

## **INTRODUCTION**

### **BIG BEAR LAKE CAMPLAND**

In August of 1982 the first reprinting of the Declaration of Restrictions and Covenants was needed. At that time all declarations for all of the subdivisions that Alyeska, Inc. developed were printed in one booklet. Over the years when additional copies were needed, Alyeska, Inc. added any new sections Declaration of Restrictions and Covenants to the booklet. The following summary gives the name of the subdivision and the date each was recorded at the Preston County Courthouse.

The first set of Declaration of Restrictions and Covenants became effective on June 15, 1972, and included the Ketchikan and Klondike Territories. The Supplemental Declaration of Restrictions and Covenants were recorded on February 2, 1973. Included were Yukon, Kodiak, Aleutian and Big Bear Territories. They were recorded at the Preston County Clerk's office in Deed Book # 429, at page 558, and Deed Book # 430 at page 79, and Deed Book # 535, at page 425. On February 19, 1973, the Second Supplemental Declaration of Restrictions and Covenants (also referred to as Tract I And Tract II) was recorded at the Preston County Clerk's office.

In February of 1978, the Anchorage Territory become a part of Big Bear Lake Campland and in August of 1978, Prospect and Dawson began. These three new territories all became subject to the same written set of Declaration of Restrictions and Covenants as the previous six.

On July 27, 1979, the Declaration of Restrictions and Covenants for Alaskan Village Territory was recorded at the Preston County Clerk's office in Deed Book # 485, at page 482. The development of Alaskan Village Territory completed Big Bear Lake Campland.

Alyeska, Inc. then began development of permanent home subdivisions.

On April 15, 1980, the Declaration of Restrictions and Covenants for White Rock Homesteads was recorded at the Preston County Clerk's office in Deed Book # 485, at page 540.

On October 20, 1981, the Declaration of Restrictions and Covenants for Sky View Terrace, Section I was recorded at the Preston County Clerk's office in Deed Book # 495 at page 291.

On July 1, 1983, a supplemental Declaration of Restrictions and Covenants for Sky View Terrace Section I, was recorded.

On April 30, 1985, the Declaration of Restrictions and Covenants for Skyview Estates Section I was recorded at the Preston County Clerk's office at Deed Book # 519, at page 62.

On April 2, 2001, a First Amended and Supplemental Declaration of Restrictions and Covenants As To Sky View Estates, Section 2 and Section 3 were recorded at the Preston County Clerk's office at Deed Book # 624 at page 215.

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# ***Declaration of Restrictions and Covenants***

**Big Bear Lake Camplands**

**A Division of Alyeska, Inc., A West Virginia Corporation**

THIS DECLARATION, made this 15th day of June 1972, by ALYESKA, INC., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the declarant is the owner of all of the real estate set forth and described on a certain plat entitled "Properties of Alyeska, Inc.," and showing thereon a subdivision hereof know as Big Bear Lake Camplands, which plat is of record in the Office of the Clerk of the County Court of Preston County, West Virginia, and in Large Map Book Number 1, at page 55, and which said plat describes said Big Bear Lake Camplands and is made a part hereof and incorporated herein by reference; and

WHEREAS, all of the real property described in that part of said plat showing Big Bear Lake Camplands includes therein two subdivisions, known as the Ketchikan Territory, a map of which is recorded in said County Clerk's Office in said Map Book Number 1, at page 56, and the Klondike Territory, a map of which is recorded in said Clerk's Office in said Map Book Number 1, at page 57, said Ketchikan and Klondike Territories being included within the aforesaid subdivision of the declarant known as Big Bear Lake Camplands; and

WHEREAS, the Ketchikan Territory and Klondike Territory are subdivided into numbered lots as set forth and described in the recorded plats hereinbefore mentioned which numbered lots lies in the aggregate single subdivision section or territories (herein called "Section") which are two of several sections contemplated in the Big Bear Lake Camplands subdivision, which other sections shall be developed within said subdivision by Declarant as hereinafter described; and

WHEREAS, Declarant is about to sell and convey said lots and before doing so desires to subject them to and impose upon them mutual and beneficial restrictions, covenants, conditions, assessments and charges, hereinafter collectively called "Restrictions," under a general plan of improvement for the benefit and use of all of the lots in the aforesaid two sections, as well as the entire Big Bear Lake subdivision, together with the easements appurtenant thereto, and the future owners of said lots.

NOW, THEREFORE, WITNESSETH: The Declarant hereby declares that all of said lots are held and shall be held, conveyed, reconveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following restrictions, all of which are declared and agreed to be in the furtherance of said plan for the Big Bear Lake Subdivision, improvement and sale of said lots are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the aforesaid plats and its subdivision as a whole. All of the restrictions, covenants, charges and assessments herein set forth shall run with the land and shall be binding upon the Declarant and upon all parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any parts thereof subject to such restrictions.

## **I. Applicability**

A. These restrictions shall apply to all subdivided numbered lots within said Big Bear Lake Subdivision and shown and described upon the Ketchikan and Klondike Sections thereof, as well as the future sections within said Subdivision, which are for recreation vehicular use only, and these restrictions shall not be applicable to other lands of the Declarant outside of the Big Bear Lake Camplands as shown on the plat aforesaid, unless otherwise herein specifically provided.

## **II. Term**

A. These restrictions shall affect and run with the land and shall exist and be binding upon the parties and all persons claiming under them unless and until changed or modified as herein set forth. By accepting a contract to purchase or a deed to recreational vehicular lots subject to these restrictions, the owners thereof agree that the restrictions shall continue until full force and effect until January 1, 2000, at which time these restrictions may be amended insofar, and only insofar as they apply to lots within said Big Bear Lake Camplands, by a vote of the then record holders of a majority of such recreational vehicular lots.

B. Declarant reserves to itself, its successors and assigns the right to revoke at any time prior to the sale of any lot within a section of said subdivision, all or any part of these restrictions and further to vacate any or all of the streets, common facilities, recreational facilities, as well as any other amenity now or hereafter shown on any recorded plats; and further provided, however, that the Declarant reserves for itself, its successors and assigns, the right to amend and change these restrictions at any time subsequent to the sale of any lot within a section or subdivision by the consent, in writing, of more than one-half (½) of the then owners of the lots sold within said subdivision.

### **III. Mutuality of Benefit and Obligation**

A. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Sections and the subdivision aforesaid, and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots herein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owner of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots in the section and subdivision and their respective owners. Restrictions substantially the same as those herein contained shall be recorded on all future sections of the subdivision in conformity with the general scheme of improvement of all lands to be therein included.

### **IV. Exclusive Use of Lots for Recreational Vehicular Purposes Only**

A. No lot shall be used except for recreational vehicular purposes, and no such lot or combination of lots owned by a single person shall be used by its owner as a permanent residence. The term "recreational vehicle" shall include manufactured, self-contained tent trailers. A lot owner may apply to the developer for permission to use a tent upon his lot, and if the appearance and use of the tent is properly maintained and self-contained, and does not detract from the general appearance of the area, the permission will be granted.

B. There shall be no homemade vehicles or converted buses or similar types of vehicles permitted on any permanent camp site, provided, that self-contained recreational vehicles commercially constructed for such purpose, shall be permitted on a camp site.

C. There shall be no permanent structures constructed on any lot, or combination of lots, with the exception of a preconstructed storage unit not to exceed six (6) to eight (8) feet which shall be susceptible of removal from the lot and shall be of good appearance.

D. There shall be no more than one (1) recreational vehicle permitted on any lot or adjoining lots where two (2) such lots are owned by the same person.

### **V. Placement of Recreational Vehiculars and Structures Upon the Lot**

A. Every recreational vehicle shall be parked or placed on any lot, or combination of lots, not less than 20 feet from the edge of the adjoining street line. Every storage unit shall likewise be at least 20 feet from the edge of the road.

B. The developer will have the authority from time to time to establish regulations pertaining to any permissible structures upon the lots and relating to the common good, which in the developer's sole discretion, conforms with the general developmental scheme.

C. In order to preserve the natural quality and aesthetic appearance of the existing geographic area in the Big Bear Lake Subdivision, all property lines shall be kept free and open to one another and no fences shall be permitted on any of the lots or lot lines except where, in the opinion of the developer, a fence or other enclosure, as a structure of or aesthetic feature design concept, will contribute to and be in keeping with the character of the area.

D. The following minimum dimensions shall govern for front, side and rear setbacks on all lots with respect to any recreational vehicle thereon, as well as any storage unit thereon; provided, however, that where more than one adjoining lot is owned by a single person, the lots shall be considered as one.

1. Twenty (20) feet from the front line of each lot abutting the street.
2. Ten (10) feet from each lot side lines.
3. Fifteen (15) feet from the rear line of each lot.

E. No change in ground level may be made on any lot in excess of one foot in height over existing grades without the written approval of the developer obtained prior to commencement of work.

## **VI. General Prohibitions and Requirements**

A. The following general prohibitions and requirements shall prevail as to the placement, use and enjoyment of recreational vehicles or activities conducted on any lot or lots in the subdivision.

1. No outside toilet, outhouse, individual sewage or waste system, whether of a permanent or temporary nature, except self-contained sewage systems in a recreational vehicle, shall be permitted on any camp site.

2. No animals or livestock of any description, except the usual household pets, shall be kept or harbored on any lot or in any recreational vehicle in the subdivision.

3. No stripped down or partially wrecked or junk vehicles, or sizeable parts thereof, and no discard or abandoned materials of any kind shall be permitted to be parked, or kept, or stored upon any lot or along any driveway, street, recreational area or common area within the subdivision.

4. No vehicle shall be parked on or along any street, service driveway, recreational or common property within Big Bear Lake Camplands except in designated parking areas or upon lots. No commercial trucks shall be parked for storage any time on any lot, except during deliveries or servicing, with the exception of trucks or vehicles designed and equipped for recreational camping uses.

5. Every tank for the storage of fuel on any lot shall be either buried below the surface of the ground or screened to the satisfaction of the Declarant, by fencing or shrubbery. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed either underground, or screened by fencing or shrubbery or enclosed within a building designed for such purposes and shall not be readily visible from any street, driveway or community property or lot within Big Bear Lake Camplands, and all such containers or receptacles shall be rodent proof.

6. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street, common recreational property with subdivision.

7. No owner of any lot shall build or permit the building thereon of any structure or the parking of any vehicle thereon or receptacles thereon that is to be used as an exhibit unless prior written permission has been obtained from the Declarant.

8. All lots, whether occupied or unoccupied, and any permitted improvements placed thereon, shall at all times be maintained in such a manner as to prevent the same from becoming unsightly, whether by reason of unattractive growth on such lot or the objectionable and unsightly accumulation of rubbish or debris thereon.

9. There shall be no noxious, offensive or illegal activities carried on upon any lot or in any recreational vehicle thereon, nor shall anything be permitted upon any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood, nor shall there be any grease, cooking oils, animal fats or other similar liquids or solids poured or spilled on the ground within the subdivision.

10. No lot shall be used for commercial purposes or any purposes other than camping.

11. In the event that any recreational vehicle or material on any lot in Big Bear Lake Camplands would be destroyed, all or in part by fire, windstorm or other cause or act of God, the same must forthwith be rebuilt, replaced or all debris removed and the campsite restored to a slightly condition with reasonable promptness; provided, however, that in no event shall the debris remain upon the campsite or lot for a period of more than thirty days following any such event.

The lots shall not be cleared of trees growing thereon except to permit the parking of an approved recreational vehicle thereon and to permit the use and enjoyment thereof in connection with such vehicle. There shall be no trees or natural growth, except weeds, removed within the setback areas of any campsite without prior written consent of Declarant.

12. There shall be no trash, ashes, garbage or other refuse dumped, stored, or accumulated on any lot or thrown into the water or shoreline of any lake, pond, or stream in the subdivision. There shall be no burning of wood, leaves, trash, garbage or other refuse without a "burning permit" secured from the developer, its successors and assigns, and every owner of a lot shall comply with the law of West Virginia relating to open fires.

13. Property owners will keep their property free from accumulation of garbage, trash and refuse and will deliver the same to a nearby, convenient storage area provided by the developer for removal by the developer to an approved disposal area.

14. There shall be no open fires permitted on any campsite except within the confines of a masonry fireplace of approved design, or a barbecue pit of approved design, or a clear space of ground in a circle with large stones in an approved manner or metal cooking device of approved design. All such fires must be attended at all times and thoroughly extinguished upon completion of use.

15. There shall be no camping permitted in any easement area, or within the setback areas or in any common or recreational areas, streets, or service driveways.

16. There shall be no vehicles of any type driven or towed in a reckless manner on or along any street or service driveway within the subdivision. All vehicles must observe such speed restrictions or noise limitations throughout the subdivision as established or changed from time to time by the Declarant, its successors or assigns. The Declarant shall likewise have the right to prescribe one-way streets and to otherwise impose reasonable restrictions on the movement and way of movement of all vehicles on the streets in the subdivision.

17. All household pets which are permitted to enter or to remain within Big Bear Lake Camplands must be constantly under the effective control of their owners, and no household pets shall be permitted to roam at large or create unreasonable noise or nuisance, as for example, a barking dog.

18. There shall be no hunting or shooting of firearms permitted on any lot or campsite in the subdivision of Big Bear Lake Camplands. There shall be no hunting or shooting permitted on any adjoining properties owned by the Declarant, and the purchase of a lot or lots shall confer no rights whatsoever for the owners thereof to use the adjoining lands of the Declarant, or any of the streams, trails, waters or water courses thereon not a part of the subdivision, except as specifically hereinafter provided or by subsequent declaration of the Declarant, any such unauthorized utilization of such adjoining properties shall be considered as a trespass thereon, provided, however, that the property owner shall have the right to use and enjoy Big Bear Lake, including the right to boat and fish therein, as hereinafter provided and subject to the reasonable restrictions and conditions imposed by the Declarant.

19. The Declarant, its successors and assigns, reserves the right to enter upon any vacant or unattended lot for the purpose of improving its general appearance without being classified as a trespasser, or being liable for the damage for property removed.

20. All recreational vehicles and permissible storage buildings which are used or maintained on any lot must be kept in good condition, painted and maintained on the exterior.

21. The Declarant will provide the boat dock and launching facilities at designated area providing easy access to Big Bear Lake. Use of the lake is limited to property owners in Big Bear Lake Camplands, their immediate family under the age of 21 years, and such use shall be in compliance with the rules and regulations of Alyeska, Inc., and current paid up assessment is a condition precedent to use of said lake. Alyeska, Inc., expressly reserves the concurrent right and use of the lake for its own purposes and for use by other persons, firms and corporations as may be granted permission in common to said lake with the owners of lots in Big Bear Lake subdivision. The Declarant reserves the right to charge reasonable fees for the use and enjoyment of Big Bear Lake to any guest or guests of property owners.

22. The Declarant, for itself, its successors, designees, assigns and permittee, reserves and accepts easements also all of the streets, roads, and public areas in the Big Bear Lake Subdivision for

the installation and maintenance of utilities, said easement to extend within fifteen (15) feet from the edge of the street line, together with the right of ingress and egress for the purpose of installing and maintaining utility lines, water lines, sewage lines, drainage ditches and appurtenances thereto, together with the right to cut, trim or remove all trees or brush necessary and the right to locate guide wires, bases, and anchors where necessary.

23. The purchaser of any lot, his heirs, devisees or assigns, shall not subdivide any lot and convey a part thereof to any other person, firm, or corporation, it being understood that this covenant shall prevent any further reduction in size of individual lots and prohibit a conveyance of a part of any individual lot.

24. There shall not be erected on any lot any sign except a sign identifying the owner of the lot, the lot number, and address, such signs to be approved by the Declarant.

25. No recreational vehicle placed upon any lot may be leased or rented by its owner to any other person, firm or corporation unless the consent of the Declarant is first obtained in writing.

The Declarant reserves the right to make and prescribe such rules, regulations, and limitations for the use of the common recreational facilities as may be necessary for the orderly and proper use and enjoyment thereof, including the right to make and enforce regulations pertaining to swimming and all swimming facilities, including regulations governing the use and enjoyment of Big Bear Lake, common facilities and the like, as well as to prescribe the opening and closing hours for the recreational facilities or the seasonal closing thereof when warranted by weather conditions or other considerations which in the opinion of the Declarant requires closure.

## **VII. Variances**

The Declarant reserves the right to permit reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes of the general development scheme and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the subdivision.

## **VIII. Ownership, Use and Enjoyment of Streets, Parks and Recreational Facilities**

A. Each of the streets in the Big Bear Lake subdivision now or hereafter designated on any plat is a private street, and every park, common facility, recreational facility and other amenity within the subdivision is a private park, facility, or amenity and neither Declarant's execution nor recording of the plat nor any other act of Declarant with respect to the property is, or is intended to be, or shall be construed as a dedication to the public of any of the streets, parks, common or recreational facilities or other amenities other than as stated herein. An easement for the use and enjoyment of each of said streets and areas designated is reserved to Declarant, its successors and assigns; and to such persons who are, from time to time, permitted by Declarant to use and enjoy such recreational facilities or other amenities as owners or licensee of Declarant.

B. The Declarant reserves the right to permit other persons, firms or corporations who own or acquire title to property from Declarant outside of the Big Bear Lakes Camplands to use and enjoy the recreational and common facilities within the subdivision, provided, however, that if such use is permitted on a permanent basis there shall be provision made for proportionate upkeep and maintenance, and such additional use shall be within the capacity of the subject facilities.

## **IX. Provisions with Respect to Big Bear Lake and Lots Contiguous Thereto**

A. The water in and under Big Bear Lake as shown on the plat thereof, is and will be owned by the Declarant, his successors and assigns. The right that will be acquired by the owners of property within the Big Bear Lake Subdivision is the right to the use and enjoyment of the water in said lake subject to the rules, regulations and restrictions as may be from time to time imposed by the Declarant, including limitations with respect to size and type of boat, motors, fishing regulations, and the like. No grantee of

property in the Big Bear Lake Subdivision, his successors and assigns, shall have any right whatsoever with respect to any streams, spring, or other water source that is a tributary to said Big Bear Lake, or any other subsequent water impoundment that may be constructed by Declarant upon the remainder of its property not included within said subdivision. The Declarant, his successors and assigns, will have the right any time to maintain the Big Bear Lake and to remove any deposits therein, and to raise or lower the water level thereof, from time to time as declared or deemed necessary. The Declarant shall have full use and enjoyment of the shoreline of Big Bear Lake except at the designated access points, and shall have the full rights to sell lots along the shoreline of said lake, and any use thereof by persons other than designated by Declarant shall be considered trespassing.

## **X. Rights of First Refusal**

A. Whenever the owner of any lot in Big Bear Lake Subdivision, or in any section thereof, other than the Declarant, shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner or if said owner shall independently decide to put said lot on the market, the owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer, or (if said owner shall independently have decided to put said lot on the market) at the price and on the terms acceptable to said owner, first to the owner of the lot on right of the prospective seller's lot, next to the owner of the lot on the left of the prospective seller's lot, and finally, to the Declarant, its successor or assigns. Such offerings shall be made successively, and each of said offerees shall have ten (10) days within which to accept or refuse such offer. If all of said offerees refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, subject to the limitations contained herein to sell said lot at the bona fide offer so received.

## **XI. Remedies**

A. The Declarant, or any party to whose benefit these restrictions inure, may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these restrictions or covenants and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorneys' fees.

B. The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of Declarant, or an aggrieved party to invoke an available remedy in respect of a violation of any of these restrictions or covenants shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him or it upon the recurrence or continuation of said violation or the occurrence of a different violation.

## **XII. Grantee's Acceptance**

A. The grantee of any lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each of these restrictions and covenants and agreements herein contained and subject to the right of the Declarant to impose reasonable rules and regulations, and also jurisdiction, rights and powers of Declarant, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, and to and with the grantees and subsequent owners of each of the lots within the subdivision to keep, observe, comply with and perform said restrictions, covenants and agreements.

B. Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all the risks and hazards of ownership, use or occupancy attendant to said lot, including but not limited to its proximity to any recreational facility.

C. Each such purchaser or grantee shall pay the annual assessment herein provided, and the imposition of such assessment shall be a debt of the owner of said lot or lots.



### **XIII. Severability**

A. Each and every one of the restrictions is hereby declared to be independent of, and severable from, the rest and remainder of the restrictions and of and from every other one of the restrictions. Therefore, if any of the restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the restrictions.

IN WITNESS WHEREOF, the said Declarant has caused its corporate name to be signed hereto by its President and its corporate seal to be affixed hereto by its Secretary by authority of its Board of Directors duly given.

**ALYESKA, INC.**  
S/ PAUL E. GARBART  
*President*

### **State of West Virginia, County of Preston, To-Wit:**

I, Neil A. Reed, a Notary Public in and for the County of Preston, in the State of West Virginia, do hereby certify that Paul E. Garbart, who signed the writing hereunto annexed, bearing date the 15th day of June, 1972, for ALYESKA, INC., a West Virginia corporation, has this day, before me, in my said county, appeared and acknowledged said writing to be the act and deed of said Corporation.

