within the boundaries of the SMV Subdivision. Property owners who have chosen such a contractor will be required to choose a different contractor before beginning construction. Building requirements that necessitate exceeding these minimum standards are left to the judgment and discretion of the individual homeowner and builder:

- (A) **Driveway & Home Site Excavation** - All cut / fill excavation in dirt, clay or other incompetent materials will be cut and filled with a maximum cut slope and out slope of 2H:1V. Any areas that are deemed by the Developer to be unstable or slide prone will need to be sloped back to an angle that is less than 2H:1V, (ie. 4H:1V). The degree of this slope will have to be determined in the field by a qualified engineer after examining the unstable area.
- (B) **Foundation** - The foundation minimum shall be a footing of at least 12" x 24" concrete with 2 (two) ½" pieces of steel reinforcing rod.
- (C) **Floor Joist** - The floor joists shall be at least a 2" x 10" built on 16" centers. Floor decking shall be ¾ inch tongue and groove plywood or equivalent.
- (D) **Windows** - No aluminum or vinyl windows shall be permitted. Windows that are any shade of WHITE are prohibited. Grids in any shade of WHITE are also prohibited.

- (E) **Exterior Doors** - Any shade of WHITE exterior doors, sliding glass doors, french doors and garage doors are prohibited. Any shade of WHITE window grids in exterior doors of any type is prohibited. Exterior Doors may be painted a natural color that blends well with the environment. **All exterior door paint colors, if not a natural wood shade, must be approved by the CCC before application.**
- (F) **Roof Framing** - Either roof trusses, 24" on center, or 2" x 8" rafters built on 16" centers shall be used as a minimum standard. Post & Beam and Log roof framing shall be designed to meet or exceed the minimum structural standard of the aforementioned conventional wood framing truss/rafter design. Sheathing shall be at least 5/8" plywood or 1" x 10" lumber. **The CCC will approve roofing material and color.** Roofing material will be either metal with factory baked painting or a minimum 30 year warranted roofing shingle will be permitted. Roofing material in the Summit Highlands, Phase One and Phase Two Sections, will be either standing-seam metal with factory baked paint or other 50-year roofing application. **The CCC will approve roofing material and color.**
- (G) **Exterior** - Exterior of homes will be of a natural material (cedar siding, log, stone or cultured stone veneer). Hardi-Panel or equivalent composite siding is permitted but only in "natural" colors. **In order to maintain the "Alpine Aesthetics" of the community, the color of all stained sidings (wood, log, or Hardi-Panel equivalent), if not a natural wood shade, must be approved by the CCC before application.** Lot owners are required to maintain and protect from inclement weather and UV damage, the exterior material of their home on an ongoing basis. Rustic brick may only be used on foundations, basements, and fireplaces. No cinder block foundations may be used without a brick or stone veneer. **Stamped concrete foundations will be permitted in unseen areas with approval of the CCC.**
- (H) **Housing of Construction Materials** - Materials for each construction site shall be organized and stored on the owners' lot, not on other owners' lots or in SMV common areas unless prior, written permission has been obtained from such owners and/or the HOA.
- (I) **Mobile and/or Modular-Prefabricated Homes** - Mobile homes and/or Modular Prefabricated homes are not permitted within SMV. High quality structural insulated panels are acceptable provided that they comply with all applicable/mandatory building codes and the requirements of the SMV Covenants.
- (J) **WV DEP Regulations** -- All construction sites shall be kept in a manner that complies with all West Virginia Department of Environmental Protection regulations. This includes, but is not limited to, maintaining proper drainage, employing stoned construction entrances and utilizing straw and silt fence erosion control applications as mandated. Any and all fines levied by the DEP for site-related infractions will be the sole responsibility of the lot owner.
- (K) **OSHA Guidelines** -- Owners and builders must follow OSHA guidelines for the disposal of all construction related debris and waste material. The SMV garbage dumpster is not to be used for the disposal of construction materials.

2) Construction Approval Notice -- Prior to commencement of any excavation on any site in SMV the owner(s) of said property shall obtain a "Construction Approval Notice" from the CCC by meeting the requirements of the Pre-Construction Checklist. The Pre-Construction Checklist outlines all mandatory, pre-construction requirements such as gaining CCC approval for home site, house plans, tree removal plan etc. The Construction Approval Notice must be displayed on owner's lot, in a location visible from the roadway, prior to and during site excavation and construction.

3) Plan Approval - New Construction: No residential building or storage building shall be erected, placed or altered on any lot until the construction plans, specifications and a plot plan showing the location of the structure have been approved by the CCC. The approval of the CCC shall be in writing, but cannot be unreasonably withheld. Failure of the CCC to approve said plans in writing within thirty days after the same have been submitted to the CCC shall constitute a waiver of the right of the CCC to disapprove said plans. Purchasers may begin construction at any time after the date of closing. **Construction must be completed within twelve (12) months from the starting date.**

4) Plan Approval - Remodeling: Plans for home additions and/or construction projects (including tree removal) that will alter the exterior appearance of a home or lot in SMV must be submitted to the CCC no less than 30 days prior to the commencement of construction for approval. Failure of the CCC to approve said plans in writing within thirty days after the same have been submitted to the CCC shall constitute a waiver of the right of the CCC to disapprove said plans. Owners may begin construction once written approval has been obtained by the CCC. **Home additions, outbuildings and/or other construction appurtenances must be completed within nine (9) months of the commencement of construction.**

5) Lots in SMV shall be used for single-family dwellings only. No residential building shall be erected, altered, placed or permitted to remain on any lot in SMV other than one single family dwelling not to exceed three stories in height, excluding basement levels, and a private garage for not more than three cars. One detached storage building shall be permitted with the following restrictions: a) exterior shall be of the same materials as the residence dwelling, b) size shall not exceed 1,000 square feet, c) it shall not be over one story in height and d) it shall not be a metal building. The exterior appearance of the storage building must match the appearance of the house and incorporate the same materials used on the house to achieve the same aesthetic likeness.

6) The living floor area of the main structure on any lot, exclusive of one story open porches and garages, shall be not less than eighteen hundred (1,800) square feet for a one story building or less than eighteen hundred (1,800) square feet for a dwelling of more than one story. The living floor area of the main structure on any lot in the Summit Highlands, Phase One Section, exclusive of one story open porches and garages, shall not be less than twenty-two hundred (2,200) square feet for dwellings of one or two stories that **ALSO** have a full basement which is visible, in whole or in part, from the exterior of the home and which adds visible size and dimension to the structure (square footage of the basement will not be included as part of the total required square footage) and shall not be less than twenty-eight hundred (2,800) square feet for dwellings of one or two stories that do not have a full basement. The living floor area of the main structure on any lot in the Summit Highlands, Phase Two Section, exclusive of one story open porches and garages, shall not be less than twenty-

two hundred (2,200) square feet for a one story building or less than twenty-two hundred (2,200) for a dwelling of more than one story. Square footage requirements for three story homes will be subject to the CCC's discretion based upon the architectural design and aesthetics of the plan and the location and characteristics of the building site.

- 7) (A) No building shall be located on any lot nearer than seventy (70') feet from the front lot line depending on the lots location. **This location shall be left to the discretion of the CCC and must be approved by the CCC before starting construction.**
- (B) All buildings, including attached garages and porches, shall be situated, as near as feasible, on each lot, but in no event shall any building, garage or porch be located nearer than seventy feet (70') to an interior (side) lot line nor nearer than thirty feet (30') to a rear lot line.
- (C) For the purpose of this covenant, eaves, and steps shall not be considered as a part of a building; provided that this shall not be construed to permit any portion of a building to encroach upon another lot.
- 8) No noxious or offensive activity shall be carried on or upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
- 9) No signs of any kind shall be displayed on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales periods.
- 10) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except household pets, and they must be managed so as not to become a nuisance or annoyance to other lot owners. Dogs shall be kept on a leash when not on their respective owner's property and all cats are to be confined to the owner's property. Lot owners who own parcels of 4 acres or more, either by owning one lot or multiple, adjacent lots, are permitted to trailer and keep a maximum of 4 horses on their property. The horses will not be permitted to graze freely and must be kept so as not to become a nuisance or annoyance to other lot owners.
- 11) No lot shall be used or maintained as a dumping ground for trash, rubbish and yard waste. Trash, garbage, or other waste shall not be kept except in sanitary containers. Violators will be charged a clean-up and disposal fee. Incinerators are prohibited. Equipment used for the storage or disposal of said materials should be kept in a clean and sanitary condition. The Association will maintain a garage dumping facility through a portion of the Dues.
- 12) The premises of all lots are to be free of clutter, garbage, or trash of any type at all times. Streets are to be kept clear of dirt and debris. If removal of said dirt or debris is conducted by the Developer, a charge for removal will be rendered to the party responsible for the litter. Wood, Hardi-Panel equivalent composite exterior siding, and logs of all homes in SMV shall be maintained and protected from inclement weather and UV damage. All homes shall be periodically stained and sealed as necessary to protect all types of exterior wood, log, or composite siding from graying and decay.
- 13) During the mowing season of May, June, July, August and September, all owners of lots situate in said subdivision shall maintain their lawn(s) by keeping them mowed, trimmed and in orderly condition. Lot owners that have not begun