Given under my hand this 15th day of June, 1972.  
My commission expires February 2, 1978.

S/ NEIL A. REED  
*Notary Public*

This instrument was prepared by  
JAMES T. DAILY, JR., Attorney at Law,  
Kingwood, West Virginia 26537.



# *Supplemental Declaration of Restrictions and Covenants*

Big Bear Lake Camplands  
A Division of Alyeska, Inc., A West Virginia Corporation

THIS SUPPLEMENTAL DECLARATION, made this 19th day of June 1972, by Alyeska, Inc., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the Declarant by a Declaration of Restrictions and Covenants dated June 15, 1972, and of record in the office of the Clerk of the County Court of Preston County, West Virginia, in Deed Book No. 429, at page 558, made and declared certain mutual and beneficial restrictions, covenants, conditions, assessments and charges, therein sometimes collectively called "Restrictions," with respect to the sale, conveyance, use and enjoyment of lots located in a subdivision known as Big Bear Lake Camplands, situate in Pleasant District of the county and state aforesaid, a plat of said subdivisions recorded in said Clerk's office in Large Map Book No. 1, at page 55, and also with respect to the sale and conveyance of the lots located within the Ketchikan Territory or section of said subdivision, a map of which is recorded in said Clerk's office in Large Map Book No. 1, at page 56, and within the Klondike Territory or section of said Camplands, a map of which is also recorded in said Clerk's office in Large Map Book No. 1, at page 57, all as therein set forth; and

WHEREAS, the Declarant reserved to itself the right to supplement said Declaration of Restrictions and Covenants prior to the sale and conveyance of any lots within said subdivision and the mentioned territories or sections thereof, and said Declaration of Restrictions having failed to set forth in detail the mutual and reciprocal covenants, agreements, rights, duties, obligations, conditions, assessments, and charges as well as the amounts thereof to be paid by the property owners for the upkeep and maintenance of the common and recreational facilities, and accordingly it is the purpose of the Declarant to set forth herein all such provisions with respect to the same, including the provisions, terms, and conditions relating to the optional termination of the duty of maintenance on the part of Declarant, all prior to the sale and conveyance of any lots within said subdivision and territories or sections.

NOW, THEREFORE, WITNESSETH: The Declarant hereby further declares that in addition to the mutual and beneficial restrictions, covenants, agreements, conditions, rights, duties, obligations, assessments and charges set forth and contained in the aforesaid Declaration of Restrictions dated June 15, 1972, and recorded in said County Clerk's office in Deed Book No. 429, at page 558, all of the lots within the said Big Bear Lake Subdivision as well as within the Ketchikan and Klondike Territories or sections thereof, plats of which are all recorded as aforesaid, as well as any future territories or sections in said subdivision, shall be subject to the further covenants, conditions, charges and assessments herein set forth, all of which shall run with the land and shall be binding upon the Declarant, its successors, assigns or designees, and upon all parties having or acquiring any right, title or interest, whether legal or equitable, in and to the lots, real property or any parts thereof, all as follows:

## **SECTION 1—Assessments for Upkeep and Maintenance of Common and Recreational Facilities**

(a) Every person, firm or corporation acquiring title, legal or equitable, to any lot in the subdivision known as Big Bear Lake Camplands, and to the Ketchikan and Klondike Territories or sections thereof, as well as any subsequent territories or sections laid off within said subdivision from which lots are sold, shall pay to the Declarant, its successors, assigns or designees, the sum of Sixty Dollars

(\$60.00) per year for each one (1) or two (2) lots where any such two lots adjoin each other by a common boundary and are purchased at the same time by the same person or persons and are used as a single lot, for the upkeep and maintenance of the common and recreational facilities which are located within or appurtenant to said subdivision, including roads, security, recreational facilities, comfort stations, sewage and garbage disposal, administration, as well as proportionate upkeep and maintenance of Big Bear Lake and the access roads to said lake and subdivision. The initial assessment shall be payable on June 1, 1973, for the fiscal year or twelve (12) month period then commencing and ending May 31, 1974, and thereafter on June 1st of each succeeding twelve (12) month period of fiscal year until and unless terminated by the Declarant as hereinafter provided.

(b) The annual assessments in said amount of Sixty Dollars (\$60.00) shall be payable on or before the annual due date thereof, and said assessments shall be a debt owing from the owner of the legal or equitable title to the lot or lots; and Declarant, its successors, assigns, or designees, shall have all of the rights under the law of West Virginia for the collection of such indebtedness.

### **SECTION 2—Annual Option to Terminate Duty of Maintenance by Declarant On and After June 1, 1978.**

(a) Commencing June 1, 1978, the Declarant, its successor, assignee or designee, shall have the annual right and option to terminate its duty and obligation for the upkeep and maintenance of the common and recreational facilities herein mentioned, provided, however, before the Declarant may exercise such annual option to terminate, it shall first give to the then property owners a notice of its intention to terminate such duty of upkeep and maintenance, and to forego the collection of annual assessments of Sixty Dollars (\$60.00) for such upkeep and maintenance set forth in Section 1 hereof, provided further, that such election to terminate shall be made within the period of thirty (30) days immediately prior to June 1, 1978, or within the period of thirty (30) days immediately prior to any succeeding June 1, thereafter during the term of said Declaration of Restrictions as set forth therein, or any extension thereof.

(b) In the event the Declarant elects to terminate its duty of upkeep and maintenance, and to forego the collection of the aforesaid annual assessments, the Declarant may cause to be organized a non-profit property owners' association or corporation which will extend membership to all persons then owning lots within the subdivision or having the right to use the common or recreational facilities, which association or non-profit corporation will thereupon have the power to establish and fix dues and assessments by a majority vote of the property owners entitled to use such facilities who are then current in the payment of their assessments to the Declarant for the previous year. The Declaration of Restrictions and Covenants of record, including this Supplemental Declaration of Restrictions and Covenants, shall thereafter continue to govern the use and enjoyment of said subdivision, the territories or sections thereof, and the facilities therein, and Declarant shall continue to have full right to invoke and enforce the same.

(c) In the event Declarant elects to terminate its duty to maintain said facilities and to forego the collection of the annual assessments, it shall within the thirty (30) day period aforesaid notify the property owners of its election to so terminate by posting a notice thereof in at least five (5) conspicuous places within the subdivision, one (1) such notice to be posted in each of the territories or sections thereof, and by publishing its notice of intention to terminate such duty to maintain in one (1) newspaper of general circulation in Preston County, West Virginia, for two consecutive weeks prior to the effective date of termination.

(d) The election to terminate its duty to maintain the common and recreational facilities may only be exercised by Declarant during the thirty (30) day period immediately prior to the commencement of the next succeeding fiscal year commencing not sooner than June 1, 1978, and failure of the Declarant to terminate such duty within said thirty (30) day period in the manner herein provided shall automatically impose on Declarant the duty of maintenance, including the right to collect assessments and charges, for the next ensuing twelve (12) month period or fiscal year.

(e) In the event that Declarant, its successors or assigns, elects to terminate its duty of upkeep and maintenance and its right to the annual assessments as hereinbefore set forth, the Declarant, its successors or assigns, shall continue thereafter to extend to the property owners the right to the continued

use and enjoyment of all such common and recreational facilities under the same conditions that previously existed, provided, however, that the annual dues and assessments may be modified and increased by a majority vote of the property owners that are members in good standing of any such property owners' association; and the Declarant upon termination of its duties to maintain the common and recreational facilities within said subdivision shall be required to lease such common and recreational facilities within said subdivision to any such property owners' association at an annual rental of not to exceed eight per cent (8%) of the market value of such facilities at the time of the termination as herein provided, and thereafter all upkeep and maintenance of such common and recreational facilities shall be provided by the property owners' association.

(f) At all times, even after the Declarant, its successors or assigns, has terminated its duty to maintain the common and recreational facilities within the subdivision aforesaid, and each territory or section thereof, the Declarant will not be required to pay any dues or assessments or to be accountable for any dues or assessments for any lots that are owned by the Declarant, and the Declarant will have the right to continue to extend the privilege to the purchasers of any such lots to be permitted to use and enjoy the common and recreational facilities upon the payment of any dues and assessments then established for other property owners similarly situated, and the purchasers of such lots from Declarant, its successors or assigns, shall have the absolute right to become a member of any such property owners' association and to be charged the same amount of dues and assessments as are paid by other property owners similarly situated.

(g) In the event of termination by Declarant of its duty to maintain the common and recreational facilities as herein provided, and upon the formation of any property owners' association as herein contemplated, the Declarant shall have one (1) vote in such association for each lot owned by Declarant at the time any matters are voted upon by said association.

### **SECTION 3—Option of Declarant to Limit Upkeep and Maintenance to Available Funds Commencing June 1, 1978.**

Commencing with the fiscal year or twelve (12) month period beginning June 1, 1978, and continuing each year thereafter, that Declarant, its successors or assigns, continues to exercise its duty of upkeep and maintenance of the common and recreational facilities, the Declarant may limit such upkeep and maintenance to the aggregate net amount of funds available from the property owners' assessments as collected by Declarant on a fiscal year basis, and the Declarant shall have no obligation to maintain the common and recreational facilities beyond the net funds so available.

### **SECTION 4—Assignment of Duties By Declarant.**

The duties of upkeep and maintenance herein provided, as well as those set forth in the Declaration of Restrictions dated June 15, 1972, recorded as aforesaid, may be assigned or delegated by the Declarant to its successors in title, or to any other responsible person, firm or corporation including a corporation organized by Declarant for the purpose of providing such upkeep and maintenance, in which event all of the duties, obligations and rights, including the right to the collection of the assessments and dues, shall be assumed and discharged by such assignee who shall have all of the rights enumerated herein or in the Declaration of Restrictions aforesaid.

### **SECTION 5—Provisions of Declaration of Restrictions and Covenants Dated June 15, 1972, Included Herein.**

Other than as herein provided, all of the terms, conditions, covenants and provisions of the Declaration of Restrictions and Covenants dated June 15, 1972, and recorded as aforesaid, are incorporated herein by reference, and made a part hereof, and this Supplemental Declaration is accordingly incorporated in and made a part thereof; and the grantee of any lot subject to the provisions of said original acceptance of a deed conveying title to any lot or lots or the execution of a contract for the purchase of any lot or lots, whether from the Declarant or a subsequent owner of said lot, shall accept such deed or contract upon and subject to each of the supplemental restrictions, covenants and agreements herein contained, and the Declarant shall have the express right to avail itself of all of the terms and provisions hereof as well as those of the Declaration aforesaid for the enforcement of the conditions herein set forth.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be signed hereto by its President and corporate seal to be affixed hereto by its Secretary by authority of its Board of Directors duly given.

**ALYESKA, INC.**  
S/ PAUL E. GARBART  
*President*

**State of West Virginia, County of Preston, To-Wit:**

I, Nancy L. Reckart, a Notary Public in and for the county and state aforesaid, do hereby certify that PAUL E. GARBART, who signed the writing hereto annexed, bearing date the 19th day of June, 1972, for ALYESKA, INC., a West Virginia corporation, has this day, before me, in my said county, appeared and acknowledged said writing to be the act and deed of said Corporation.

Given under my hand this 19th day of June, 1972.  
My commission expires December 8, 1975.

S/ NANCY L. RECKART  
*Notary Public*

The foregoing instrument was prepared by  
JAMES T. DAILEY, JR., Attorney at Law,  
Dailey & Smith, 107 W. Court Street,  
Kingwood, West Virginia.

# *Second Supplemental Declaration of Restrictions and Covenants*

## **Big Bear Lake Camplands, Tracts Nos. 1 and 2 A Division of Alyeska, Inc. A West Virginia Corporation**

THIS SECOND SUPPLEMENTAL DECLARATION, made this 19th day of February, 1973, by ALYESKA, INC., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the Declarant by a Declaration of Restrictions and Covenants dated June 15, 1972, and of record in the office of the Clerk of the County Court of Preston County, West Virginia, in Deed Book No. 429, at page 558, and by Supplemental Declaration of Restrictions and Covenants dated June 19, 1972, and of record in said County Clerk's office in Deed Book No. 430, at page 79, made and declared certain mutual and beneficial restrictions, covenants, conditions, assessments and charges therein sometimes collectively called "Restrictions," with respect to the sale, conveyance, use and enjoyment of lots located in the subdivision known as Big Bear Lake Camplands, situate in Pleasant District, of the county and state aforesaid, a plat of said subdivision of record in said County Clerk's office in Large Map Book No. 1, at page 55, and also with respect to the sale and conveyance of the lots located within the Ketchikan Territory or Section of said subdivision, a map of which is recorded in said County Clerk's office in Large Map Book No. 1, at page 56, and within the Klondike Territory or Section of said subdivision, a map of which is also recorded in said Clerk's office in Large Map Book No. 1, at page 57, all as more particularly therein set forth; and

WHEREAS, the Declarant has enlarged the subdivision known as Big Bear Lake Camplands as more fully set forth on a revised map or plat thereof of record in said County Clerk's office in Large Map Book No. 1, at page 61, said Big Bear Lake Camplands now consisting of Tract No. 1 (which was the original Big Bear Lake Camplands) and Tract No. 2; said Tract No. 1 of Big Bear Lake Camplands containing therein the Ketchikan and Klondike Sections or Territories hereinbefore mentioned, as well as the Yukon Territory, a map of which is recorded in said Clerk's office in Large Map Book No. 1, at page 58, the Kodiak Section or Territory, a map of which is recorded in Large Map Book No. 1, at page 62, the Aleutian Territory, a map of which is recorded in Large Map Book No. 1, at page 63; and Big Bear Territory which is located in Tract No. 2 of Big Bear Lake Camplands, a map of which is recorded in Large Map Book No. 1, at page 64; and

WHEREAS, the Declarant desires to expressly include the Yukon, Kodiak, Aleutian and Big Bear Territories or Sections within the terms of the Declaration of Restrictions and Covenants and Supplemental Declaration of Restrictions and Covenants hereinbefore mentioned as well as to supplement the same, all as hereinafter set forth.

NOW, THEREFORE, WITNESSETH: Declarant hereby further declares that in addition to the mutual and beneficial restrictions, covenants, agreements, conditions, rights, duties, obligations, assessments and charges set forth and contained in the aforesaid Declaration of Restrictions dated June 15, 1972, and recorded in said County Clerk's office in Deed Book No. 429, at page 558, and set forth in the Supplemental Declaration of Restrictions and Covenants dated June 19, 1972, and recorded in said County Clerk's office in Deed Book No. 430, at page 79; that all of the unsold lots in the said Big Bear Lake Camplands, Tract No. 1, within the Ketchikan, Klondike and Yukon Territories thereof; and all of the lots in the Kodiak and Aleutian Territories of said Tract No. 1, and in the Big Bear Territory of Big Bear Lake Camplands, Tract No. 2, as well as any future territories or sections in said revised subdivision, shall be subject to the further covenants, conditions, reservations, easements, charges and restrictions herein set forth, all of which shall run with the land and shall be binding upon the Declarant, its successors, assigns or designees, and upon all parties having or acquiring any right, title or interest whether legal or equitable in and to the lots, real property or any parts thereof, all as follows:

## **I. Applicability**

These second supplemental restrictions shall apply to all subdivided numbered lots within the Ketchikan, Klondike and Yukon Territories wherein legal or equitable title was not sold as of the date hereof, and to all of the subdivided and numbered lots within the Kodiak and Aleutian Territories of said Tract No. 1, and to the Big Bear Territory of Tract No. 2, as well as to the impoundment of water known as Big Bear Lake located within said Tract No. 2 and all lots fronting or bordering on the shore line thereof, as well as to future sections within said subdivision, all of which are for recreation vehicular use only; and these restrictions shall not be applicable to other lands of the Declarant outside of Tracts Nos. 1 and 2 of Big Bear Lake Camplands as shown on the plat aforesaid, unless otherwise herein or hereinafter specifically provided.

## **II. Easements**

In addition to the easements set forth and reserved in the Declaration of Restrictions dated June 15, 1972, Declarant reserves for itself, its successors and assigns, for purposes incident to its development of real property the following additional easements and/or rights of way:

A. A ten (10) foot wide easement and right of way adjacent to each cul-de-sac, which may be improved by the Declarant and used as a part of the roadway of the cul-de-sacs for the use and benefit of all persons lawfully using said roadway.

B. An eight (8) foot wide easement [four (4) feet on each lot] along property boundary lines for the purpose of installing, operating and maintaining underground utility lines and mains, including underground electric lines, facilities and attachments to distribute electricity to individual lots.

C. Such other easements or rights of way as may be needed for the natural and orderly development and occupation of the subdivision.

## **III. Provisions With Respect To Lakes and Lots Contiguous Thereto**

The water in, as well as the land under, Big Bear Lake located within Tract No. 2 of Big Bear Lake Camplands, or any other lakes or impoundments constructed by Declarant within the subdivision or any future extension thereof, is and will be owned by Declarant, its successors and assigns. The title that will be granted to and acquired by the grantee of the Declarant's title to any lot fronting or bordering on said lake or lakes, and that acquired by the successors and assigns of each such grantee, shall extend only to such point as designated on the map or plat, and in no event shall any property line extend beyond the shore line of the lake to which such lot is fronting, bordering or contiguous. No such grantees, nor their successors or assigns, shall have any right with respect to any stream, spring or other water source that is a tributary to said Big Bear Lake, or other lake, or with respect to said lake or lakes, and the land thereunder, the water therein, or its elevation, use or condition, and none of said lots shall have any riparian rights or incidents appurtenant; provided, further, that title shall not pass by reliction, submergence or changing water elevations. The Declarant, its successors and assigns, shall have the right at any time to dredge or otherwise remove the accretion or deposit from any of said lots in order that the shore line of the lake or lakes may be moved toward or to, but not inland beyond, the location of said shore line as it would exist on the date that Big Bear Lake as shown on the map or plat of Big Bear Territory hereinbefore mentioned is completed, or any other lake or lakes that may hereafter be constructed in said subdivision or any addition or extension thereof.

## **IV. Reservation of Easement of Declarant for Operation of Lake**

A. The Declarant reserves to itself, its successors and assigns, such an easement upon, across and through the lake front portion of each of said lots fronting on or contiguous to said lake as may be reasonably necessary in connection with operating said lake.

B. The Declarant further reserves to itself, its successors and assigns, an easement on all lake front lots and lake front access areas to permit the fluctuation of the water level from the normal lake elevation up to the water elevation that may be reached by virtue of flooding or raising the water level to the height of or above the emergency spillway, and the Declarant shall not be liable for any losses or damages whatsoever to any person, firm or corporation or to the owners of any lake front lots including any boats, docks or other property in or upon the same that may be caused by virtue of high water, ice, erosion, washing, flooding or other actions by the water.



## **V. Declarant Shall Have the Right To Regulate Docks and Docking Facilities On Lots Abutting Lake**

The Declarant has the right to prohibit in the first instance all docks and docking facilities extending past the shore line of Big Bear Lake or any other impoundment hereafter built in the existing or any extended subdivision, provided, however, that Declarant may permit the placement of docks or docking facilities extending from the lake front lots into the water; but Declarant expressly reserves to itself the right to prescribe and enforce rules and regulations for the type, size, location, construction and use of all such individual docks or docking facilities, which shall include, but shall not be limited to prescribing and approving the type, size, length, width, plans and construction for all docks and docking facilities, as well as the periods of time that such docks or docking facilities may extend beyond the shore line. Before constructing any dock or docking facilities beyond the shore line of Big Bear Lake, or any other lake constructed by Declarant, the lot owner must apply to Declarant for permission to place or construct a dock or docking facilities; and such application shall contain a description or plan of the dock proposed to be constructed as well as other or further information which may be required by Declarant, and the granting by Declarant of permission to erect and place a dock or docking facilities shall not be construed to permit any subsequent construction or placement of any such facilities, or the requiring by Declarant of such facilities once constructed to be removed.

## **VI. Provisions of Declaration of Restrictions and Covenants Dated June 15, 1972, and Supplemental Declaration of Restrictions and Covenants Dated June 19, 1972, Included Herein**

Other than as herein provided, all of the terms, conditions, covenants and provisions of the Declaration of Restrictions and Covenants dated June 15, 1972, and recorded as aforesaid, and the Supplemental Declaration of Restrictions and Covenants dated June 19, 1972, and also recorded as aforesaid, are incorporated herein by reference and made a part hereof; and this Second Supplemental Declaration is accordingly incorporated in and made a part thereof; and the grantee of any lot subject to the provisions of said original Declaration, the Supplemental Declaration, by acceptance of a deed conveying title to any lot or lots or the execution of a contract for the purchase of any lot or lots, whether from the Declarant or from a subsequent owner of said lot, shall accept such deed or contract upon and subject to each of the restrictions, covenants and agreements therein or herein contained, and the Declarant shall have the express right to avail itself of all of the terms and provisions hereof as well as those of the original Declaration and Supplemental Declaration aforesaid for the enforcement of the conditions herein set forth.