construction or any building activity on their lot may leave said lot in its natural state, providing that the natural state does not become unsightly. All lot owners will be responsible for the removal of fallen trees or other unsightly debris if so designated by the CCC. In the event that any lot is not maintained as above, the Developer reserves the right to employ help to maintain said lot or lots at the sole expense of the owner of said lot(s).

14) Each lot owner shall provide adequate off street parking for all vehicles owned and kept at each lot location. On street parking shall be prohibited except for occasional use by visitors. All vehicles shall be fully licensed and in operable condition. No stripped, partially wrecked, or junked vehicles, or any part thereof, shall be permitted to be parked or kept on any lot. Motor homes may be permitted to park on the lots or in front of any house only during the home construction period. The time for construction shall be limited to twelve (12) months from beginning of construction.

15) No recreational motorized vehicle is permitted on the streets of said development. Recreational motorized vehicles may be used by lot owners for snow removal on their driveways or for other maintenance within the confines of their lot.

16) Written permission must be obtained from the CCC prior to the removal of any tree greater than three inches (3") in diameter from any lot. However, it shall be the responsibility of each lot owner to promptly remove dead or diseased vegetation, as the Developer's intention is to preserve and maintain the wooded, natural aesthetic of the land.

17) No excess dirt may be removed from the development without the prior, written permission of the CCC.

18) All governmental building codes, health regulations, zoning restrictions and the like, applicable to said lot now or hereafter made, shall be observed. In the event of any conflict between any provision of any governmental code, regulation, or restriction and any provision of these covenants, the more restrictive provision shall apply.

19) External satellite dishes must be eighteen inches (18") or less in diameter and grey or black in color. Any other styles, sizes, or colors must be approved by the CCC. All Propane gas tanks shall be of the type that may be buried and shall be placed under ground and concealed from view, abiding by the specifications set forth by the sponsoring propane gas tank provider. Any above ground tanks that must continue to exist due to contractual obligations with the propane provider, must be fenced and/or landscaped in order to conceal them from view.

20) (A) Any unnatural drainage such as from swimming pools, hot tubs or other manmade drainage structures shall be monitored and restricted so as not to cause erosion or a nuisance across property lines. Chemically treated water should be neutralized prior to drainage.

(B) All swells, ditches, culverts and other instruments of drainage shall remain open and clear of debris at all times.

(C) Drain pipe sizes shall be determined by watershed and approved by the CCC or the CCC's engineer. Drain pipes shall be placed under driveways in the road ditch and any other drainage areas crossing

the driveway. Drainage culverts shall be kept open at all times to allow for free flowing of the water unless otherwise determined by the CCC. Driveway culverts must be a *minimum* of fifteen inches (15") in diameter and made of sixteen (16) gage corrugated metal pipe or equivalent. Homeowners abutting streams shall maintain an open stream channel with adequate width as indicated on the recorded subdivision plat for maximum potential flow volume.

21) Utility easements are specified by the Developer across each lot as follows:

- (A) A 10' easement is reserved across the front and rear of all lots.
- (B) A 10' easement is reserved along all sidelines of all lots.
- (C) Easements are reserved for areas designated on plat plan map.

22) No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Developer. **The only lots that are permitted to subdivide are lots 202 and 203 located in the Sunset Pass Section of SMV.** The said 10 acre lots may only be sub-divided one (1) time and the newly created parcel of land must be at least two (2) acres in size. All road and utility installations to the newly created parcel will be the sole responsibility of the new lot owner. Any new road and utility development must be approved by the Developer in writing before the start of any new development. Both lots 202 and 203 are provided a 1.25" water line and a 1" electrical conduit in order to connect to the existing water well on the property. **If these said lots are sub-divided, the newly created parcels will not be permitted to obtain water service from the existing well.** The new lot owner of the newly created parcel will be solely responsible for drilling water well on the newly created parcel in order to obtain water. The new lot owner, by purchasing this lot in SMV, Sunset Pass Section, shall become a member of the Sunset Mountain Village Homeowner's Association and will be required to abide by the current Protective Covenants and Restrictions of the Association as provided in this document and in any future Amendments to said document, and shall be subject to any dues and assessments therein.

If said lots are subdivided, the newly created lots will be surveyed by a licensed engineer and recorded with the County Commission of Pocahontas County, West Virginia. These new parcels will be identified as 202(A) and 203(A) respectively. The Developer will be provided a copy of the newly recorded plat map as soon as the parcel is sold. All surveying and engineering expenses will be the sole responsibility of the lot owner.

23) By the acceptance of a deed for a lot in Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands Sections, Phase One and Phase Two, each lot owner shall automatically become a member of Sunset Mountain Village Homeowner's Association, a non-profit West Virginia Corporation, which has as part of its purpose the ownership and maintenance of the streets, improvements, and Common Areas of Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One and Phase Two Sections. Each lot owner shall pay the reasonable Dues and Assessments of said Association and shall abide by the rules, regulations, and by-laws of said Association.

24) The Homeowner's Association shall elect a Board of Directors consisting of five (5) members. Until the time of the initial election, the first five (5) *different* owners of lots sold in SMV shall make up the Board of Directors. While each lot

represents one (1) vote within the Association, owners of more than one (1) lot may not represent more than one (1) member of the Board. The Board shall begin functioning as soon as there is one (1) member. In the event that the first one (1) member owns multiple lots, it is understood that as soon as a lot is sold to a *different* owner, that *different* owner will become a member of the Board and all subsequent *different* lot owners will also become members until such time as five (5) different individuals are serving as Directors of the Board. Thereafter, an annual, general election shall be held on the first Saturday in October of each year, beginning with the month of October in the year 2001, to elect Directors to said Board. In the event that there are not yet five (5) *different* lot owners at the time of the election, all of the then lot owners shall act as the Board until such time as there are a sufficient number of *different* lot owners to make up five (5) Directors.

All owners of one (1) lot in said subdivision shall be considered as one (1) member of said Association and shall be subject to all the rules and regulations of said Association including any assessments that may be charged to individual lots for the development, maintenance, and upkeep of improvements that might be placed in said subdivision. It being understood that each lot represents one (1) member of the Association, every member shall have one (1) vote on matters pertaining to the development including matters of any recreation areas within said subdivision or any future expansions as to the roads and streets therein.

If an owner of any property within SMV violates one or more of the restrictive covenants above, he or she will receive a notice of violation from the board. This notice of violation shall be dated and shall state which covenant has been violated and shall give owner thirty (30) days to cure the violation. If, with good cause shown, the owner requires more than thirty (30) days to cure the violation, the owner may apply to the board for an extension of thirty (30) days to cure the violation.

If the violation is not cured within the thirty (30) day period and no extension has been granted by the board, or, if an extension has been granted and has expired and the violation is not cured, then the board, at its option, may take steps necessary to cure the violation, including retaining someone to cure the defect. The board shall then bill the owner for monies actually expended by it to cure the defect. That invoice becomes due and payable immediately upon submission by the board to the owner. This obligation shall become a personal obligation of the owner. If the invoice is not paid by the owner within sixty (60) days, the association may bring any action at law against the owner personally obligated to pay the same or file a lien against the lot(s) held by the owner. In the case of services, such as garbage and snow removal, the board may, at its option, in addition to placing a lien upon the lot(s), discontinue services to any lot whose owner is in violation of the restrictive covenants or has not paid its pro-rated share toward the usage of said service. This lien may be filed ex parte and without notice to the owner. The association may foreclose on the lien if the debt is unpaid for ninety (90) days after filing but foreclosure must be with notice. No owner may waive or otherwise escape liability by abandonment of his or her lot.