## **VII. Severability**

Each and every one of the restrictions herein contained is hereby declared to be independent of, and severable from, the rest and remainder of the restrictions and of and from every combination of the restrictions, whether herein set forth or set forth in the original Declaration and Supplemental Declaration of Restrictions hereinbefore mentioned. Therefore, if any of the supplemental restrictions herein contained shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that any such holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the restrictions herein contained.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be signed hereto by its President and its corporate seal to be affixed hereto by its Secretary by authority of its Board of Directors duly given.

**ALYESKA, INC., a corporation**  
S/ PAUL E. GARBART  
*President*

**State of West Virginia, County of Preston, To-Wit:**

I, Nancy L. Reckart, a Notary Public in and for the county and state aforesaid, do hereby certify that PAUL E. GARBART, who signed the writing hereunto annexed, bearing date the 19th day of February, 1973, for ALYESKA, INC., a West Virginia corporation, has this day, before me, in my said county, appeared and acknowledged said writing to be the act and deed of said Corporation.

Given under my hand this 28th day of February, 1973.

My commission expires December 8, 1975.

S/ NANCY L. RECKART  
*Notary Public*

This instrument was prepared by  
JAMES T. DAILEY, JR., Attorney at Law,  
Dailey & Smith, 107 W. Court Street,  
Kingwood, West Virginia.

***Alaskan Village Territory, Tract 3***  
Big Bear Lake Camplands  
A Division of Alyeska, Inc., A West Virginia Corporation

**Declaration of Restrictions and Covenants**

THIS DECLARATION, made on July 27, 1979, by ALYESKA, INC., a West Virginia Corporation, hereinafter called "Declarant."

WHEREAS, Declarant has enlarged the subdivision known as big Bear Lake Camplands situated in Preston County, West Virginia, to include the following:

Alaskan Village Territory, Section 1, lots 1001-1988, recorded in Map Cabinet 1, Sheet 80A; Section 2, lots 2001-2578, recorded in Map Cabinet 1, Sheet 80B; Section 3, lots 3001-3549, recorded in Map Cabinet 1, Sheet 81A; in the Preston County, West Virginia Clerk's Office.

WHEREAS, Declarant is the owner of the property know as Alaskan Village Territory and intends to sell and convey the lots situated within Alaskan Village Territory and before doing so desires to subject them to and impose upon them mutual and beneficial restrictions, covenants, conditions, assessments and charges, hereinafter collectively called "restrictions and covenants," under a general plan or scheme of improvement for the benefit of all of the lots and parcels in Alaskan Village Territory and the owners and future owners.

NOW, THEREFORE, WITNESSETH: The Declarant hereby declares that all of said lots are held and shall be held, conveyed, reconveyed, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration, all of which are declared and agreed to be in the furtherance of a plan for the development, improvement and sale of lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the aforesaid plats and its subdivision as a whole. All of the restrictions, covenants, charges and assessments herein set forth shall run with the land and shall be binding upon the Declarant and upon all parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any parts thereof subject to such restrictions.

**Definitions**

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

(a) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of Big Bear Lake Camplands and intended to be devoted to the common use and enjoyment of the owners of Big Bear Lake Camplands, including the owners of Alaskan Village Territory.

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

(c) "Recreational vehicle" shall mean but is not limited to, self-contained motorhomes, camper trailers, travel trailers, truck campers, when mounted to a truck, and tent trailers. The Declarant will be the final arbiter of whether a vehicle qualifies as a recreational vehicle.

(d) "Owner" shall mean and refer to the record owner of the fee simple title to any lot and who has a general warranty deed.

**Restrictions and Covenants**

1. Every person, firm or corporation acquiring title, legal or equitable, to any lot in Alaskan Village Territory shall pay to the Declarant, its successors, assigns or designees, the sum of ninety dollars (\$90.00) per year for each one (1) or two (2) lots where any such two lots adjoin each other by a common boundary and are purchased at the same time by the same person or persons and are used as a single lot, for the upkeep and maintenance of the common and recreational facilities which are

located within or appurtenant to Big Bear Lake Camplands, including roads, security, recreational facilities, comfort stations, sewage and garbage disposal, and administration. The assessment shall be payable on or before March 1 of each year for the fiscal year or twelve-month period then commencing and ending February 28 of the following year.

The assessments, together with such interest thereon and costs of 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. Each such assessment, together, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Declarant, its successors, assigns, or designees, shall have all of the rights under the law of West Virginia for the collection of such indebtedness and for foreclosure of the lien.

Because the Declarant has expended substantial sums toward the improvement of the subdivision and because it does not use the facilities to any degree remotely proportionate to the number of lots it owns, unsold lots held by the Declarant shall not be subject to the assessment for the upkeep and maintenance of the common and recreational facilities.

The assessment fee of \$90.00 is subject to increase each year proportionately as the Consumer Price Index increases.

2. Every Owner shall have the privilege of enjoyment in and to the Common Properties, subject to reasonable use fees which the Declarant, in its discretion may charge, and subject also to the right of the Declarant to suspend the enjoyment rights of any Owner for any period during which the maintenance assessment remains unpaid and for any period not to exceed thirty (30) days for any infractions of the published rules and regulations promulgated by the Declarant.

3. The Declarant shall promulgate and publish rules and regulations from time to time governing the use of the Common Properties and the personal conduct of the members and their guests thereon. The Declarant shall have the power to enforce the rules and regulations by means of appropriate sanctions including, but not limited to, imposition of fines and suspension of the offending owner's, families', and invitees' use of any common or recreational facility.

4. In order to engender cooperation and to facilitate the smooth transition of control of subdivision matters from the Declarant to the property owners, an Advisory Committee shall be established by the Declarant. The Advisory Committee, consisting of five members, may be, at the discretion of the Declarant, selected by the Declarant from property owners who are not employees of the Declarant or of marketing agents, but who own lots in Alaskan Village Territory. The function of the Advisory Committee is to assist the Declarant in prescribing rules and regulations regarding the use of roads, recreational facilities and other common facilities for the benefit of lot owners in Alaskan Village Territory and to further assist the Declarant, upon the Declarant's request and only to the extent requested, by engaging in other reasonable activities necessary to further the purpose of maintaining, protecting and enhancing the Common Properties.

5. The Declarant may, at its option transfer or assign its power to collect and administer maintenance assessments and to administer and enforce the restrictions to an organization of property owners. Upon the formation of any property owners' association, the Declarant shall have three (3) votes in such association for each lot to which Declarant holds legal and equitable title at the time any matters are voted upon by said association. Upon the formation of any property owners' association, the association shall have the power to establish and fix dues and assessments.

Common facilities shall be conveyed to the property owners' association when, in the Declarant's opinion, it is appropriate to do so. When the facilities are conveyed to the property owners' association, the property owners' association must accept the conveyance.

6. No homemade vehicles or converted buses or similar types of vehicles shall be permitted on any permanent camp site; however, recreational vehicles shall be permitted on a camp site.

7. No animals or livestock of any description, except the usual household pets, in reasonable numbers, shall be kept or harbored on any lot or in any recreational vehicle in Alaskan Village Territory.

8. No wrecked, abandoned, discarded or junked vehicle, or sizeable parts thereof, shall be placed or be permitted to remain on any lot.

9. Every tank for the storage of fuel on any lot shall be buried below the surface of the ground.
10. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street or common recreational facility within Alaskan Village Territory.
11. No lot shall be used for commercial purposes, for exhibiting items for casual sale, or for the parking of commercial-type vehicles not designed and used for camping.
12. All motorcycles, minibikes, motorbikes, motor scooters, and drag racers are prohibited and shall not be operated in Alaskan Village Territory, except in specifically designated areas during authorized hours.
13. All lots, whether occupied or unoccupied, and any permitted improvements placed thereon, shall at all times be maintained in such a manner as to prevent the same from becoming unsightly, whether by reason of unattractive growth on such lot or the objectionable and unsightly accumulation of rubbish or debris thereon.
14. No noxious, dangerous, illegal, unreasonably disturbing or offensive activities shall be carried on upon any lot or in any recreational vehicle thereon, nor shall anything be permitted upon any lot which may be or become a nuisance or annoyance to the neighborhood.
15. Lots shall not be cleared of trees growing thereon except to permit the parking of an approved recreational vehicle thereon and to permit the use and enjoyment thereof in connection with such vehicle. There shall be no trees removed within the setback areas of any campsite without prior written consent of Declarant.
16. There shall be no trash, ashes, garbage or other refuse dumped, stored, or accumulated on any lot or thrown into the water or shoreline of any lake, pond, or stream in Alaskan Village Territory. There shall be no burning of wood, leaves, trash, garbage or other refuse without a "burning permit" secured from the Declarant, its successors and assigns, and every owner of a lot shall comply with the law of West Virginia relating to open fires.
17. Property owners shall keep their property free from accumulation of garbage, trash and refuse and will deliver the same to a nearby, convenient storage area provided by the Declarant for removal by the Declarant.
18. There shall be no open fires permitted on any campsite except within the confines of a masonry fireplace of approved design, or a barbecue pit of approved design, or a clear space of ground in a circle with large stones in an approved manner or metal cooking device of approved design. All such fires must be attended at all times and thoroughly extinguished upon completion of use.
19. There shall be no camping permitted in any easement area, or within the setback areas or in any common or recreational areas, streets, or service driveways, except in those areas, if any, which are specifically designated for that purpose.
20. There shall be no vehicles of any type driven or towed in a reckless manner on or along any street or service driveway within Alaskan Village Territory. All vehicles must observe such speed restrictions or noise limitations throughout Alaskan Village Territory as established or changed from time to time by the Declarant, its successors or assigns. The Declarant shall likewise have the right to prescribe one-way streets and to otherwise impose reasonable restrictions on the movement and way of movement of all vehicles on the streets in Alaskan Village Territory.
21. All recreational vehicles and permissible storage buildings which are used or maintained on any lot must be kept in good condition, painted and maintained on the exterior.
22. No drilling or digging or wells of any description, quarrying, mining, dredging, or excavating of any type or nature, shall be permitted on any lot, unless approved by Declarant.
23. The Declarant reserves a ten-foot easement on the front, side, and rear of each lot for the purpose of installing, using, repairing and maintaining public utilities, drainage ditches, and/or equipment necessary for the performance of utility services and functions or for any other purpose determined by the Declarant to be for the general benefit of Alaskan Village Territory and the property owners thereof. The Declarant reserves the right to waive this easement on the sides of adjoining lots where more than one adjoining lot is owned by a single person.

24. The Declarant, its successors and assigns, reserves the right to enter upon any vacant or unattended lot for the purpose of improving its general appearance without being classified as a trespasser, or being liable for the damage for property removed.

25. The purchaser of any lot, his heirs, devisees or assigns, shall not subdivide any lot and convey a part thereof to any other person, firm, or corporation, it being understood that this covenant shall prevent any further reduction in size of individual lots and prohibit a conveyance of a part of any individual lot.

26. There shall not be erected on any lot any sign except a sign identifying the owner of the lot, the lot number, and address, such signs to be approved by the Declarant.

27. No recreational vehicle placed upon any lot may be leased or rented by its owner to any other person, firm or corporation unless the consent of the Declarant in writing is first obtained.

28. The Declarant reserves the right to permit reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes of the general development scheme and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in Alaskan Village Territory.

29. There shall be no more than one (1) recreational vehicle permitted on any lot or adjoining lots where two (2) such lots are owned by the same person.

30. Prior to placing a recreational vehicle on a lot, a property owner must obtain a recreational vehicle permit from Alyeska, Inc. The permit will be granted if the recreational vehicle is in good condition and painted and maintained on the exterior. However, the Declarant shall be the final arbiter as to whether a permit will be granted.

31. No vehicle shall be parked on or along any street, service driveway, recreational or common property within Alaskan Village Territory except in designated parking areas or upon lots. No commercial trucks shall be parked for storage any time on any lot, except during deliveries or servicing, with the exception of trucks or vehicles designed and equipped for recreational camping uses.

32. No lot shall be used except for recreational vehicular purposes, and no such lot or combination of lots owned by a single person shall be used by its owner as a permanent residence. A lot owner may apply to the Declarant for permission to use a tent upon his lot, and if the appearance and use of the tent is properly maintained and self-contained, and does not detract from the general appearance of the area, the permission will be granted.

33. In the event that any recreational vehicle or material on any lot in Alaskan Village Territory would be destroyed, all or in part by fire, windstorm or other cause or act of God, the same must forthwith be rebuilt, replaced or all debris removed and the campsite restored to a slightly condition with reasonable promptness; provided, however, that in no event shall the debris remain upon the campsite or lot for a period of more than thirty days following any such event.

34. There shall be no permanent structures constructed on any lot, or combination of lots, with the exception of a storage unit not to exceed 12 feet in length, 10 feet in width, and 10 feet in height, which shall be susceptible of removal from the lot and shall be of good appearance.

35. Every recreational vehicle shall be parked or placed on any lot, or combination of lots, not less than 20 feet from the edge of the adjoining street line. Every storage unit shall likewise be at least 20 feet from the edge of the road. Further, driveways shall be located at least 2 feet from any exterior lot corner.

36. The Declarant will have the authority from time to time to establish regulations pertaining to any permissible structures upon the lots and relating to the common good, which in the Declarant's sole discretion, conforms with the general developmental scheme.

37. The following minimum dimensions shall govern for front, side and rear setbacks on all lots with respect to the placement of any recreational vehicle thereon, as well as any storage unit thereon; provided, however, that where more than one adjoining lot is owned by a single person, the lots shall be considered as one.

- a. 20 feet from the front line of each lot abutting the street.
- b. 5 feet from each lot side line.
- c. 10 feet from the rear line of each lot.

38. No change in ground level may be made on any lot in excess of one foot in height over existing grades without the written approval of the Declarant obtained prior to commencement of work.

39. All household pets which are permitted to enter or to remain within Alaskan Village Territory must be constantly under the effective control of their owners, and no household pets shall be permitted to roam at large or create unreasonable noise or nuisance.

40. There shall be no hunting or shooting of firearms permitted on any lot or campsite in Alaskan Village Territory. There shall be no hunting or shooting permitted on any adjoining properties owned by the Declarant, and the purchase of a lot or lots shall confer no rights whatsoever for the owners thereof to use the adjoining lands of the Declarant, or any of the streams, trails, waters or water courses thereon not a part of the subdivision, except as specifically hereinafter provided or by subsequent declaration of the Declarant. Any such unauthorized utilization of such adjoining properties shall be considered as a trespass thereon.

41. In order to preserve the natural quality and aesthetic appearance of the existing geographic area in Alaskan Village Territory, all property lines shall be kept free and open to one another and no fences shall be permitted on any of the lots or lot lines except where, in the opinion of the Declarant, a fence or other enclosure will contribute to and be in keeping with the character of the area.

42. No outside toilet, outhouse, individual sewage or waste system, whether of a permanent or temporary nature, except self-contained sewage systems in a recreational vehicle, shall be permitted on any camp site.

43. Declarant reserves to itself, its successors and assigns the right to: 1. Revoke or supplement at any time prior to the sale of any lot within a section of said subdivision all or any part of these restrictions and 2. Vacate at any time prior to the sale of any lot within a section of said subdivision any or all of the streets, common facilities, recreational facilities, as well as any other amenity now or hereafter shown on any recorded plats.

44. The Declarant reserves the right to permit other persons, firms or corporations who own or acquire title to property from Declarant outside of Alaskan Village Territory to use and enjoy the recreational and common facilities within Alaskan Village Territory provided, however, that if such use is permitted on a permanent basis there shall be provision made for proportionate upkeep and maintenance, and such additional use shall be within the capacity of the subject facilities.

45. The grantee of any lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each of these restrictions and covenants and agreements herein contained and subject to the right of the Declarant to impose reasonable rules and regulations, and subject also to the jurisdiction, rights and powers of Declarant, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, and to and with the grantees and subsequent owners of each of the lots within Alaskan Village Territory to keep, observe, comply with and perform said restrictions, covenants and agreements.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all the risks and hazards of ownership, use or occupancy attendant to said lot, including but not limited to its proximity to any recreational facility.

46. Whenever the owner of any lot in Alaskan Village Territory, or in any section thereof, other than the Declarant, shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner or if said owner shall independently decide to put said lot on the market, the owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer, or (if said owner shall independently have decided to put said lot on the market) at the price and on the terms acceptable to said owner, first to the Declarant, its successors or assigns, next to the owner of the lot on right of the prospective seller's lot (as determined by standing on seller's lot facing the road), and

finally to the owner of the lot on the left of the prospective seller's lot. Such offerings shall be made successively, and each of said offerees shall be made successively, and each of said offerees shall have ten (10) days within which to accept or refuse such offer. If all of said offerees refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, subject to the limitations contained herein to sell said lot at the bona fide offer so received.

47. By a Declaration of Restrictions and Covenants for Big Bear Lake Camplands, dated June 15, 1972, the Declarant reserved an easement for the use and enjoyment of the streets and common or recreational areas within Big Bear Lake Camplands to the Declarant, its successors and assigns and to such persons who are, from time to time, permitted by Declarant to use and enjoy such recreational facilities or other amenities as owners or licensees of Declarant. Pursuant to this provision, the Declarant hereby declares that all owners within Alaskan Village Territory are permitted to use and enjoy the recreational and common facilities within Big Bear Lake Camplands subject to the payment of the annual assessment for the maintenance and upkeep of the recreational and common facilities referenced in paragraph 1 of these Restrictions and Covenants and subject also to the compliance with the rules and regulations promulgated by the Declarant governing the use of the Common Properties.

48. In order to meet the increased costs of replacement of or capital improvements to the common or recreational facilities, the Declarant shall have the power to levy a special assessment for these purposes, subject to the approval of a majority of lot owners.

### **Duration**

The covenants and restrictions of this Declaration shall run with the land and be binding upon Alyeska, Inc. and upon its successors and assigns, for a period of ten (10) years from the date of this instrument. Said covenants shall be automatically extended for successive periods of ten (10) years unless, during the last year of each ten-year period, an instrument signed by the then owners of a majority of the lots has been recorded, agreeing to change said covenants in whole or in part. The provisions of said instrument shall become operative at the expiration of that particular period in which such instrument is executed and recorded.

### **Enforcement**

The restrictions and covenants herein set forth shall be binding on Alyeska, Inc., its successors and assigns, and upon all parties claiming by, through, or under them and all subsequent owners of property in the subdivision, each of whom shall be obligated and bound to observe such restrictions, covenants and conditions. Alyeska, Inc. or the owners of any lot in this subdivision shall have the right to enforce observance or performance of the provisions of this instrument, but Alyeska, Inc. shall be under no affirmative obligation to sue for enforcement of any such violation hereof.

### **Severability**

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

IN WITNESS WHEREOF, the said Declarant has caused its corporate name to be signed hereto by its President and its corporate seal to be affixed hereto by its Secretary by authority of its Board of Directors duly given.

**ALYESKA, INC.**  
S/ PAUL E. GARBART  
*President*

### **State of West Virginia, County of Preston, To Wit:**

I, Don Buvalla, a Notary Public in and for the County of Preston, in the State of West Virginia, do hereby certify that Paul E. Garbart who signed the writing hereunto annexed, bearing date the 27th day of July, 1979, for ALYESKA, INC., a West Virginia corporation, has this day, before me, in my said county, appeared and acknowledged said writing to be the act and deed of said Corporation.

Given under my hand this 27th day of July 1979.

My commission expires March, 1987.

S/ DON BUVALLA.  
*Notary Public*



***White Rock Homesteads***  
Big Bear Lake Camplands  
A Development of Alyeska, Inc., A West Virginia Corporation

**Declaration of Restrictions and Covenants**

THIS DECLARATION, made this 15th day of April, 1980, by and between ALYESKA, INC., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the Declarant is the owner of all of the real estate set forth and described on a certain plat entitled "White Rock Homesteads, a development of Alyeska, Inc.," which plat is of record in the office of the County Clerk of Preston County, West Virginia, in Map Cabinet No. 1, at Sheet 83-B; and which plat describes the Subdivision known as White Rock Homesteads, and which plat is made a part hereof and incorporated herein by reference; and

WHEREAS, all of the real property described in the plat of said White Rock Homesteads (herein sometimes called Subdivision") comprises a part of Alyeska, Inc. general subdivision; and

WHEREAS, White Rock Homesteads is a subdivision of Alyeska, Inc., and is subdivided into numbered lots as set forth and described in the recorded plat hereinbefore mentioned; and

WHEREAS, Declarant is about to sell and convey said lots in White Rock Homesteads and before so doing, desires to subject said lots to and impose upon said lots mutual and beneficial restrictions, covenants, conditions, assessments and charges, hereinafter collectively called "Restrictions," under a general plan of development and improvement for the benefit and of use of all of the lots in the aforesaid Subdivision, as well as the entire Alyeska, Inc. Subdivision, together with the easements appurtenant thereto, and the future owners of said lots.