The lien provided in this section shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect this lien. However, sale or transfer of any lot pursuant to a mortgage or deed of trust foreclosure or any proceeding or deed in lieu thereof shall extinguish the lien as to payments that come due prior to the transfer or sale. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE III. RESERVATIONS

- 1) The Developer reserves unto itself, its successors and assigns, the right of ways and easements through and across each lot in Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands Sections, Phase One and Phase Two, as shown upon the aforesaid plat for utilities servicing said lot, other lots in Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One and Phase Two Sections, and other properties owned or hereafter acquired by the Developer.
- 2) The Developer reserves the right to grant to others both in and out of Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One and Phase Two Sections, the use and enjoyment of the streets in said development, as the same now exist or may be hereafter created. Said streets may be used by the owners of the lots in Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One and Phase Two Sections, in common with the Developer, its assigns, and successors in title. The Developer reserves the right to create new streets (even through existing lots that it owns) that may gain access to the development from adjoining property. Lot owners shall not be permitted to grant to adjacent property owners access or right of ways through their lots, such as to landowners owning property adjacent to the subdivision.
- 3) The Developer reserves the right to revise the plat (or plats) of Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One and Phase Two Sections, for the purpose of making boundary line adjustments regarding lots owned by the Developer.

ARTICLE IV. GENERAL PROVISIONS

- 1) **ENFORCEMENT:** The Association, Developer, or any owner shall have the right to enforce by a civil action all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant or reservation herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 2) **SEVERABILITY:** Invalidity of any one of these covenants or reservation by judgment or order of the Court shall in no way affect any other provision, which shall remain in full force and effect.
- 3) **PROPERTY OWNER LIMITATIONS:** No property owner, without prior written approval of the Developer, its successors or assigns, may impose any additional covenants or reservation on any part of the land in Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section or Summit Highlands, Phase One and Phase Two Sections, as shown upon the aforesaid maps or as shown upon any future maps which may be prepared and recorded.

4) **AMENDMENT:** The Developer, its successors, and assigns reserve the right to amend these covenants and reservations unilaterally, for a period of five years after its recordation. The covenants and reservations of this Declaration shall run with and bind the land for a term of twenty five (25) years from the date of recordation of this Declaration after which time they shall be automatically extended for successive periods of twenty five (25) years each unless a written agreement, voted upon and approved by the then owners of two-thirds of the lots within Sunset Mountain Village, Sunset North Section, Sunset Pass Section, Summit Ridge Section and Summit Highlands, Phase One and Phase Two Sections, executed by an Officer of the SMVHOA Board of Directors and recorded in the Office of the Clerk of the County Commission of Pocahontas County, WV, permits any of these covenants and reservations provided for herein to be changed, modified, waived or extinguished, in whole or in part, as to all or any part of the lots. In determining the two-thirds majority, the Developer shall be given one (1) vote for each lot it owns in the development.

After the last lot is sold and the Developer transfers ownership of the streets and improvements to the Association, the Association shall have the right to amend these covenants and reservations by a majority vote.

IN WITNESS WHEREOF, SUNSET MOUNTAIN VILLAGE HOMEOWNER'S ASSOCIATION, a West Virginia Corporation, has caused this instrument to be executed as of this ____ day of January, 2009, by its Secretary, Suzanne Hodges, thereunto duly authorized.

SUNSET MOUNTAIN HOMEOWNER'S ASSOCIATION
A West Virginia Corporation

BY:
ITS: Secretary

STATE OF WEST VIRGINIA,
COUNTY OF _____, to wit:

The foregoing document was acknowledged before me this ____ day of January, 2009, by Suzanne Hodges, Secretary of the SUNSET MOUNTAIN VILLAGE HOMEOWNER'S ASSOCIATION, a West Virginia Corporation, as the act and deed of said Corporation.

Notary Public

My Commission Expires: _____

AFFIX SEAL

Prepared By:
Sunset Mountain Village Homeowner's Association
HC69 Box 47B, Valley Head, WV 26294