NOW, THEREFORE, WITNESSETH: The Declarant hereby declares that all of said lots in said White Rock Homesteads Subdivision shall be held, conveyed, reconveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the restrictions herein set forth, all of which are declared and agreed to be in the furtherance of said plan for the Alyeska, Inc. properties, and White Rock Homesteads Subdivision thereof, improvement and sale of lots are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the aforesaid plat and the White Rock Homesteads Subdivision as a whole. All of the restrictions, covenants, charges and assessments herein set forth shall run with the land and shall be binding upon the Declarant, and upon all parties having or acquiring any right, title, or interest, legal or equitable, in and to the real property or any parts thereof subject to such restrictions.

**I. Applicability**

A. These restrictions shall apply to all subdivided numbered lots shown and described upon the aforesaid plat of said White Rock Homesteads Subdivision which are for residential purposes only, but these restrictions shall not be applicable to such lands now or hereafter designated on the plat otherwise, as parcels or as lands of Declarant, which parcels and lands are intended for commercial, multiple dwellings, condominiums, hotels, recreational uses, or other specified special, general or limited uses or purposes.

**II. Term**

A. These restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2010. By accepting a deed to residential property, subject to these restrictions, the residential owners agree that after January 1, 2010, these restrictions shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the owners of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part; provided, however, that anytime before January 1, 1995, these restrictions may be amended by a vote of the then record owners of two-thirds ( $\frac{2}{3}$ ) of such residential lots and thereafter by majority of said owners, except as otherwise provided herein.

B. Declarant reserves to itself, its successors and assigns, the right to revoke at any time prior to the sale of any lot within said Subdivision, all or any part of these restrictions and further to vacate any or all of the streets, parks, recreational facilities, and any other amenity now or hereafter shown on any recorded plans or plats.

### III. Mutuality of Benefit and Obligation

A. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the White Rock Homesteads Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots in the Subdivision and their respective owners. Restrictions substantially the same as those contained herein shall be recorded on all future subdivisions having a like or similar purpose in conformity with the general scheme of improvement of lands to be included in similar future subdivisions.

### IV. Exclusive Residential Use and Improvement

A. Subject to the provisions herein contained, no numbered lot shall be used except for single family residential purposes. No structures shall be erected, placed or permitted to remain on any lot other than one (1) detached, single family residence dwelling and such other outbuildings as are usually accessible to a single family residence dwelling, including a private garage; provided, however, that the provisions of this paragraph shall be subject to paragraph B hereof for a period of two (2) years from the sale by the developer of a lot in said Subdivision.

B. During the period of two (2) years from the date of consummation of the sale by the Declarant to the original purchaser of a lot in the Subdivision, the owner of any such lot may use as a temporary residence, a recreational vehicle of the type approved by Big Bear Lake Property Owners Association, it being understood that after the expiration of two (2) years from the sale by Declarant of legal or equitable title to the original purchaser of any lot within said Subdivision, the provisions of this paragraph shall no longer apply. In the event the original purchaser of legal or equitable title from the Declarant should sell the lot prior to the expiration of two (2) years from the date of original purchase, the provision herein contained shall cease at the end of two (2) years from the original sale by Declarant, regardless of ownership.

### V. Building Control Committee

A. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roofs and exterior color schemes, any later changes or additions after the initial approval thereof, and any remodeling, reconstruction, alterations, or additions thereto, on any lot shall be subject to and shall require the approval in writing before any work is commenced of the Building Control Committee (herein sometimes called "Committee"), as the same may from time to time be composed.

B. The Committee shall be composed of three (3) members to be appointed by Declarant. Committee members shall be subject to removal by Declarant and any vacancy that may from time to time exist shall be filled by the appointment of Declarant, or in the event of Declarant's failure to so appoint such member within two (2) months after any such vacancy, then such vacancy may be filled by the Board of Directors of Big Bear Lake Property Owners Association (hereinafter sometimes called "Association"); provided, however, that at anytime hereafter, the Declarant may, at its sole option, relinquish or assign to the Board of Directors of the Association the power of appointment and removal reserved herein to the Declarant. Such transfer of power and authority must be evidenced in writing.

C. Prior to the commencement of any construction there shall be submitted to the Committee two (2) complete sets of final plans and specifications for any and all proposed improvements, the

erection or alteration of which is desired, and no structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations and specifications therefor have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the dwelling, garage, wall, fence, or other structures proposed to be constructed, altered, placed or maintained, together with the proposed construction material, color scheme, or roofs and exteriors thereof and proposed landscaping. Declarant reserves the right to require a reasonable filing fee for the submission of any plans to defray Committee expenses. No additional fee, in the event of the payment of an initial fee, shall be required for resubmission of plans revised in accordance with Committee recommendation.

D. The Committee shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications in detail with the approval or disapproval endorsed thereon, shall be returned to the person submitting them, and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Committee then shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these restrictions, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or the adjacent buildings or structures; if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof, to be contrary to the interest, welfare or rights of any part of the real property subject hereto, or the owners thereof. The decision of the Committee shall be final and not subject to appeal or review.

F. Neither the Committee nor any architect or agent thereof, or of the Declarant shall be responsible in any way for any defects in the plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done pursuant to such plans and specifications.

## **VI. Size and Placement of Residence and Structures**

A. Every residence dwelling constructed on a lot shall contain a minimum of six hundred (600) square feet on the first floor of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, carports and other outbuildings) and no such dwelling shall exceed two and one-half (2½) stories in height.

B. The Committee shall have the authority to establish regulations pertaining to the height and size requirements of all other types of structures, including, but not limited to fences, walls, and copings. Such regulations shall, in the Committee's sole discretion, conform with the general development scheme.

C. Except as provided in Paragraph VII-D, the following minimum dimensions shall govern for front, side and rear setbacks, on all lots (except fences or walls where approved or required by the Committee), with respect to any dwelling house, or above-grade structure that may be constructed or placed on any lot in the Subdivision.

1. Thirty (30) feet from the front line of each lot abutting a street;
2. Fifteen (15) feet from each lot side lines;
3. Thirty (30) feet from the rear line of each lot.

D. No change in ground level may be made of any lot in excess of one (1) foot in height over existing grades without written approval of the Committee obtained prior to the commencement of work.

## **VII. Particular Rules for Application of Setback Requirements**

A. If the line from which a setback is to be measured is a meandering line, the average length of the two lot lines intersecting the meandering lines shall be determined, and using that average length, an imaginary straight line shall be drawn through the meandering line and the setback measurement shall be made along a line perpendicular to such imaginary line.

B. The term "side line" defines a lot boundary line that extends from the street to which the lot abuts to the front or rear of the lot.

C. The term "rear lot line" defines the boundary line of the lot that is the furthest from and substantially parallel to, the line of the street on which the lot abuts, except that on corner lots it may be determined from either street line.

D. A corner lot shall be deemed to have a front line on each street on which the lot abuts and such lot need only have one rear yard as defined by VI-C(3).

E. The provisions of paragraph VI and paragraph VII shall be subject to the provisions of paragraph IX pertaining to reasonable variances and adjustments.

### **VIII. General Prohibitions and Requirements**

A. The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any lot in the Subdivision.

1. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwasher or toilets shall be connected to an on-site sewage system approved by the West Virginia Board of Health; and in the event that a regulatory authority hereafter requires a central sewage system, then to such central sewage system so required by such regulatory authority, at no cost to Declarant. Storm water shall not be allowed to flow into the sewage system.

2. After two (2) years from the original purchase of legal or equitable title from the Declarant, no temporary house, trailer, camper, travel trailer, tent, garage or other outbuildings shall be placed or erected on any lot for residential purposes; provided, however, that the Declarant may grant permission for any such temporary structure for a period of two (2) years from the date of original purchase of legal or equitable title from the Declarant. No such temporary structures as may be approved shall be used as a permanent dwelling place. During the two (2) year period that a recreational vehicle may be temporarily kept upon a lot in the Subdivision, such recreational vehicle shall be kept, used, enjoyed and maintained, subject to and in conformity with the provisions contained in the Declaration of Restrictions and Covenants for the Alaskan Village Territory of Big Bear Lake Camplands of record in said County Clerk's office in Deed Book No. 481, at page 482, which restrictions and covenants are incorporated herein by reference as fully as if set forth herein verbatim.

3. Once construction of a residence is commenced on any lot, such residence must be substantially completed in accordance with the plans and specifications, as approved by the Committee, within two (2) years from the date of commencement of such construction.

4. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications, and a certificate of occupancy has been issued by the Committee as well as any governmental regulatory agency which may now or hereafter have jurisdiction over the occupancy of such residence.

5. All structures constructed or placed on any lot shall be built of substantially new material and no structure shall be relocated or placed on any lot without the prior written consent of the Committee.

6. No animals or livestock of any description, except the usual household pets in reasonable numbers, shall be kept or harbored on any lot in the Subdivision. All such household pets which are permitted to enter or to remain within the Subdivision, shall at all times be kept under the effective control of their owners, and no household pets shall be permitted to roam at large or create unreasonable noise or nuisance, as for example, excessive barking by a dog.

7. No sign or signs (including, but not limited to "For Sale" or similar signs), billboards, or other advertising structures of any kind may be erected or maintained upon any lot, except a sign identifying the owner of the lot, the lot number and address, except after applying and receiving written permission from the Declarant. Declarant reserves the right to approve all such signs.

8. No unregistered, unlicensed, stripped, partially wrecked, inoperable, or junk automobiles, trucks, motorcycles, motor bikes, other motor vehicles, or parts thereof, shall be kept, used, driven, placed or parked anywhere within the Subdivision; nor shall any such unregistered or unlicensed vehicle, including motor bikes, motorcycles or the like, be driven or ridden upon the street, roadways, alleys or sidewalks within the Subdivision, or upon the lots, open areas, or trails, in the Subdivision. All vehicles, including automobiles, motor bikes, motorcycles or the like, shall be operated by persons holding a valid drivers license. All motorcycles, mini-bikes, motor bikes, motor

scooters, trail bikes, drag racers, off the road vehicles, and the like are prohibited and shall not be operated in the Subdivision; and may only be operated in such areas of the Declarant's property as may be specifically designated by the Declarant during the authorized hours and subject to the conditions imposed by the Declarant.

9. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Committee. Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be installed underground, screened or placed and kept so as not to be visible from any street, or recreation area.

10. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery or other screening approved by the Declarant so as not to be visible from any street or recreational area.

11. No structure erected upon any lot may be used as a model or exhibit or house unless prior written permission to do so shall have been obtained from the Declarant.

12. All lots, whether occupied or unoccupied, and any and all improvements thereon shall be will maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

13. No noxious, offensive, or illegal activities shall be carried on on any lot, nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

14. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

15. No vehicles shall be parked on any street in the Subdivision, except in case of emergency or in connection with the making of deliveries.

16. Any dwelling or outbuilding on any lot which may be destroyed in whole or in part by fire, windstorm, or by any other cause or Act of God must be rebuilt or all such debris removed and the lot restored to a sightly condition with reasonable promptness; provided, however, that in no event shall such debris remain longer than six (6) months.

17. No tree over ten (10) inches in diameter shall be cut or removed from any lot without the prior written consent of the Declarant. In order to preserve and maintain the wooded and natural appearance of the Subdivision, the Committee and the Declarant expressly reserve the right to approve the area to be cleared for the construction of any dwelling or other permissible structure. Prior approval shall be obtained from the Committee and Declarant prior to any such cutting of trees, and the lot owner shall promptly remove and dispose of all cut timber, including tree stumps and limbs from the lot.

18. No trash, ashes, garbage, or other refuse shall be dumped, stored, or accumulated on any lot or upon any recreational area in the Subdivision. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted, except by issuance of a permit by the Declarant, together with any other State Permit which may be required. In order to enhance the appearance and orderliness of the Subdivision, the Declarant hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time to grant an exclusive license to a third party to operate, a commercial scavenging service for the purpose of removing garbage, trash, and other household refuse. The charge for such refuse collection and removal service shall be paid by the lot owner and shall be commensurate with the rates charged by commercial scavengers serving other subdivisions of high standards in the area, and shall be subject to change from time to time.

19. There shall be no access to any lot on the perimeter of the Subdivision except from designated roads within the Subdivision.

20. There shall be no vehicles of any type driven or towed in a reckless manner on or along any street or service driveway within the Subdivision. All vehicles must observe such speed restrictions or noise limitations throughout the Subdivision, as established or changed from time to time by the Declarant, its successors or assigns. The Declarant shall likewise have the right to prescribe one way streets and to otherwise impose reasonable restrictions on the movement and the way of movement of all vehicles on the streets in the Subdivision.

chase of a lot or lots shall confer no rights whatsoever for the owners thereof to use the adjoining lands of Declarant, or any of the streams, trails, waters or water courses thereon, nor other parts of the Subdivision, except as specifically permitted and authorized by the Declarant; provided, however, that the property owners shall have the right to boat and fish therein, and to use the other recreational facilities of Declarant, subject to the reasonable restrictions and conditions imposed by Declarant, its successors or assigns.

22. The purchaser of any lot, his heirs, devisees or assigns, shall not subdivide any lot and convey a part thereof to any person, firm, or corporation; it being understood that this covenant shall prevent any further reduction in size of individual lots and prohibit a conveyance of a part of any individual lot.

23. There shall be no camping permitted in any easement area, or within the setback areas or in any common or recreational areas, streets or service driveways, except in those areas, if any, which are specifically designated for that purpose.

24. The Declarant, its successors and assigns, reserves the right to enter upon any vacant or unattended lot for the purpose of improving its general appearance without being classified as a trespasser, or being liable for damages for property removed.

25. The Declarant reserves the right to permit other persons, firms or corporations who own or acquire title to property from Declarant outside of said Subdivision to use and enjoy the recreational and common facilities within the Subdivision; provided, however, that if such use is permitted on a permanent basis, there shall be provisions made for proportionate upkeep and maintenance, and such additional use shall be within the capacity of the subject facilities.

26. Whenever the owner of any lot in the Subdivision, other than the Declarant, shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner, or if said owner shall independently decide to put said lot on the market, the owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer or (if said owner shall independently have decided to put said lot on the market) at the price and on the terms acceptable to said owner; first, to the Declarant, its successors or assigns; next, to the owner of the lot on right of the prospective sellers' lot (as determined by standing on seller's lot facing the road); and finally, to the owner of the lot on the left of the prospective sellers' lot. Such offering shall be made successively and each of said offerees shall have ten (10) days within which to accept or refuse said offer. If all of said offerees refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, subject to the limitations contained herein, to sell said lot at the bona fide offer so received.

27. By Declaration of Restrictions and Covenants for Big Bear Lake Camplands, dated June 15, 1972, the Declarant reserved an easement for the use and enjoyment of the streets and common or recreational areas within Big Bear Lake Camplands to the Declarant, its successors and assigns, and to such persons who are, from time to time, permitted by the Declarant to use and enjoy such recreational facilities or other amenities as owners or licensees of Declarant. Pursuant to this provision, the Declarant hereby declares that all owners within the White Rock Homestead Subdivision are permitted to use and enjoy the recreational and common facilities within Big Bear Lake Camplands, subject to the payment of the annual assessment for the maintenance and upkeep of the recreational and common facilities mentioned in these restrictions and covenants and subject also to the compliance with the rules and regulations promulgated by the Declarant, its successors or assigns, governing the use of the common properties.

28. In order to meet the increased costs of replacement of, or capital improvements to, as well as upkeep and maintenance for the common and recreational facilities, the Declarant, its successors or assigns, shall have the power to levy a special assessment for these purposes. The Declarant may limit such replacement, improvements, upkeep and maintenance to the aggregate net amount of funds available from the property owners assessments as collected by Declarant, its successors or assigns, on a fiscal year basis, and the Declarant, its successors or assigns, shall have no obligation to replace, improve or maintain the common recreational facilities beyond the net funds so available.

29. Every owner and member shall have the right and privilege of enjoyment in and to the common and recreational properties and facilities, subject to reasonable use fees which the Declarant,

in its discretion, may charge, and further subject to the right of the Declarant to suspend the privilege of enjoyment of any owner, or member, his family or guests, for any period during which the maintenance assessment remains unpaid, and for any period, not to exceed thirty (30) days, for any refractions of the published rules and regulations promulgated by the Declarant.

30. The Declarant, its successors or assigns, reserves the exclusive right to promulgate, and from time to time shall promulgate, and publish rules and regulations governing the use of the common or recreational facilities or properties and the personal conduct of the members and their guests thereon. The Declarant shall have the power to enforce the rules and regulations by means of appropriate sanctions, including, but not limited to, imposition of fines, penalties and suspension of the offending owner or member, and his family's or guest's right to use any common or recreational facility.

31. The Declarant reserves the right to make and prescribe such reasonable rules, regulations and limitations for the use and enjoyment of the common recreational facilities as may be necessary for the orderly and proper use and enjoyment thereof; including the right to make and enforce regulations pertaining to swimming and all swimming facilities as well as with respect to all other recreational facilities, including regulations governing the use and enjoyment of Big Bear Lake, or any present or subsequent water impoundments which are or may hereafter be developed on the property, common facilities and the like, as well as to prescribe the opening and closing hours for the recreational facilities or the seasonal closing thereof when warranted by weather conditions or other conditions, which, in the opinion of the Declarant, require closure.

## **IX. Variances.**

A. The Declarant, its successors or assigns, may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that any such variance is allowed in conformity with the intent and purposes of the general development scheme; and further provided, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

## **X. Easements**

A. Declarant reserves for itself, its successors or assigns, for purposes incident to the development of its real property, subject to these restrictions the following easements and/or rights of way:

1. A fifteen (15) foot easement and right of way over each lot, not to interfere with any improvement thereon or the owner's beneficial use thereof, as Declarant may deem necessary for the use and maintenance of storm and sanitary sewers and installation of any other utility services.

2. A fifteen (15) foot easement along the front, and a ten (10) foot easement along the sides, and rear of each lot, for the purpose of installing, using, repairing, operating and maintaining public utilities, lines, mains, drainage ditches, and/or equipment necessary for the performance of utility services and functions, and for any other purpose determined by the Declarant to be for the general benefit of the Subdivision and the properties thereof. The Declarant reserves the right to waive the easements herein retained on the sides of adjoining lots where more than one adjoining lot is owned by a single person. Declarant also reserves the right to trim, cut, and remove any trees and brush and to locate guy wires and braces wherever necessary, for the installation, operation and maintenance of such facilities, together with the right to install, operate and maintain any and all utilities, including, but not limited to electric, cable television, gas, water, and sewer lines, as well as other services for the convenience of the property owners and appurtenances thereto; reserving also the right of ingress and egress to such areas for any of these purposes.

3. Such other easements or rights of way as may be needed for the natural and orderly development and occupation of the Subdivision.

B. Declarant reserves for itself, its successors or assigns, the exclusive right, together with all necessary easements for the installation and maintenance of any radio and television transmission cables within the rights of way and easement areas reserved and defined above.

C. On each lot, the rights of way and easement areas reserved by Declarant or dedicated to public utility purposes shall be maintained continuously by the lot owner, but no structures,

plantings, or other materials shall be placed or permitted to remain, or other activities undertaken, which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which may damage or interfere with established slope ratios or create erosion or sliding problems; provided, however, that where the existing location of drainage channels would hinder the orderly development of a lot, the drainage channel may be relocated; further provided, however, that such relocation will not cause an encroachment on any other lot in the Subdivision. Improvements within such areas shall also be maintained by the respective lot owner except for those areas where a public authority or utility company is responsible.

D. The lots shall be burdened by such additional rights of way, easements and encroachments as may be shown on the recorded plat of the Subdivision.

## **XI. Ownership, Use and Enjoyment of Streets, Parks and Recreational Amenities**

A. Each of the streets in the Subdivision now or hereafter designated on any plat is a private street, and every park, recreational facility or other amenity within the Subdivision is a private park, facility or amenity and neither Declarant's execution nor recording of the plat nor any other act of Declarant's with respect to the property is, or is intended to be, or shall be construed as a dedication to the public of any said streets, parks, recreational facilities and amenities, other than as reflected herein. An easement for the use and enjoyment of each of said streets and areas designated as parks is reserved to Declarant, its successors and assigns; to the persons who are, from time to time, members or associate members of Big Bear Lake Property Owners Association (Association); to the members and owners of any recreational facility; to the residents, tenants and occupants of any multi-family residential buildings, guest houses, inn or hotel facilities, and all other kinds of residential structures that may be erected within the boundaries of the property and the invitees of the Declarant and all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by Declarant or the Association, if the Association is the owner or lessee of the facility or property involved.

B. The ownership of the recreational amenities within the property which may include, but shall not be limited to lakes, dams, streams, trails, streets, roads, marinas, beaches, lake access areas, golf courses, tennis courts, swimming pools, clubhouses and adjacent clubhouse grounds, campgrounds, and any other recreational property or areas of any kind or description, whether developed or undeveloped, shall be in Declarant, or its lessees, successors or assigns; and the use and enjoyment thereof shall be on such terms and conditions as the Declarant, its lessees, successors or assigns, shall from time to time establish; provided, however, that any one or all of such amenities may be conveyed, leased, licensed or rented to the Association, or such other entity as Declarant may choose or designate.

## **XII. Big Bear Lake Property Owners Association**

A. Every person, which shall include a firm, corporation or other legal entity, before acquiring title, legal or equitable, to any lot in the Subdivision, shall be a member of the Big Bear Lake Property Owners Association, a West Virginia non-profit corporation, hereinbefore and hereafter sometimes referred to as "Association," and no such person shall acquire title to any lot within the Subdivision until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivision convey title to said lot or lots to any such person who has not been approved in writing for membership in the Association; provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money under a mortgage, deeds of trust, or other security instrument; further, provided, however, that in the event such person, his successors or assigns, should foreclose upon his security and become the real owner of the lot, such person, or his successors or assigns, shall then be subject to all of the requirements and limitations imposed in these restrictions on the owners of lots within the Subdivision, and on members of the Association, including those provisions with respect to alienation and the payment of the annual charge.



B. The general purpose of the Association is to further and promote the common welfare of the property owners in the Subdivision.

C. The Declarant, its successors or assigns, shall be responsible for the maintenance, repair and upkeep of the private streets and parks within the Subdivision; the appurtenant drainage and slope easements reserved by Declarant; all waterways, bulkheads and other waterfront improvements. The Association, in event of assignment by the Declarant, shall also be the means for the promulgation and enforcement of all regulations necessary to govern the use and enjoyment of such streets, parks and other common properties or facilities within the Subdivision, as the Association may from time to time hold. In the event that the Association, following any leasing or assignment by the Declarant, should at any time fail to properly maintain such streets, parks, easements, waterways, bulkheads, waterfront improvements, facilities, or other improvements, or should fail to provide adequate protection; then, and in that event, the Declarant, its successors or assigns, may at its sole discretion, enter upon and make all such repairs to any such facility which it deems to be necessary and proper, or may adopt measures to provide protection and may charge the Association for all such repairs or protection.

D. The Association shall have all of the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, or that may be delegated to it by the Declarant, including, but not limited to, the power to levy against every member of the Association, a uniform annual charge per single family residential lot within the Subdivision, the amount of said charge to be determined by the Board of Directors of the Association, after consideration of the current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than Ninety Dollars (\$90.00) per year for such maintenance and performance of the other services delegated to or assumed by the Association. No such annual charge shall ever be made or levied against, or be payable by the Declarant, the Association itself, or any person, firm or corporation that may be created to acquire title to and operate any water, sewer, electric or other utilities serving the area, or any lakes, dams, beaches, lake access tracks, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, hotels, lodges, motels, or other like facilities owned by the Declarant or its assigns.

1. Every such charge so made shall be paid by the member to the Association or its designee on or before the 1st day of March of each year for the ensuing year. The Declarant or the Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the 15th day of January of each year, and written notice of the charge so fixed shall be sent to each member.

2. If the annual charge or assessment shall not be paid when the same is due, it shall bear interest from the date of delinquency at the rate of one and one-half percent (1 ½%) per month. The annual charge shall, if unpaid within thirty (30) days of the due date thereof, become a lien or encumbrance upon the land and acceptance of each deed or contract to purchase, not including the acceptance by a mortgage or deed of trust, shall be construed to be a covenant to pay the charge. The Association may publish the names of the delinquent members and may record a lien to secure the payment of the unpaid charge, plus costs and reasonable attorney fees. Such lien shall become an encumbrance upon the subject lot when recorded in the office of the County Clerk of Preston County, West Virginia. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest, costs, and reasonable attorney fees, in any Court of competent jurisdiction, as a debt owed by any delinquent member of the Association. Every person who has become the owner of title, legal or equitable, to any lot in the Subdivision by any means whatsoever, shall be conclusively held to have covenanted to pay the Declarant, Association or its designee all charges that the Declarant or Association shall make, pursuant to any paragraph or subparagraph of these restrictions, or by-laws of the Association. Any lot acquired shall be taken subject to the lien for any prior unpaid charges.

3. The Declarant, or Association, shall, upon demand, at anytime furnish a certificate in writing, signed by an officer of the Declarant or of the Association, certifying that the charge on the specified lot has been paid, or that certain charges against said lot remain unpaid as the case may be.

A reasonable charge may be made by Declarant or the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of such payment of any charges therein stated to have been paid.

E. The fund accumulated as a result of the charges levied by the Declarant or the Association, as the case may be, shall be used exclusively to promote the recreational facilities and the health, safety and welfare of the members of the Association, and in particular for the improvement and maintenance of streets, and those areas designated as parks, and all other common and recreational facilities within the Subdivision which have been conveyed to or acquired by the Association, or retained by the Declarant.

F. The lien of the mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon, recorded in accordance with the laws of West Virginia, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Declarant, or the Board of Directors of the Association, upon assignment by the Declarant, shall have the right to suspend the voting rights (if any) and the right to use common and recreational facilities of any member, his family or guest:

1. For any period during which the charges and fines, if any, assessed under paragraph XII-D, or under any other part or section of these restrictions owed by any member remains unpaid.

2. During the period of any continuous violation of the restrictive covenants for the Subdivision, after existence of the violation shall have been declared by the Declarant or the Board of Directors of the Association and proper written notice of such violation given to the member or property owner.

H. The Declarant shall have the right to exercise any and all of the powers and authorities provided herein to be exercised by the Association, in the event that such powers and authority, including, but not limited to, the right to levy and collect assessments, and take action to enforce any of the provisions of this Declaration, which have not been specifically assigned to the Association, or which the Association, after assignment, fails or refuses to perform.

### **XIII. General Provisions and Remedies**

A. Any notice required to be sent or given by the Declarant to any member or owner under the provisions of this Declaration, or any notice by or to the Association, or any member thereof, or to the Declarant, shall be deemed to be sufficient and to have been properly given when reduced to writing and mailed by first class mail, or at the option of the sender, by registered or certified mail, with return receipt requested, with postage prepaid thereon, to the last known address of the person so being notified, as the address of such member or owner appears on the records of the Declarant, its successors or assigns, or upon the records of the Association at the time of such mailing. The notice shall be deemed to be given as of the date of the postmark, and the return receipt, or the refusal or neglect of the recipient to accept such registered or certified mail and notice, shall be conclusively presumed as acceptance.

B. The enforcement of these restrictions and covenants may be instituted by the Declarant, its successors and assigns, or by the Association in the manner herein set forth, or by an appropriate civil action or proceeding under the laws of the State of West Virginia, against any person or persons violating or attempting to violate any of the covenants or restrictions herein contained, either to restrain any such violation or attempted violation through injunctive procedure, or to recover monetary damages, or against the land to enforce any lien created by these restrictions and covenants; and the failure of the Declarant, the Association, or its successors or assigns, or any owner to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to thereafter proceed. The remedies herein specified are cumulative and this specification shall not be taken to preclude an aggrieved party's resort to any other remedy, whether legal, equitable or statutory.

### **XIV. Severability**

Each and every one of the restrictions and covenants herein contained is hereby declared to be independent and severable from the rest and remainder of the restrictions and covenants and of and

from every combination of such restrictions and covenants herein contained shall be held by a Court of competent jurisdiction, to be invalid or unenforceable, or shall be without affect upon the validity, enforcement or "running quality" of the remainder of the restrictions herein set forth, and shall in nowise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be signed hereto by its President, and its corporate seal to be affixed hereto by its Secretary, by authority of its Board of Directors, duly given.

**Alyeska, Inc.**  
S/ PAUL E. GARBART  
*President*

**State of West Virginia, County of Preston, To-Wit:**

The foregoing instrument was acknowledged before me this 28th day of April, 1980, by Paul E. Garbart, President of Alyeska, Inc., a West Virginia corporation, for and on behalf of said corporation.

Given under my hand this 28th day of April, 1980.  
My commission expires February 4, 1984.

S/ DONNA METHENY  
*Notary Public*

*This instrument was prepared by  
JAMES T. DAILEY, JR., Attorney at Law  
Dailey & Miller, 107 West Court Street  
Kingwood, West Virginia, 26537.*

***Sky View Terrace, Section 1***  
Big Bear Lake Camplands  
A Development of Alyeska, Inc., A West Virginia Corporation

**Declaration of Restrictions and Covenants**

THIS DECLARATION, made this 20th day of October, 1981, by and between Alyeska, Inc., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the Declarant is the owner of all of the real estate set forth and described on a certain plat entitled "Sky View Terrace, Section 1, a development of Alyeska, Inc.," which plat is of record in the office of the County Clerk of Preston County, West Virginia, in Map Cabinet No. 1, at Sheet 90-B; and which plat describes the Subdivision known as Sky View Terrace, and which plat is made a part hereof and incorporated herein by reference; and

WHEREAS, all of the real property described in the plat of said Sky View Terrace, Section 1, (herein sometimes called "Sky View Terrace") comprises a part of the Alyeska, Inc. general subdivision; and

WHEREAS, Sky View Terrace is a subdivision of Alyeska, Inc., and is subdivided into numbered lots as set forth and described in the recorded plat hereinbefore mentioned; and

WHEREAS, Declarant is about to sell and convey said lots in Sky View Terrace and before so doing, desires to subject said lots to and impose upon said lots mutual and beneficial restrictions, covenants, conditions, assessments and charges, hereinafter collectively called "Restrictions," under a general plan of development and improvement for the benefit of use of all of the lots in the aforesaid Subdivision, as well as the entire Alyeska, Inc. Subdivision, together with the easements appurtenant thereto, and the future owners of said lots.

NOW, THEREFORE, WITNESSETH: The Declarant hereby declares that all of said lots in Sky View Terrace Subdivision shall be held, conveyed, reconveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the restrictions herein set forth, all of which are declared and agreed to be in the furtherance of said plan for the Alyeska, Inc. properties, and Sky View Terrace Subdivision thereof, improvement and sale of lots are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the aforesaid plat and the Sky View Terrace Subdivision as a whole. All of the restrictions, covenants, charges and assessments herein set forth shall run with the land and shall be binding upon the Declarant, and upon all parties having or acquiring any right, title, or interest, legal or equitable, in and to the real estate or any parts thereof, subject to such restrictions.

**I. Applicability**

A. These restrictions shall apply to all subdivided numbered lots shown and described upon the aforesaid plat of said Sky View Terrace Subdivision which are for residential purposes only, but these restrictions shall not be applicable to such lands now or hereafter designated on the plat otherwise, as parcels or as lands of Declarant, which parcels and lands are intended for commercial, multiple dwellings, condominiums, hotels, recreational uses, or other specified special, general or limited uses or purposes.

**II. Term**

A. These restrictions shall affect and run with the land and shall exist and be binding upon the parties and all persons claiming under them until January 1, 2010. By accepting a deed to residential property, subject to these restrictions, the residential owners agree that after January 1, 2010, these restrictions shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the owners of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part; provided, however, that anytime before January 1, 1995, these restric-

tions may be amended by a vote of the then record owners of two-thirds ( $\frac{2}{3}$ ) of such residential lots and thereafter by majority of said owners, except as otherwise provided herein.

B. Declarant reserves to itself, its successors and assigns, the right to revoke at any time prior to the sale of any lot within said Subdivision, all or any part of these restrictions and further to vacate any or all of the streets, parks, recreational facilities, and any other amenity now or hereafter shown on any recorded plans or plats.

### **III. Mutuality of Benefit and Obligation**

A. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Sky View Terrace Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots in the Subdivision and their respective owners. Restrictions substantially the same as those contained herein shall be recorded on all future subdivisions having a like or similar purpose in conformity with the general scheme of improvement of lands to be included in similar future subdivisions.

### **IV. Exclusive Residential Use and Improvement**

A. Subject to the provisions herein contained, no numbered lot shall be used except for single family residential purposes. No structures shall be erected, placed or permitted to remain on any lot other than mobile home. Only one mobile home will be permitted per lot and such other outbuildings as are usually accessible to a single family, including a private garage; provided, however, that the provisions of this paragraph shall be subject to paragraph B hereof for a period of two (2) years from the sale by the developer of a lot in said subdivision.

B. During the period of two (2) years from the date of consumation of the sale by the Declarant to the original purchaser of a lot in the Subdivision, the owner of any such lot may use as a temporary residence, a recreational vehicle of the type approved by Big Bear Lake Property Owners Association, it being understood that after the expiration of two (2) years from the sale by Declarant of legal or equitable title to the original purchaser of any lot within said Subdivision, the provisions of the paragraph shall no longer apply. In the event the original purchaser of legal or equitable title from the Declarant should sell the lot prior to the expiration of two (2) years from the date of original purchase, the provision herein contained shall cease at the end of two (2) years from the original sale by Declarant, regardless of ownership.

### **V. Building Control Committee**

A. All plans and specifications for any mobile home or improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roofs and exterior color schemes, any later changes or additions after the initial approval thereof, and any remodeling, reconstruction, alterations, or additions thereto, on any lot shall be subject to and shall require the approval in writing before any work is commenced of the Declarant or the Architectural Control Committee (herein sometimes called "Committee"). Until June 1, 1983, unless the Declarant exercises its discretion as is provided in the by-laws of the Big Bear Lake Property Owners Association, as is provided in Article XII, Section 1, the Declarant shall be the sole member of the Architectural Control Committee. After June 1, 1983, the Board of Directors shall appoint the first Architectural Control Committee.

B. The Committee shall be composed of three (3) members to be appointed by Declarant. Committee members shall be subject to removal by Declarant and any vacancy that may from time to time exist shall be filled by the appointment of Declarant, or in the event of Declarant's failure to so appoint such member within two (2) months after any such vacancy, then such vacancy may be filled by the Board of Directors of Big Bear Lake Property Owners Association (hereinafter sometimes called "Association"); provided, however, that at anytime hereafter, the Declarant may, at its sole option,

relinquish or assign to the Board of Directors of the Association the power of appointment and removal reserved herein to the Declarant. Such transfer of power and authority must be evidenced in writing.

C. Prior to the delivery of any mobile home there shall be submitted to the Declarant or the Committee two (2) complete sets of plans and specifications for the unit, and no structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the plans, elevations and specifications therefor have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the mobile home dwelling, garage, wall, fence, or other structures proposed to be constructed, altered, placed or maintained. Declarant reserves the right to require a reasonable filing fee for the submission of any plans to defray Committee expenses. No additional fee, in the event of the payment of an initial fee, shall be required for resubmission of plans revised in accordance with Committee recommendation.

D. The Declarant or the Committee shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications in detail with the approval or disapproval endorsed thereon, shall be returned to the person submitting them, and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Declarant or the Committee then shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these restrictions, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or the adjacent buildings or structures; if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof, to be contrary to the interest, welfare or rights of any part of the real property subject hereto, or the owners thereof. The decision of the Committee shall be final and not subject to appeal or review.

F. Neither the Committee nor any architect or agent thereof, or of the Declarant shall be responsible in any way for any defects in the plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done pursuant to such plans and specifications.

## **VI. Size and Placement of Residence and Structures**

A. The following must be observed for any mobile home placed on any lot.

1. Each mobile home placed on a lot shall be a minimum of thirty-five (35) feet and a maximum of eighty (80) feet in length. This includes the total square feet of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces and other outbuilding). No such dwelling shall exceed one story in height. No fifth (5th) wheel or recreational vehicles will be permitted.

2. Each unit must be also situated horizontally on the lot with the front of the unit facing the road.

3. Each mobile home must have a permanent and solid type enclosed foundation of concrete, masonry or other skirting materials. No basements will be permitted.

4. No mobile home shall be more than four (4) years old at the date of placement on the lot, as evidenced by a certificate of title or similar instrument which must be presented to the Declarant or the Building Control Committee.

5. Each mobile home must have an open or closed deck or porch which has a minimum area of 36 square feet.

6. No outbuilding erected on any lot shall at any time be used as a dwelling, temporarily or permanently, nor shall any shack be placed on any lot, nor shall any residence of a temporary character be permitted, except as provided in paragraph IV-B. The maximum size of any storage building shall be ten (10) feet long by twelve (12) feet wide by ten (10) feet high. All outbuildings must be located to the rear of the mobile home.

B. The Declarant or the Building Control Committee shall have the authority to establish regulations pertaining to the height and size requirements of all other types of structures, including, but not limited to fences, walls and copings. Such regulations shall, in the Declarant or the Architectural Control Committee's sole discretion, conform with the general development scheme.

C. No change in ground level may be made of any lot in excess of one (1) foot in height over existing grades without written approval of the Declarant or the Architectural Control Committee obtained prior to the commencement of work.

D. The following minimum dimensions shall govern for front, side and rear setbacks, on all lots and no dwelling or above-grade structure may be constructed or placed on any lot in the Subdivision within these set back areas.

1. Sixty (60) feet from the front line of each lot abutting Sky View Lane.
2. Thirty (30) feet from lot lines abutting Alaskan Boulevard.
3. Ten (10) feet from each lot side lines.
4. Twenty (20) feet from the rear line for each lot.

## **VII. Easements**

A. Declarant reserves for itself, its successors or assigns, for purposes incident to the development of its real property, subject to these restrictions the following easements and/or rights of way:

1. A ten (10) foot easement and right of way over each lot, not to interfere with any improvement thereon or the owner's beneficial use thereof as Declarant may deem necessary for the use and maintenance of storm and sanitary sewers and installation of any other utility services.

2. A ten (10) foot easement along the front, and a ten (10) foot easement along the sides, and a ten (10) foot easement along the rear of each lot, for the purpose of installing, using, repairing, operating and maintaining public utilities, lines, mains, drainage ditches, and/or equipment necessary for the performance of utility services and functions, and for any other purpose determined by the Declarant to be for the general benefit of the Subdivision and the properties thereof. The Declarant reserves the right to waive the easements herein retained on the sides of adjoining lots where more than one adjoining lot is owned by a single person. Declarant also reserves the right to trim, cut, and remove any trees and brush and to locate guy wires and braces wherever necessary, for the installation, operation and maintenance of such facilities, together with the right to install, operate and maintain any and all utilities, including, but not limited to electric, cable television, gas, water, and sewer line, as well as other services for the conveniences of the property owners and appurtenances thereto; reserving also the right of ingress and egress to such areas for any of these purposes.

3. Such other easements or the rights of way as may be needed for the natural and orderly development and occupation of the Subdivision.

B. Declarant reserves for itself, its successors or assigns, the exclusive right, together with all necessary easements for the installation and maintenance of any radio and television transmission cables within the rights of way and easement areas reserved and defined above.

C. On each lot, the rights of way and easement areas reserved by Declarant or dedicated to public utility purposes shall be maintained continuously by the lot owner, but no structures, planting, or other materials shall be placed or permitted to remain, or other activities undertaken, which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, or which may damage or interfere with established slope ratios or create erosion or sliding problems; provided, however, that where the existing location of drainage channels would hinder the orderly development of a lot, the drainage channel may be relocated; further provided, however, that such relocation will not cause an encroachment of any other lot in the Subdivision.

D. The lots shall be burdened by such additional rights of way, easements and encroachments as may be shown on the recorded plat of the Subdivision.

## **VIII. General Prohibitions and Requirements**

A. The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any lot in the Subdivision.

1. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwashers or toilets shall be connected to the Sky View Terrace central sewage system. Storm water shall not be allowed to flow into the central sewage system.

2. No animals or livestock of any description, except the usual household pets in reasonable numbers, shall be kept or harbored on any lot in the Subdivision. All such household pets which are permitted to enter or remain within the Subdivision, shall at all times be kept under the effective control of their owners, and no household pets shall be permitted to roam at large or create unreasonable noise or nuisance, as for example, excessive barking by a dog.

3. No sign or signs (including, but not limited to "For Sale" or similar signs), billboards, or other advertising structures of any kind may be erected or maintained upon any lot, except a sign identifying the owner of the lot, the lot number and address, except after applying and receiving written permission from the Declarant. Declarant reserves the right to approve all such things.

4. No unregistered, unlicensed, stripped, partially wrecked, inoperable, or junk automobiles, trucks, motorcycles, motor bikes, other motor vehicles, or parts thereof, shall be kept, used, driven, placed or parked anywhere within the Subdivision; nor shall any such unregistered or unlicensed vehicle, including motor bikes, motorcycles or the like, be driven or ridden upon the street, roadways, alleys or sidewalks within the Subdivision, or upon the lots, open areas, or trails, in the Subdivision. All vehicles, including automobiles, motor bikes, motorcycles or the like, shall be operated by persons holding a valid drivers license. All motorcyles, mini-bikes, motor bikes, motor scooters, trail bikes, drag racers, off the road vehicles, and the like are prohibited and shall not be operated in the Subdivision; and may only be operated in such areas of the Declarant's property as may be specifically designated by the Declarant during the authorized hours and subject to the conditions imposed by the Declarant.

5. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Declarant or the Committee. Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be installed underground, screened or placed and kept so as not to be visible from any street, or recreation area.

6. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery or other screening approved by the Declarant so as not to be visible from any street or recreational area.

7. No structure erected upon any lot may be used as a model or exhibit of house unless prior written permission to do so shall have been obtained from the Declarant.

8. All lots, whether occupied or unoccupied, and any and all improvements thereon shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

9. No noxious, offensive, or illegal activities shall be carried on on any lot, nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

10. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

11. No vehicles shall be parked on any street in the Subdivision, except in case of emergency or in connection with the making of deliveries.

12. Any dwelling or outbuilding on any lot which may be destroyed in whole or in part by fire, windstorm, or by any other cause or Act of God must be rebuilt or all such debris removed and the lot restored to a sightly condition with reasonable promptness; provided, however, that in no event shall such debris remain longer than six (6) months.

13. No tree over ten (10) inches in diameter shall be cut or removed from any lot without the prior written consent of the Declarant. In order to preserve and maintain the wooded and natural appearance of the Subdivision, the Committee and the Declarant expressly reserve the right to approve the area to be cleared for the construction of any dwelling or other permissible structure. Prior approval shall be obtained from the Committee and Declarant prior to any such cutting of trees, and the lot owner shall promptly remove and dispose of all cut timber, including tree stumps and limbs from the lot.

14. No trash, ashes, garbage, or other refuse shall be dumped, stored, or accumulated on any lot or upon any recreational area in the Subdivision. No outside burning of wood, leaves, trash,



garbage, or household refuse shall be permitted, except by issuance of a permit by the Declarant, together with any other State Permit which may be required. In order to enhance the appearance and orderliness of the Subdivision, the Declarant hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time to grant an exclusive license to a third party to operate, a commercial scavenging service for the purpose of removing garbage, trash, and other household refuse. The charge for such refuse collection and removal service shall be paid by the lot owner and shall be commensurate with the rates charged by commercial scavengers serving other subdivisions of high standards in the area, and shall be subject to change from time to time.

15. There shall be no access to any lot on the perimeter of the Subdivision except from designated roads within the Subdivision.

16. There shall be no vehicles of any type driven or towed in a wreckless manner on or along any street or service driveway within the Subdivision. All vehicles must observe such speed restrictions or noise limitations throughout the Subdivision, as established or changed from time to time by the Declarant, its successors or assigns. The Declarant shall likewise have the right to prescribe one way streets and to otherwise impose reasonable restrictions upon the movement and the way of movement of all vehicles on the streets in the Subdivision.

17. There shall be no hunting or shooting of firearms permitted in the Subdivision. There shall be no hunting or shooting permitted on any adjoining properties owned by the Declarant, and the purchase of a lot or lots shall confer no right whatsoever for the owners thereof to use the adjoining lands of Declarant, or any of the streams, trails, waters or watercourses thereon, nor other parts of the Subdivision, except as specifically permitted and authorized by the Declarant; and so provided in numbered paragraph 23 herein.

18. The purchaser of any lot, his heirs, devisees or assigns, shall not subdivide any lot and convey a part thereof to any person, firm, or corporation; it being understood that this covenant shall prevent any further reduction in size of individual lots and prohibit a conveyance of a part of any individual lot.

19. There shall be no camping permitted in any easement area, or within the setback areas or in any common or recreational areas, streets or service driveways, except in those areas, if any, which are specifically designated for that purpose.

20. The Declarant, its successors and assigns, reserves the right to enter upon any vacant or unattended lot for the purpose of improving its general appearance without being classified as a trespasser, or being liable for damages for property removed.

21. The Declarant reserves the right to permit other persons, firms or corporations who own or acquire title to property from Declarant outside of said Subdivision to use and enjoy the recreational and common facilities within the Subdivision; provided, however, that if such use is permitted on a permanent basis, there shall be provisions made for proportionate upkeep and maintenance, and such additional use shall be within the capacity of the subject facilities.

22. Whenever the owner of any lot in the Subdivision, other than the Declarant, shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner, or if said owner shall independently decide to put said lot on the market, the owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer or (if said owner shall independently have decided to put said lot on the market) at the price and on the terms acceptable to said owner of the lot; first, to the Declarant, its successors or assigns; next, to the owner of the lot on the right of the prospective seller's lot (as determined by standing on seller's lot facing the road); and finally, to the owner of the lot on the left of the prospective seller's lot. Such offering shall be made successively and each of said offerees shall have ten (10) days within which to accept or refuse said offer. If all of said offerees refuse to purchase said lot at the price and on the terms proposed by the owner, said owner shall be free, subject to the limitations contained herein, to sell said lot at the bona fide offer so received.

The following paragraph taken from the By-laws of the Big Bear Lake Property Owners Association, Article 4, Section 4, Page 4, also applies. Because those who initially purchase lots from the developer have contributed to the commencement of the Big Bear Lake Camplands community and in

some cases have been responsible for payment of maintenance fees for several years prior to the formation of this Association, it is determined that upon resale of a lot, initiation fees of \$300.00 shall be set by the Board of Directors for the new owners except those who have purchased from the Declarant, its successors and assigns. Payment of this initiation fee coupled with full payment of applicable dues and assessments entitle resale purchasers to full voting rights.

23. By Declaration of Restrictions and Covenants for Big Bear Lake Camplands, dated June 15, 1972, the Declarant reserved an easement for the use and enjoyment of the streets and common or recreational areas within Big Bear Lake Camplands to the Declarant, its successors and assigns, and to such persons who are, from time to time, permitted by the Declarant to use and enjoy such recreational facilities or other amenities as owners or licensees of Declarant. Pursuant to this provision, the Declarant hereby declares that all owners within the Sky View Terrace Subdivision are permitted to use and enjoy the recreational and common facilities within Big Bear Lake Camplands, subject to the payment of the annual assessment fee for the maintenance and upkeep of the recreational and common facilities mentioned in these restrictions and covenants and subject also to the compliance with the rules and regulations promulgated by the Declarant, its successors or assigns, governing the use of the common properties.

24. In order to meet the increased costs of replacement of, or capital improvements to, as well as upkeep and maintenance for the common or recreational facilities, the Declarant, its successors or assigns, shall have the power to levy a special assessment for these purposes. The Declarant may limit such replacement, improvements, upkeep and maintenance to the aggregate net amount of funds available from the property owners assessments as collected by Declarant, its successors or assigns, on a fiscal year basis, and the Declarant, its successors or assigns, shall have no obligation to replace, improve or maintain the common recreational facilities beyond the net funds so available.

25. Every owner and member shall have the right and privilege of enjoyment in and to the common and recreational properties and facilities, subject to reasonable use fees which the Declarant, in its discretion, may charge, and further subject to the right of the Declarant to suspend the privilege of enjoyment of any owner, or member, his family or guests, for any period during which the maintenance assessment remains unpaid, and for any period, not to exceed thirty (30) days, for any fractions of the published rules and regulations promulgated by the Declarant.

26. The Declarant reserves the right to make and prescribe such reasonable rules, regulations and limitations for the use and enjoyment of the common or recreational facilities as may be necessary for the orderly and proper use and enjoyment thereof; including the right to make and enforce regulations pertaining to swimming and all swimming facilities as well as with respect to all other recreational facilities, including regulations governing the use and enjoyment of Big Bear Lake, or any present or subsequent water impoundments which are or may hereafter be developed on the property, common facilities and the like, as well as to prescribe the opening and closing hours for the recreational facilities or the seasonal closing thereof when warranted by weather conditions or other conditions, which, in the opinion of the Declarant requires closure.

27. The Declarant, its successors or assigns, reserves the exclusive right to promulgate, and from time to time shall promulgate, and publish rules and regulations governing the use of the common or recreational facilities or properties and the personal conduct of the members and their guests thereon. The Declarant shall have the power to enforce the rules and regulations by means of appropriate sanctions, including but not limited to, imposition of fines, penalties and suspension of the offending owner or member, and his family's or guest's right to use any common or recreational facility.

## **IX. Maintenance Fund**

A. Each lot in Sky View Terrace Subdivision shall be and is hereby made subject to a monthly maintenance charge, except as otherwise hereinafter provided.

B. The maintenance charge referred to shall be used to create a fund to be known as the "Sky View Terrace Maintenance Fund" and each such maintenance charge shall (except as otherwise hereinafter provided) be paid by the owner of each lot monthly, from date of purchase, in advance, on or before the first day of the second month following the month in which the lot was purchased.

C. The maintenance charge shall initially be Eighteen and No/100 dollars (\$18.00) per month unless and until such charge is hereafter changed; the maintenance charge may be changed from time to time by the Developer (and subsequently by the Big Bear Lake Property Owners Association) and shall be the amount determined by the Developer or the Association during the month preceeding the due date of said maintenance charge.

D. The maintenance charge shall not, without the consent of the Developer, apply to lots owned by the Developer.

E. The maintenance charges collected shall be paid into the Maintenance Fund to be held and used for the upkeep and maintenance of the sewage system and water system, of Sky View Terrace Subdivision; and such Maintenance Fund may be expended for any purpose which, in the judgement of the Developer (and subsequently Big Bear Lake Property Owners Association) will tend to maintain the sewage system and the water system in the Sky View Terrace Subdivision.

F. In order to secure the payment of the maintenance charge hereby levied, an express lien shall be and is hereby reserved in the Deed or Contract for Deed from the Developer to the purchaser of each lot or portion thereof, which lien shall be enforceable through appropriate judicial proceedings by the Developer (and subsequently the Big Bear Lake Property Owners Association). Said lien shall be deemed subordinate to the lien or liens of any Institutional Lender which hereafter lends money for the purchase of any property in the Subdivision, and/or for construction and/or permanent financing of improvements on any such property.

G. These provision as to the maintenance charge and Maintenance Fund shall continue in effect unless changed in the manner and at the time herein above provided for effective changes in the restrictive covenants.

## **X. Variances**

A. The Declarant, its successors or assigns, may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that any such variance will be in conformity with the intent and purposes of the general development scheme; and further provided, that in every instance such variance or adjustment will not be materially detrimental or injurious to the other property or improvements in the Subdivision.

## **XI. Ownership, Use and Enjoyment of Streets, Parks and Recreational Amenities**

A. Each of the streets in the Subdivision now or hereafter designated on any plat is a private street, and every park, recreational facility or other amenity within the Subdivision is a private park, facility, or amenity and neither Declarant's execution nor recording of the plat nor any other act of Declarant with respect to the property is, or is intended to be, or shall be construed as a dedication to the public of any of the said streets, parks, recreational facilities and amenities, other than as reflected herein. An easement for the use and enjoyment of each of said streets and areas designated as parks is reserved to Declarant, its successors and assigns; to persons who are, from time to time, members to associate members of Big Bear Lake Property Owners Association (Association); to the members and owners of any recreational facility; to the residents, tenants and occupants of any multi-family residential structures that may be erected within the boundaries of the property and the invitees of the Declarant and all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by Declarant or the Association, if the Association is the owner or lessee of the facility or property involved.

B. The ownership of the recreational amenities within the property which may include, but shall not be limited to lakes, dams, streams, trails, streets, roads, marinas, beaches, lake access areas, golf courses, tennis courts, swimming pools, clubhouses and adjacent clubhouse grounds, campgrounds, and any other recreational property or areas of any kind or description, whether developed or undeveloped shall be in Declarant, or its lessees, successors or assigns; and the use and enjoyment thereof shall be on such terms and conditions as the Declarant, its lessees, successors or assigns, shall from time to time establish; provided, however, that any one or all of such amenities may be con-

veyed, leased, licensed or rented to the Association, or such other entity as Declarant may choose or designate.

## **XII. Big Bear Lake Property Owners Association**

A. Every person, which shall include a firm, corporation or other legal entity, before acquiring title, legal or equitable, to any lot in the Subdivision, shall be a member of the Big Bear Lake Property Owners Association, a West Virginia nonprofit corporation, hereinbefore and hereafter sometimes referred to as "Association," and no such person shall acquire title to any lot within the Subdivision until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivision convey title to said lot or lots to any such person who has not been approved in writing for membership in the Association; provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money under a mortgage, deeds of trust, or other security instrument; further, provided, however, that in the event such person, his successors or assigns, should foreclose upon his security and become the real owner of the lot, such person, or his successors or assigns, shall then be subject to all of the requirements and limitations imposed in these restrictions on the owners of lots within the Subdivision, and on members of the Association, including those provisions with respect to alienation and the payment of the annual charge.

B. The general purpose of the Association is to further and promote the common welfare of the property owners in the Subdivision.

C. The Declarant, its successors or assigns, shall be responsible for the maintenance, repair and upkeep of the private streets and parks within the Subdivision; the appurtenant drainage and slope easements reserved by Declarant; all waterways, bulkheads and other waterfront improvements. The Association, in event of assignment by the Declarant, shall also be the means for the promulgation and enforcement of all regulations necessary to govern the use and enjoyment of such streets, parks and other common properties or facilities within the Subdivision, as the Association may from time to time hold. In the event that the Association, following any leasing or assignment by the Declarant, should at any time fail to properly maintain such streets, parks, easements, waterways, bulkheads, waterfront improvements, facilities, or other improvements, or should fail to provide adequate protection; then, and in that event, the Declarant, its successors or assigns, may at its sole discretion, enter upon and make all such repairs to any such facility which it deems to be necessary and proper, or may adopt measures to provide protection and may charge the Association for all such repairs or protection.

D. The Association shall have all of the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, or that may be delegated to it by the Declarant, including, but not limited to, the power to levy against every member of the Association, a uniform annual charge per single family residential lot within the Subdivision, the amount of said charge to be determined by the Board of Directors of the Association after consideration of the current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than Ninety Dollars (\$90.00) per year for such maintenance and performance of the other services delegated to or assumed by the Association. No such annual charge shall ever be made or levied against, or be payable by the Declarant, the Association itself, or any person, firm or corporation that may be created to acquire title to and operate any water, sewer, electric or other utilities serving the area, or any lakes, dams, beaches, lake access tracks, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, hotels, lodges, motels, or other like facilities owned by the Declarant or its assigns.

1. Every such charge so made shall be paid by the member to the Association or its designee on or before the 1st day of March of each year for the ensuing year. The Declarant or the Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the 15th day of January of each year, and written notice of the charge so fixed shall be sent to each member.

2. If the annual charge or assessment shall not be paid when the same is due, it shall bear interest from the date of delinquency at the rate of one and one-half percent (1½) per month. The

annual charge shall, if unpaid within thirty (30) days of the due date thereof, become a lien or encumbrance upon the land and acceptance of each deed or contract to purchase, not including the acceptance by a mortgage or deed or trust, shall be construed to be a covenant to pay the charge. The Association may publish the names of the delinquent members and may record a lien to secure the payment of the unpaid charge, plus costs and reasonable attorney fees. Such lien shall become an encumbrance upon the subject lot when recorded in the office of the County Clerk of Preston County, West Virginia. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest, costs, and reasonable attorney fees, in any Court of competent jurisdiction, as a debt owned by any delinquent member of the Association. Every person who has become the owner of title, legal or equitable, to any lot in the Subdivision by any means whatsoever, shall be conclusively held to have covenanted to pay the Declarant, Association or its designee all charges that the Declarant or Association shall make, pursuant to any paragraph or subparagraph of these restrictions, or by-laws of the Association. Any lot acquired shall be taken subject to the lien for any prior unpaid charges.

3. The Declarant, or Association, shall, upon demand, at anytime furnish a certificate in writing, signed by an officer of the Declarant or of the Association, certifying that the charge on the specified lot has been paid, or that certain charges against said lot remain unpaid as the case may be. A reasonable charge may be made by Declarant or the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of such payment of any charges therein stated to have been paid.

E. The fund accumulated as a result of the charges levied by the Declarant or the Association, as the case may be, shall be used exclusively to promote the recreational facilities and the health, safety and welfare of the members of the Association, and in particular for the improvement and maintenance of streets, and those areas designated as parks, and all other common and recreational facilities within the Subdivision which have been conveyed to or acquired by the Association, or retained by the Declarant.

F. The lien of the mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon, recorded in accordance with the laws of West Virginia, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Declarant, or the Board of Directors of the Association, upon assignment by the Declarant, shall have the right to suspend the voting rights (if any) and the right to use common and recreational facilities of any member, his family or guest;

1. For any period during which the charges and fines, if any, assessed under paragraph XII-D, or under any other part or section of these restrictions owed by any member remains unpaid.

2. During the period of any continuous violation of the restrictive covenants for the Subdivision, after existence of the violation shall have been declared by the Declarant or the Board of Directors of the Association and proper written notice of such violation given to the member or property owner.

H. The Declarant shall have the right to exercise any and all of the powers and authorities provided herein to be exercised by the Association, in the event that such powers and authority, including, but not limited to, the right to levy and collect assessments, and take action to enforce any of the provisions of this Declaration, which have not been specifically assigned to the Association, or which the Association, after assignment, fails or refuses to perform.

### **XIII. General Provisions and Remedies**

A. Any notice required to be sent or given by the Declarant to any member or owner under the provisions of this Declaration, or any notice by or to the Association, or any member thereof, or to the Declarant, shall be deemed to be sufficient and to have been properly given when reduced to writing and mailed by first class mail, or at the option of the sender, by registered or certified mail, with return receipt requested, with postage prepaid thereon, to the last known address of the person so being notified, as the address of such member or owner appears on the records of the Declarant, its successors or assigns, or upon the records of the Association at the time of such mailing. The notice

shall be deemed to be given as of the date of the postmark, and the return receipt, or the refusal or neglect of the recipient to accept such registered or certified mail and notice, shall be conclusively presumed as acceptance.

B. The enforcement of these restrictions and covenants may be instituted by the Declarant, its successors or assigns, or by the Association in the manner herein set forth, or by an appropriate civil action or proceeding under the laws of the State of West Virginia, against any person or persons violating or attempting to violate any of the covenants or restrictions herein contained, either to restrain any such violation or attempted violation through injunctive procedure, or to recover monetary damages, or against the land to enforce any lien created by these restrictions and covenants; and the failure of the Declarant, the Association, or its successors or assigns, or any owner to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to thereafter proceed. The remedies herein specified are cumulative and this specification shall not be taken to preclude an aggrieved party's resort to any other remedy, whether legal, equitable or statutory.

#### **XIV. Severability**

Each and every one of the restrictions and covenants herein contained is hereby declared to be independent and severable from the rest and remainder of the restrictions and covenants and of and from every combination of such restrictions and covenants herein contained shall be held by a court of competent jurisdiction, to be invalid or unenforceable, or shall be held to lack the quality of running with the land, such holding shall be without affect upon the validity, enforcement or "running quality" of the remainder of the restrictions herein set forth, and shall in nowise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be signed hereto by its President, and its corporate seal to be affixed hereto by its Secretary, by authority of its Board of Directors, duly given.

**ALYESKA, INC.**  
S/ PAUL E. GARBART  
*President*

#### **State of West Virginia, County of Preston, To-Wit:**

The foregoing instrument was acknowledged before me this 20th day of October, 1981, by Paul E. Garbart, President of Alyeska, Inc., a West Virginia corporation, for and on behalf of said corporation.

My commission expires June 1990.

S/ LINDA S. RECKART  
*Notary Public*

The foregoing instrument was prepared by  
ALYESKA, INC., Route 3, Box 204  
Bruceeton Mills, West Virginia, 26525.

# ***Supplemental Declaration of Restrictions and Covenants***

Sky View Terrace, Section 1  
Big Bear Lake Camplands

A Division of Alyeska, Inc., A West Virginia Corporation

THIS SUPPLEMENTAL DECLARATION, made this 1st day of July 1983, by Alyeska, Inc., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the Declarant by a Declaration of Restrictions and Covenants dated October 20, 1981, and of record in the office of the Clerk of the County Court of Preston County, West Virginia, in Book 495 at page number 291, made and declared certain mutual and beneficial restrictions, covenants, conditions, assessments and charges, therein sometimes collectively called, "Restrictions," with respect to the sale, conveyance, use and enjoyment of lots located in a subdivision known as Big Bear Lake Camplands, situate in Pleasant District of the county and state aforesaid, a plat of said subdivision recorded in said Clerk's office in Large Map Book No. 1, at page 55, and also with respect to the sale and conveyance of the lots located within Sky View Terrace, Section 1 of said subdivision, a map of which is recorded in said Clerk's office in Map Cabinet No. 1, at Sheet 90-B.

WHEREAS, the Declarant reserved to itself the right to supplement said Declaration of Restrictions and Covenants prior to the sale and conveyance of any lots within said subdivision and the mentioned Sky View Terrace, Section 1. The Declarant reserves to itself, its successors and assigns, the right to revoke at any time prior to sale of any lot in Sky View Terrace, Section 1, all or any part of these restrictions.

NOW, THEREFORE, WITNESSETH: The Declarant hereby declares a change in Section VI. Size and Placement of Residence and Structures, A. 1. The original Section VI, A.1 permitted each mobile home placed on a lot to be a minimum of thirty-five feet (35). This supplemental Declaration of Restrictions and Covenants changes that minimum length to forty-four (44) feet.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be signed hereto by its President and its corporate seal to be affixed hereto by its Secretary by authority of its Board of Directors duly given.

**ALYESKA, INC., a corporation**  
S/ PAUL E. GARBART  
*President*

## **State of West Virginia, County of Preston, To-Wit:**

The foregoing instrument was acknowledged before me this 30th day of June, 1983, by Paul E. Garbart, President of Alyeska, Inc., a West Virginia corporation, for and on behalf of said corporation.

Given under my hand this 30th day of June, 1983.

My commission expires May 2, 1993.

S/ JEAN SCHNOPP  
*Notary Public*

**State of West Virginia, County of Preston, To-Wit:**

I, NANCY RECKART, Clerk of the County Commission of said county, do hereby certify that the foregoing writing was this day produced to me in my said office, and was duly admitted to record therein.

Given under my hand this 30th day of June, 1983, at 4:49 p.m.

NANCY RECKART, *Clerk*  
by Gail P. Smith, *Deputy*



# ***Sky View Estates, Section 1***

Big Bear Lake Camplands  
A Development of Alyeska, Inc., A West Virginia Corporation

## **Declaration of Restrictions and Covenants**

THIS DECLARATION, made this 30th day of April, 1985, by and between ALYESKA, INC., a West Virginia Corporation, hereinafter sometimes called "Declarant."

WHEREAS, the Declarant is the owner of all of the real estate set forth and described on a certain plat entitled "Sky View Estates, Section 1, a development of Alyeska, Inc.," which plat is of record in the office of the County Clerk of Preston County, West Virginia, in Map Cabinet 1, at Sheet 139A, and which plat describes the Subdivision known as Sky View Estates, and which plat is made a part hereof and incorporated herein by reference; and

WHEREAS, all of the real property described in the plat of said Sky View Estates, Section 1, (herein sometimes called Sky View Estates) comprises a part of the Alyeska, Inc. general subdivision; and

WHEREAS, Sky View Estates is a subdivision of Alyeska, Inc., and is subdivided into numbered lots as set forth and described in the recorded plat hereinbefore mentioned; and

WHEREAS, Declarant is about to sell and convey said lots in Sky View Estates and before so doing, desires to subject said lots to and impose upon said lots mutual and beneficial restrictions, covenants, conditions, assessments and charges, hereinafter collectively called "Restrictions," under a general plan of development and improvement for the benefit of use of all of the lots in the aforesaid Subdivision, as well as the entire Alyeska, Inc. Subdivision, together with the easements appurtenant thereto, and the future owners of said lots.

NOW THEREFORE, WITNESSETH: The Declarant hereby declares that all of said lots in Sky View Estates Subdivision shall be held, conveyed, reconveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the restrictions herein set forth, all of which are declared and agreed to be in the furtherance of said plan for the Alyeska, Inc. properties, and Sky View Estates thereof, improvement and sale of lots are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the aforesaid plat and the Sky View Estates subdivision as a whole. All of the restrictions, covenants, charges and assessments herein set forth shall run with the land and shall be binding upon the Declarant, and upon all parties having or acquiring any right, title, or interest, legal or equitable, in and to the real estate or any parts thereof, subject to such restrictions.

### **I. Applicability**

A. These restrictions shall apply to all subdivided numbered lots shown and described upon the aforesaid plat of said Sky View Estates Subdivision. These restrictions shall not be applicable to such lands now or hereafter designated on the plat otherwise, as parcels or as lands of Declarant, which parcels and lands are intended for commercial, multiple dwellings, condominiums, hotels, recreational uses, or other specified special, general or limited uses or purposes.

### **II. Term**

A. These restrictions shall affect and run with the land and shall exist and be binding upon the parties and all persons claiming under them until January 1, 2010. By accepting a deed to the property, subject to these restrictions, the residential owners agree that after January 1, 2010, these restrictions shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the owners of the lots subject hereto has been recorded agreeing to change the covenants in whole or in part; provided, however, that anytime before January 1, 1995, these restrictions may be amended by a vote of the then record owners of two-thirds ( $\frac{2}{3}$ ) of such residential lots and thereafter by majority of said owners, except as otherwise provided herein.

B. Declarant reserves to itself, its successors and assigns, the right to revoke at any time prior to the sale of any lot within said Subdivision, all or any part of these restrictions and further to vacate any or all of the streets, parks, recreational facilities, and any other amenity now or hereafter shown on any recorded plans or plats.

### **III. Mutuality of Benefit and Obligation**

A. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Sky View Estates Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots in the Subdivision and their respective owners. Restrictions substantially the same as those contained herein shall be recorded on all future subdivisions having a like or similar purpose in conformity with the general scheme of improvement of lands to be included in similar future subdivisions.

### **IV. Exclusive Use and Improvement**

#### **A. RECREATIONAL VEHICLES**

1. If a property owner chooses to place a recreational vehicle on his lot, no lot shall be used except for recreational vehicle purposes, and no such lot or combination of lots owned by a single person shall be used by its owners as a permanent residence. The term "recreational vehicle" shall include manufactured, self-contained recreational vehicles, self-contained motorhomes, camper trailers, travel trailers, truck campers when mounted to a truck.

2. There shall be no homemade vehicles or converted buses or similar types of vehicles permitted on any lot.

3. There shall be no permanent structures constructed on any lot, or combination of lots, with the exception of a preconstructed storage unit not to exceed ten feet by twelve feet by ten feet high (10'x 12'x 10') which shall be susceptible of removal from the lot and shall be of good appearance.

4. There shall be no more than one (1) recreational vehicle permitted on any lot or adjoining lots where two (2) such lots are owned by the same person.

#### **B. MOBILE HOMES**

1. If a property owner chooses to place a mobile home on his property, it will be subject to the provisions herein contained, no numbered lot shall be used except for single family residential purposes. No structures shall be erected, placed or permitted to remain on any lot other than a mobile home. Only one mobile home will be permitted per lot and such other outbuildings as are usually accessible to a single family, including a private garage; provided, however, that the provisions of this paragraph shall be subject to paragraph 2 hereof for a period of two (2) years from the sale by the developer of a lot in said subdivision.

2. During the period of two (2) years from the date of consummation of the sale by the Declarant to the original purchaser of a lot in the Subdivision, the owner of any such lot may use as a temporary residence, a recreational vehicle of the type approved by Big Bear Lake Property Owners Association, it being understood that after the expiration of two (2) years from the sale by the Declarant of legal or equitable title to the original purchaser of any lot within said Subdivision, the provisions of the paragraph shall no longer apply. In the event the original purchaser of legal or equitable title from the Declarant should sell the lot prior to the expiration of two (2) years from the date of original purchase, the provision herein contained shall cease at the end of two (2) years from the original sale by Declarant, regardless of ownership.

#### **C. SINGLE FAMILY RESIDENTIAL DWELLING**

1. If a property owner chooses to erect a single family residential dwelling on his property, it must be no less than six hundred (600) square feet (see Section VI.B.1.) it also will be subject to the provisions herein contained, no numbered lot shall be used except for single family residential purposes. No structures shall be erected, placed or permitted to remain on any lot other than one (1) detached, single family residence dwelling and such other outbuildings as are usually accessible to a single family residence dwelling,

including a private garage; provided, however, that the provisions of this paragraph shall be subject to paragraph 2 hereof for a period of two (2) years from the sale by the developer of a lot in said Subdivision.

2. During the period of two (2) years from the date of consummation of the sale by the Declarant to the original purchaser of a lot in the Subdivision, the owner of any such lot may use as a temporary residence, a recreational vehicle of the type approved by Big Bear Lake Property Owners Association, it being understood that after the expiration of two (2) years from the sale by Declarant of legal or equitable title to the original purchaser of any lot within said Subdivision, the provisions of this paragraph shall no longer apply. In the event the original purchaser of legal or equitable title from the Declarant should sell the lot prior to the expiration of two (2) years from the date of original purchase, the provision herein contained shall cease at the end of two (2) years from the original sale by Declarant, regardless of ownership.

## **V. Building Control Committee**

A. All plans and specifications for any recreational vehicle, mobile home, residential dwelling or improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roofs and exterior color schemes, any later changes or additions after the initial approval thereof, and any remodeling, reconstruction, alterations, or additions thereto, on any lot shall be subject to and shall require the approval in writing before any work is commenced of the Declarant or the Architectural Control Committee (herein sometimes called "Committee"). Until June 1, 1990, unless the Declarant exercises its discretion as is provided in the by-laws of the Big Bear Lake Property Owners Association, as is provided in Article XII, Section 1, the Declarant shall be the sole member of the Architectural Control Committee. After June 1, 1990, the Board of Directors shall appoint the first Architectural Control Committee.

B. The Committee shall be composed of three (3) members to be appointed by Declarant. Committee members shall be subject to removal by Declarant and any vacancy that may from time to time exist shall be filled by the appointment of Declarant, or in the event of Declarant's failure to so appoint such member within two (2) months after any such vacancy, then such vacancy may be filled by the Board of Directors of Big Bear Lake Property Owners Association (hereinafter sometimes call "Association"); provided, however, that at any time hereafter, the Declarant may, at its sole option, relinquish or assign to the Board of Directors of the Association the power of appointment and removal reserved herein to the Declarant. Such transfer of power and authority must be evidenced in writing.

C. Prior to the delivery of any recreational vehicle, mobile home, or commencing of construction of a dwelling, there shall be submitted to the Declarant or the Committee two (2) complete sets of plans and specifications for the unit, and no structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the plans, elevations and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the recreational vehicle, mobile home, or residential dwelling garage, wall, fence, or other structures proposed to be constructed, altered, placed or maintained. Declarant reserves the right to require a reasonable filing fee for the submission of any plans to defray Committee expenses. No additional fee, in the event of the payment of an initial fee, shall be required for resubmission of plans revised in accordance with Committee recommendation.

D. The Declarant or the Committee shall approve or disapprove plans, specifications, and detail within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications in detail with the approval or disapproval endorsed thereon, shall be returned to the person submitting them, and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Declarant or the Committee then shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these restrictions, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or the adjacent buildings or structures; if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof, to be contrary to the interest, welfare or rights of any part of the real property subject hereto, or the owners thereof. The decision of the Committee shall be final and not subject to appeal or review.

F. Neither the Committee nor any architect or agent thereof, or of the Declarant shall be responsible in any way for any defects in the plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done pursuant to such plans and specifications.

## **VI. Size and Placement of Structures**

### **A. SIZE AND PLACEMENT OF MOBILE HOMES AND STRUCTURES**

1. The following must be observed for any mobile home placed on any lot.

a. Each mobile home placed on a lot shall be a minimum of forty four (44) feet and a maximum of eighty (80) feet in length. This includes the total square feet of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces and other outbuilding). No such dwelling shall exceed one story in height. No fifth (5th) wheel or recreational vehicles will be permitted.

b. Each mobile home must have a permanent and solid type enclosed foundation of concrete, masonry or other skirting materials. No basements will be permitted.

c. No mobile home shall be more than four (4) years old at the date of placement on the lot, as evidenced by a certificate of title or similar instrument which must be presented to the Declarant or the Building Control Committee.

d. Each mobile home must have an open or closed deck or porch which has a minimum area of 36 square feet.

e. No outbuilding erected on any lot shall at any time be used as a dwelling, temporarily or permanently, nor shall any shack be placed on any lot, nor shall any residence of a temporary character be permitted, except as provided in paragraph IV-B. The maximum size of any storage building shall be ten (10) feet long by twelve (12) feet wide by ten (10) feet high.

2. The Declarant or the Building Control Committee shall have the authority to establish regulations pertaining to the height and size requirements of all other types of structures, including, but not limited to, fences, walls and copings. Such regulations shall, in the Declarant or the Architectural Control Committee's sole discretion, conform with the general development scheme.

3. Minimum distance for setback lines shall be thirty (30) feet, measured to the property line.

### **B. SIZE AND PLACEMENT OF RESIDENCE DWELLING AND STRUCTURES**

1. Every residence dwelling constructed on a lot shall contain a minimum of six hundred (600) square feet on the first floor of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, carports and other outbuildings) and no such dwelling shall exceed two and one-half (2½) stories in height.

2. The Committee shall have the authority to establish regulations pertaining to the height and size requirements of all other types of structures, including, but not limited to fences, walls, and copings. Such regulations shall, in the Committee's sole discretion, conform with the general development scheme.

3. Minimum distances for setback lines shall be thirty (30) feet, measured to the property line.

## **VII. Easements**

A. Declarant reserves for itself, its successors or assigns, for purposes incident to the development of its real property, subject to these restrictions the following easements and/or rights of way:

1. A ten (10) feet easement and right of way over each lot, not to interfere with any improvement thereon or the owner's beneficial use thereof as Declarant may deem necessary for the use and maintenance of storm and sanitary sewers and installation of any other utility services.

2. A ten (10) feet easement along the front, and a ten (10) feet easement along the sides, and a ten (10) feet easement along the rear of each lot, for the purpose of installing, using, repairing, operating and maintaining public utilities, lines, mains, drainage ditches, and/or equipment necessary for the performance of utility services and functions, and for any other purpose determined by the Declarant to be for the general benefit of the Subdivision and the properties thereof. The Declarant reserves the right to waive the easements herein retained on the sides of adjoining lots where more than one adjoining lot is owned by a single person. Declarant also reserves the right to trim, cut, and remove any trees and brush and to locate guy wires and braces wherever necessary, for the installation, operation and maintenance of such facilities, together with the right to install, operate and maintain any and all utilities, including but not limited to

electric, cable television, gas, water, and sewer line, as well as other services for the conveniences of the property owners and appurtenances thereto; reserving also the right of ingress and egress to such areas for any of these purposes.

3. Such other easements or the rights of way as may be needed for the natural and orderly development and occupation of the Subdivision.

B. Declarant reserves for itself, its successors or assigns, the exclusive right, together with all necessary easements for the installation and maintenance of any radio and television transmission cables within the rights of way and easement areas reserved and defined above.

C. On each lot, the rights of way and easement areas reserved by Declarant or dedicated to public utility purposes shall be maintained continuously by the lot owner, but no structures, planting, or other materials shall be placed or permitted to remain, or other activities undertaken, which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, or which may damage or interfere with established slope ratios or create erosion or sliding problems; provided, however, that where the existing location of drainage channels would hinder the orderly development of a lot, the drainage channel may be relocated; further provided, however, that such relocation will not cause an encroachment of any other lot in the Subdivision.

D. The lots shall be burdened by such additional rights of way, easements and encroachments as may be shown on the recorded plat of the Subdivision.

### **VIII. General Prohibitions and Requirements**

A. The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any lot in the Subdivision.

1. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwasher or toilets shall be connected to an on-site sewage system approved by the West Virginia Board of Health; and in the event that a regulatory authority hereafter requires a central sewage system, then to such central sewage system so required by such regulatory authority, at no cost to Declarant. Storm water will not be allowed to flow into the sewage system.

2a. After two (2) years from the original purchase of legal or equitable title from the Declarant, no temporary house, trailer, camper travel trailer, tent, garage or other outbuildings shall be placed or erected on any lot for residential purposes; provided, however, that the Declarant may grant permission for any such temporary structure for a period of two (2) years from the date of original purchase of legal or equitable title from the Declarant. No such temporary structures as may be approved shall be used as a permanent dwelling place. During the two (2) year period that a recreational vehicle may be temporarily kept upon a lot in the Subdivision, such recreational vehicle shall be kept, used, enjoyed and maintained, subject to and in conformity with the provisions contained in the Declaration of Restrictions and Covenants for the Alaskan Village Territory of Big Bear Lake Camplands of record in said County Clerk's office in Deed Book No. 481, at page 482, which restrictions and covenants are incorporated herein by reference as fully as if set forth herein verbatim.

2b. Item a. above will not apply if the property owner has applied to the developer or the Building Control Committee for permission to place an R.V. on the lot in Sky View Estates.

3. Once construction of a residence is commenced on any lot, such residence must be substantially completed in accordance with the plans and specifications, as approved by the Committee, within two (2) years from the date of commencement of such construction.

4. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications, and a certificate of occupancy has been issued by the Committee as well as any governmental regulatory agency which may now or hereafter have jurisdiction over the occupancy of such residence.

5. All structures constructed or placed on any lot shall be built of substantially new material and no structure shall be relocated or placed on any lot without prior written consent of the Committee.

6. No animals or livestock of any description, except the usual household pets in reasonable numbers, shall be kept or harbored on any lot in the Subdivision. All such household pets which are permitted to enter or to remain within the Subdivision, shall at all times be kept under the effective control

of their owners, and no household pets shall be permitted to roam at large or create unreasonable noise or nuisance, as for example, excessive barking by a dog.

7. No sign or signs (including, but not limited to "For Sale" or similar signs), billboards, or other advertising structures of any kind may be erected or maintained upon any lot, except a sign identifying the owner of the lot, the lot number and address, except after applying and receiving written permission from the Declarant. Declarant reserves the right to approve all signs.

8. No unregistered, unlicensed, stripped, partially wrecked, inoperable, or junk automobiles, trucks, motorcycles, motor bikes, other motor vehicles, or parts thereof, shall be kept, used, driven, placed or parked anywhere within the Subdivision; nor shall any such unregistered or unlicensed vehicle, including motor bikes, motorcycles or the like, be driven or ridden upon the street, roadways, alleys or sidewalks within the Subdivision, or upon the lots, open areas, or trails, in the Subdivision. All vehicles, including automobiles, motor bikes, motorcycles or the like, shall be operated by persons holding a valid driver's license. All motorcycles, mini-bikes, motor bikes, motor scooters, trail bikes, drag racers, off-the-road vehicles, and the like are prohibited and shall not be operated in the Subdivision; and may only be operated in such areas of the Declarant's property as may be specifically designated by the Declarant during the authorized hours and subject to the conditions imposed by the Declarant.

9. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Committee. Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be installed underground, screened or placed and kept so as not to be visible from any street, or recreation area.

10. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery or other screening approved by the Declarant so as not to be visible from any street or recreational area.

11. No structure erected upon any lot may be used as a model or exhibit or house unless prior written permission to do so shall have been obtained from the Declarant.

12. All lots, whether occupied or unoccupied, and any and all improvements thereon shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

13. No noxious, offensive, or illegal activities shall be carried on any lot, nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

14. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

15. No vehicles shall be parked on any street in the Subdivision, except in case of emergency or in connection with the making of deliveries.

16. Any dwelling or outbuilding on any lot which may be destroyed in whole or in part by fire, windstorm, or by any other cause or Act of God must be rebuilt or all such debris removed and the lot restored to a sightly condition with reasonable promptness; provided, however, that in no event shall such debris remain longer than six (6) months.

17. No tree over ten (10) inches in diameter shall be cut or removed from any lot without the prior written consent of the Declarant. In order to preserve and maintain the wooded and natural appearance of the Subdivision, the Committee and the Declarant expressly reserve the right to approve the area to be cleared for the construction of any dwelling or other permissible structure. Prior approval shall be obtained from the Committee and Declarant prior to any such cutting of trees, and the lot owner shall promptly remove and dispose of all cut timber, including tree stumps and limbs from the lot.

18. No trash, ashes, garbage, or other refuse shall be dumped, stored, or accumulated on any lot or upon any recreational area in the Subdivision. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted, except by issuance of a permit by the Declarant, together with any other State Permit which may be required. In order to enhance the appearance and orderliness of the Subdivision, the Declarant hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time grant an exclusive license to a third part to operate, a commercial scavenging service for the purpose of removing garbage, trash, and other household refuse. The charge for such refuse collection and removal service shall be paid by the lot owner and shall be commensurate with the rates

charged by commercial scavengers serving other subdivisions of high standards in the area, and shall be subject to change from time to time.

19. There shall be no access to any lot on the perimeter of the Subdivision except from designated roads within the Subdivision.

20. There shall be no vehicles of any type driven or towed in a reckless manner on or along any street or service driveway within the Subdivision. All vehicles must observe such speed restrictions or noise limitations throughout the Subdivision, as established or changed from time to time by the Declarant, its successors, or assigns. The Declarant shall likewise have the right to prescribe one-way streets and to otherwise impose reasonable restrictions on the movement and the way of movement of all vehicles on the streets in the Subdivision.

21. The purchase of a lot or lots shall confer no rights whatsoever for the owners thereof to use the adjoining lands of Declarant, or any of the streams, trails, waters or water courses thereon, nor other parts of the Subdivision, except as specifically permitted and authorized by the Declarant; provided, however, that the property owners shall have the right to boat and fish therein, and to use the other recreational facilities of Declarant, subject to the reasonable restrictions and conditions imposed by Declarant, its successors or assigns.

22. The purchaser of any lot, his heirs, devisees or assigns, shall not subdivide any lot and convey a part thereof to any person, firm, or corporation; it being understood that this covenant shall prevent any further reduction in size of individual lots and prohibit a conveyance of a part of any individual lot.

23. There shall be no camping permitted in any easement area, or within the setback areas or in any common or recreational areas, streets or service driveways, except in those areas, if any, which are specifically designated for that purpose.

24. The Declarant, its successors and assigns, reserves the right to enter upon any vacant or unattended lot for the purpose of improving its general appearance without being classified as a trespasser, or being liable for damages for property removed.

25. The Declarant reserves the right to permit other persons, firms or corporations who own or acquire title to property from Declarant outside of said Subdivision to use and enjoy the recreational and common facilities within the Subdivision; provided, however, that if such use is permitted on a permanent basis, there shall be provisions made for proportionate upkeep and maintenance, and such additional use shall be within the capacity of the subject facilities.

26. Whenever the owner of any lot in the Subdivision, other than the Declarant, shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner, or if said owner shall independently decide to put said lot on the market, the owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer or (if said owner shall independently have decided to put said lot on the market) at the price and on the terms acceptable to said owner; first, to the Declarant, its successors or assigns; next, to the owner of the lot on right of the prospective seller's lot (as determined by standing on the seller's lot facing the road); and finally, to the owner of the lot on the left of the prospective seller's lot. Such offering shall be made successively and each of said offerees shall have ten (10) days within which to accept or refuse said offer. If all of said offerees refuse to purchase said lot at the price and the terms proposed by said owner, said owner shall be free, subject to the limitations contained herein, to sell said lot at the bona fide offer so received.

27. By Declaration of Restrictions and Covenants for Big Bear Lake Camplands, dated June 15, 1972, the Declarant reserved an easement for the use and enjoyment of the streets and common or recreational areas within Big Bear Lake Camplands to the Declarant, its successors and assigns, and to such persons who are, from time to time, permitted by the Declarant to use and enjoy such recreational facilities or other amenities as owners or licensees of Declarant. Pursuant to this provision, the Declarant hereby declares that all owners within the Subdivision are permitted to use and enjoy the recreational and common facilities within Big Bear Lake Camplands, subject to the payment of the annual assessment for the maintenance and upkeep of the recreational and common facilities mentioned in these restrictions and covenants and subject also to the compliance with the rules and regulations promulgated by the Declarant, its successors or assigns, governing the use of the common properties.

28. In order to meet the increased costs of replacement of, or capital improvements to, as well as upkeep and maintenance for the common and recreational facilities, the Declarant, its successors or assigns, shall have the power to levy a special assessment for these purposes. The Declarant may limit such

replacement, improvements, upkeep and maintenance to the aggregate net amount of funds available from the property owners assessments as collected by Declarant, its successors or assigns, on a fiscal year basis, and the Declarant, its successors or assigns, shall have no obligation to replace, improve or maintain the common recreational facilities beyond the net funds so available.

29. Every owner and member shall have the right and privilege of enjoyment in and to the common recreational properties and facilities, subject to reasonable use fees which the Declarant, in its discretion, may charge, and further subject to the right of the Declarant to suspend the privilege of enjoyment of any owner, or member, his family or guests, for any period during which the maintenance assessment remains unpaid, and for any period, not to exceed thirty (30) days, for any infractions of the published rules and regulations promulgated by the Declarant.

30. The Declarant, its successors or assigns, reserves the exclusive right to promulgate, and from time to time shall promulgate, and publish rules and regulations governing the use of common or recreational facilities or properties and the personal conduct of the members and their guests thereon. The Declarant shall have the power to enforce the rules and regulations by means of appropriate sanctions, including, but not limited to, imposition of fines, penalties and suspension of the offending owner or member, and his family's or guest's right to use any common or recreational facility.

31. The Declarant reserves the right to make and prescribe such reasonable rules, regulations and limitations for the use and enjoyment of the common recreational facilities as may be necessary for the orderly and proper use and enjoyment thereof; including the right to make and enforce regulations pertaining to swimming and all swimming facilities as well as with respect to all other recreational facilities, including regulations governing the use and enjoyment of Big Bear Lake, or any present or subsequent water impoundments which are or may hereafter be developed on the property, common facilities and the like, as well as to prescribe the opening and closing hours for the recreational facilities or the seasonal closing thereof when warranted by weather conditions or other considerations, which, in the opinion of the Declarant, require closure.

### **IX. Variances.**

A. The Declarant, its successors or assigns, may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that any such variance is allowed in conformity with the intent and purposes of the general development scheme; and further provided, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

### **Ownership, Use and Enjoyment of Streets, Parks and Recreational Amenities**

A. Each of the streets in the Subdivision now or hereafter designated on any plat is a private street, and every park, recreational facility or other amenity within the Subdivision is a private park, facility, or amenity and neither Declarant's execution nor recording of the plat nor any other act of Declarant with respect to the property is, or is intended to be, or shall be construed as a dedication to the public of any of the said streets, parks, recreational facilities and amenities, other than as reflected herein. An easement for the use and enjoyment of each of said streets and areas designated as parks is reserved to Declarant, its successors and assigns; to persons who are, from time to time, members to associate members of Big Bear Lake Property Owners Association (Association); to the members and owners of any recreational facility; to the residents, tenants and occupants of any multi-family residential structures that may be erected within the boundaries of the property and the invitees of the Declarant and all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by Declarant or the Association, if the Association is the owner or lessee of the facility or property involved.

B. The ownership of the recreational amenities within the property which may include, but shall not be limited to lakes, dams, streams, trails, streets, roads, marinas, beaches, lake access areas, golf courses, tennis courts, swimming pools, clubhouses and adjacent clubhouse grounds, campgrounds, and any other recreational property or areas of any kind or description, whether developed or undeveloped shall be in Declarant, or its lessees, successors or assigns; and the use and enjoyment thereof shall be on such terms



and conditions as the Declarant, its lessees, successors or assigns, shall from time to time establish; provided, however, that any one or all of such amenities may be conveyed, leased, licensed or rented to the Association, or such other entity as Declarant may choose or designate.

### **XI. Big Bear Lake Property Owners Association**

A. Every person, which shall include a firm, corporation or other legal entity, before acquiring title, legal or equitable, to any lot in the Subdivision, shall be a member of the Big Bear Lake Property Owners Association, a West Virginia nonprofit corporation, hereinbefore and hereafter sometimes referred to as "Association," and no such person shall acquire title to any lot within the Subdivision until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivision convey title to said lot or lots to any such person who has not been approved in writing for membership in the Association; provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money under a mortgage, deeds of trust, or other security instrument; further, provided, however, that in the event such person, his successors or assigns, should foreclose upon his security and become the real owner of the lot, such person, or his successors or assigns, shall then be subject to all of the requirements and limitations imposed in these restrictions on the owners of lots within the Subdivision, and on members of the Association, including those provisions with respect to alienation and the payment of the annual charge.

B. The general purpose of the Association is to further and promote the common welfare of the property owners in the Subdivision.

C. The Declarant, its successors or assigns, shall be responsible for the maintenance, repair and upkeep of the private streets and parks within the Subdivision; the appurtenant drainage and slope easements reserved by Declarant; all waterways, bulkheads and other waterfront improvements. The Association, in event of assignment by the Declarant, shall also be the means for the promulgation and enforcement of all regulations necessary to govern the use and enjoyment of such streets, parks and other common properties or facilities within the Subdivision, as the Association may from time to time hold. In the event that the Association, following any leasing or assignment by the Declarant, should at any time fail to properly maintain such streets, parks, easements, waterways, bulkheads, waterfront improvements, facilities, or other improvements, or should fail to provide adequate protection; then, and in that event, the Declarant, its successors or assigns, may at its sole discretion, enter upon and make all such repairs to any such facility which it deems to be necessary and proper, or may adopt measures to provide protection and may charge the Association for such repairs or protection.

D. The Association shall have all of the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, or that may be delegated to it by the Declarant, including, but not limited to, the power to levy against every member of the Association, a uniform annual charge per lot within the Subdivision, the amount of said charge to be determined by the Board of Directors of the Association after consideration of the current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than One Hundred Fifty Dollars (150.00) per year for such maintenance and performance of the other services delegated to or assumed by the Association. No such annual charge shall ever be made or levied against, or be payable by the Declarant, the Association itself, or any person, firm or corporation that may be created to acquire title to and operate any water, sewer, electric or other utilities serving the area, or any lakes, dams, beaches, lake access tracks, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, hotels, lodges, motels, or other facilities owned by the Declarant or its assigns.

1. Every such charge so made shall be paid by the member to the Association or its designee on or before the 1st day of March of each year for the ensuing year. The Declarant or the Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the 15th day of January of each year, and written notice of the charge so fixed shall be sent to each member.

2. If the annual charge or assessment shall not be paid when the same is due, it shall bear interest from the date of delinquency at the rate of one and one-half percent (1½) per month. The annual charge

shall, if unpaid within thirty (30) days of the due date thereof, become a lien or encumbrance upon the land and acceptance of each deed or contract to purchase, not including the acceptance by a mortgage or deed or trust, shall be construed to be a covenant to pay the charge. The Association may publish the names of the delinquent members and may record a lien to secure the payment of the unpaid charge, plus costs and reasonable attorney fees. Such lien shall become an encumbrance upon the subject lot when recorded in the office of the County Clerk of Preston County, West Virginia. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest, costs, and reasonable attorney fees, in any Court of competent jurisdiction, as a debt owned by any delinquent member of the Association. Every person who has become the owner of title, legal or equitable, to any lot in the Subdivision by any means whatsoever, shall be conclusively held to have covenanted to pay the Declarant, Association or its designee all charges that the Declarant or Association shall make pursuant to any paragraph or subparagraph of these restrictions, or by-laws of the Association. Any lot acquired shall be taken subject to the lien for any prior unpaid charges.

3. The Declarant, or Association, shall, upon demand, at anytime furnish a certificate in writing, signed by an officer of the Declarant or of the Association, certifying that the charge on the specified lot has been paid, or that certain charges against said lot remain unpaid as the case may be. A reasonable charge may be made by Declarant or the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of such payment of any charges therein stated to have been paid.

E. The fund accumulated as a result of the charges levied by the Declarant or the Association, as the case may be, shall be used exclusively to promote the recreational facilities and the health, safety and welfare of the members of the Association, and in particular for the improvement and maintenance of streets, and those areas designated as parks, and all other common and recreational facilities within the Subdivision which have been conveyed to or acquired by the Association, or retained by the Declarant.

F. The lien of the mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon, recorded in accordance with the laws of West Virginia, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Declarant, or the Board of Directors of the Association, upon assignment by the Declarant, shall have the right to suspend the voting rights (if any) and the right to use common recreational facilities of any member, his family or guest;

1. For any period during which the charges and fines, if any, assessed under paragraph XII-D, or under any other part or section of these restrictions owed by any member remains unpaid.

2. During the period of any continuous violation of the restrictive covenants for the Subdivision, after existence of the violation shall have been declared by the Declarant or the Board of Directors of the Association and proper written notice of such violation given to the member or property owner.

H. The Declarant shall have the right to exercise any and all powers and authorities provided herein to be exercised by the Association, in the event that such powers and authority, including, but not limited to, the right to levy and collect assessments, and take action to enforce any of the provisions of the Declaration, which have not been specifically assigned to the Association, or which the Association, after assignment, fails or refuses to perform.

## **XII. General Provisions and Remedies**

A. Any notice required to be sent or given by the Declarant to any member or owner under the provisions of this Declaration, or any notice by or to the Association, or any member thereof, or to the Declarant, shall be deemed to be sufficient and to have been properly given when reduced to writing and mailed by first class mail, or at the option of the sender, by registered or certified mail, with return receipt requested, with postage prepaid thereon, to the last known address of the person to be notified, as the address of such member or owner appears on the records of the Declarant, its successors or assigns, or upon the records of the Association at the time of such mailing. The notice shall be deemed to be given as of the date of the postmark, and the return receipt, or the refusal or neglect of the recipient to accept such registered or certified mail and notice, shall be conclusively presumed as acceptance.

B. The enforcement of these restrictions and covenants may be instituted by the Declarant, its successors or assigns, or by the Association in the manner herein set forth, or by an appropriate civil action

or proceeding under the laws of the State of West Virginia, against any person or persons violating or attempting to violate any of the covenants or restrictions herein contained, either to restrain any such violation or attempted violation through injunctive procedure, or to recover monetary damages, or against the land to enforce any lien created by these restrictions and covenants; and the failure of the Declarant, the Association, or its successors or assigns, or any owner to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to thereafter proceed. The remedies herein specified are cumulative and this specification shall not be taken to preclude an aggrieved party's resort to any other remedy, whether legal, equitable or statutory.

### **XIII. Severability**

Each and every one of the restrictions and covenants herein contained is hereby declared to be independent and severable from the rest and remainder of the restrictions and covenants and of and from every combination of such restrictions and covenants herein contained shall be held by a court of competent jurisdiction, to be invalid or unenforceable, or shall be held to lack the quality of running with the land, such holding shall be without affect upon the validity, enforcement or "running quality" of the remainder of the restrictions herein set forth, and shall in nowise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be signed hereto by its President, and its corporate seal to be affixed hereto by its Secretary, by authority of its Board of Directors, duly given.

**ALYESKA, INC.**  
S/ NANCY G. FRIEND  
*President*

### **State of West Virginia, County of Preston, To-Wit:**

The foregoing instrument was acknowledged before me this 30th day of April, 1985, by Nancy G. Friend, President of Alyeska, Inc., a West Virginia Corporation, for and on behalf of said corporation.

My commission expires May 2nd, 1993.

S/ JEAN SCHNOPP  
*Notary Public*

The foregoing instrument was prepared by  
ALYESKA, INC., Route 3, Box 204  
Bruceton Mills, West Virginia 26525.

### **State of West Virginia, County of Preston, To-Wit:**

I, NANCY RECKART, Clerk of the County Commission of said county, do hereby certify that the foregoing writing was this day produced to me in my said office, and was duly admitted to record therein.

Given under my hand this 30th day of April, 1985, at 4.30 p.m.

NANCY RECKART, *Clerk*  
by Gail P. Smith, *Deputy*

**FIRST AMENDED AND SUPPLEMENTAL  
DECLARATION OF RESTRICTIONS AND COVENANTS  
AS TO  
SKY VIEW ESTATES, SECTION 2 AND SECTION 3**

**A development of Alyeska, Inc.,  
a West Virginia corporation**

THIS FIRST AMENDED AND SUPPLEMENTAL DECLARATION OF RESTRICTIONS AND COVENANTS, made this 1st day of April 2001, by Alyeska, Inc., a West Virginia corporation, whose address is Route 3, Box 204, Bruceton Mills, West Virginia, 26525, hereinafter sometimes called "Developer."

WHEREAS, the Developer by a Declaration of Restrictions and Covenants dated April 30, 1985 (the Original Declaration), of record in the Office of the Clerk of the County Commission of Preston County, West Virginia, in Deed Book No. 519, at page 62, made and declared certain mutual and beneficial restrictions, covenants, conditions, assessments, and charges, therein sometimes collectively called "the Restrictions" with respect to the sale, conveyance, use, and enjoyment of lots located in a subdivision known as Sky View Estates, Section I, situate in Pleasant Taxation District, Preston County, West Virginia, the original map or plat of said subdivision entitled "Sky View Estates, Section I, a development of Alyeska, Inc.," dated April 30, 1985, of record in said County Clerk's office in Map Cabinet No. 1, at sheet 139A; and,

WHEREAS, the Developer reserved unto itself the right to supplement the Restrictions prior to the conveyance or sale of any lots within said subdivision, and further reserved unto itself, its successors and assigns, the right to revoke at any time prior to the sale of any lot in Sky View Estates, Section I, all or any part of the Restrictions; and,

WHEREAS, all of the lots in Section I of Sky View Estates have been sold and the Developer has enlarged the subdivision known as Sky View Estates, Section I, by adding thereto two (2) additional sections identified as "Section 2", containing Lots Nos. 15 through 27, respectively, and "Section 3," containing Lots Nos. 28 through 36, respectively; all as more fully set forth on the revised map or plat thereof, dated March 27, 2001, of record in said County Clerk's office in Map Cabinet No. 2, at sheet 61B; and,

WHEREAS, certain modifications of the Original Declaration with respect to the exclusive use and improvement of the lots in the Sections 2 and 3 of Sky View Estates are deemed necessary to preserve and enhance the value and desirability thereof in that improvements to be constructed on the lots in "Section 2" will be restricted to stick-built and modular homes, as well as sectional homes on a block foundation with a minimum residential roof pitch of 5/12; and improvements to be constructed on the lots in "Section 3" will be restricted to single- or double-wide sectional mobile homes, modular, or stick-built homes, all as more fully hereinafter set forth. Recreational vehicles as defined in the Original Declaration will not be permitted as a dwelling on any of the lots in Section 2 and Section 3 of Sky View Estates.

NOW, THEREFORE, WITNESSETH: That the Developer hereby further declares that in addition to the mutual and beneficial restrictions, covenants, agreements, conditions, rights, duties, obligations, assessments, and charges set forth and contained in the aforesaid Original Declaration dated April 30, 1985, and recorded as aforesaid and in particular all of the lots in Section 2 and Section 3 of the subdivision, shall be subject to the further amended and supplemental conditions, reservations, and charges herein set forth, all of which shall run with the land and shall be binding upon the Developer, its successors and assigns, and upon all of the parties having acquired any right, title, or interest, whether legal equitable, in and to the lots, streets, common areas, real property or any parts thereof as amended shall read as follows:

**IV-A. Exclusive Use of Improvements  
(Section 2 and Section 3)**

**A. Recreational Vehicle.**

1. There shall be no recreational vehicles permitted as a residence in lieu of a permissible dwelling structure on any of the lots in either Section 2 or Section 3 of Sky View Estates. The term "recreational vehicle" shall include manufactured self-contained recreational vehicles, self-contained motor homes, camper trailers, travel trailers, including park models, and/or truck campers.

2. The modifications as to recreational vehicles on Section 2 and Section 3 of Sky View Estates shall not apply to the lots in Section I of Sky View Estates which is governed by the Original Declaration.
- B. Mobile Homes.
1. Mobile homes are not permitted in Section 2 of Sky View Estates.
  2. Single-wide mobile homes of a minimum width of 14 feet and a minimum length of 48 feet, as well as double-wide mobile homes shall be permitted in Section 3 of Sky View Estates.
- C. Single Family Residential Dwellings.
1. Only stick-built, modular, and sectional homes on a block foundation may be erected as a single-family dwelling in Section 2 of Sky View Estates. All such homes in Section 2 shall have a minimum residential roof pitch of 5/12.
  2. In addition to the single-wide and double-wide mobile homes, the property owners may chose to erect either stick-built or modular homes as a single-family residence in Section 3 of Sky View Estates.
  3. All single-family residential dwellings erected in Section 2 and Section 3 of Sky View Estates shall be no less than six hundred (600) square feet. The provisions of Section IV.C.1 of the Original Declaration shall otherwise apply to homes constructed in Section 2 of Sky View Estates.

Other than as herein provided, all of the terms, conditions, covenants, and provisions of the Declarations of Restrictions and Covenants dated April 30, 1985 (the Original Declaration), recorded as aforesaid are incorporated herein by reference, and made a part hereof, and this First Amended Supplemental Declaration (the First Amended Declaration) is accordingly incorporated in and made a part hereof; and the Grantee(s) of any lot subject to the provisions of said Original Declaration acceptance of a deed conveying title to any lot or lots, or the execution of a contract for the purchase of any lot or lots, whether from the Developer or a subsequent owner of said lot, shall accept such a deed or contract upon and subject to each of the amended and supplemental reservations, restrictions, covenants, and agreements herein contained; and Developer shall have the express right to prevail itself of all of the terms and provisions thereof, as well as those of the Original Declaration aforesaid, for the enforcement of the conditions and reservations therein set forth.

IN WITNESS WHEREOF, the Developer has executed this First Amended and Supplemental Declaration of Restrictions and Covenants as the day and year first above written.

**ALYESKA, INC.**  
a West Virginia corporation,

S/ Nancy G. Friend  
*President*

STATE OF WEST VIRGINIA,  
COUNTY OF PRESTON, to-wit:

The foregoing instrument was acknowledged before me this 4th day of May 2001, by Nancy G. Friend, President of Alyeska, Inc., a West Virginia corporation, for and on behalf of said corporation.

S/ DOLLY ANN HIMES  
*Notary Public*

My commision expires April 29, 2009.

The foregoing instrument was prepared by  
James T. Dailey, Jr., Attorney at Law,  
McNeer, Highland, McMunn, and Varner, L.C., 107 West Court Street,  
P.O. Box 585, Kingwood, West Virginia, 26537/dh.

