

May 1, 2024

Dear Mountain Brook Subdivision Member:

We, the new Architectural Control Committee ("ACC") for Mountain Brook Subdivision, had our first quarterly meeting at the Zion United Methodist Church on December 20, 2023 and spent much of the time explaining about the lawsuit that was brought against the prior homeowners association, Mountain Brook of Troy, Inc. ("Association"), which has since been dissolved pursuant to order by the Circuit Court of Louisa County ("Court") in Case No. CL19000072 ("Lawsuit") that the Association was improperly incorporated on November 18, 2011. In addition, as a result of the Lawsuit the Court ordered that the Eighth Declaration of Amended Restrictive Covenants and Easements For Mountain View Estates, Section III, Phases I, II, & III (Mountain Brook Subdivision) ("Eighth Declaration") was deemed unenforceable/improperly adopted and the Seventh Declaration of Amended Restrictive Covenants and Easements for Mt. View Estates, Section III, Phase I, II, & III (Mountain Brook Subdivision) ("Seventh Declaration") as recorded with the Louisa County Circuit Court Clerk on August 4, 2011 is currently in effect. Legal counsel has reviewed the Seventh Declaration and recommends some changes be incorporated into the Seventh Declaration by amendment thereto.

For example, the current Seventh Declaration limits the lot owner's annual assessment dues to \$75.00 annually per lot. While this may have been sufficient in 2011, it is obviously no longer adequate funding in 2024 for the needs of the community, considering inflation. There is a need to increase the annual assessment dues to a minimum of \$125.00 (just the same as it was under the Eighth Declaration), to maintain the lakes and easements, the front median island, landscaping, insurance, quarterly meetings, office supplies and postage.

There are additional amendments to the Seventh Declaration proposed and a copy of what the Seventh Declaration, as amended, would look like if the changes proposed are approved is enclosed. The proposed additions are noted in underline/bold and the proposed deletions are noted in ~~strikethrough/bold~~ in the materials that will be sent to all lot owners with the changes recommended by legal counsel. In addition to the proposed language for the amendments, enclosed please find an Instrument of Consent to execute and return in the envelope enclosed to demonstrate consent and approval to the proposed amendments to the Seventh Declaration.

Please review the documents received and, if you consent to the proposed amendments, return the original signed and completed Instrument of Consent demonstrating your consent and approval to the proposed and recommended changes to the Seventh Declaration. This is very important for us to be able to continue to function as a viable community.

Enclosures

SEVENTH DECLARATION OF AMENDED RESTRICTIVE COVENANTS  
AND EASEMENTS FOR MT. VIEW ESTATES, SECTION III, PHASES I,  
II, & III  
(MOUNTAIN BROOK SUBDIVISION)

WHEREAS, Restrictive Covenants, Easements and Conditions were recorded with reference to all lots in Mt. View Estates, Section III, Phase I, in Deed Book 451, Page 779 of the Louisa County Circuit Court Clerk's Office, and has been revised and recorded with reference to all lots in Mt. View Estates, Section III, Phase I, in Deed Book 467, Page 135; Deed Book 487, Page 163; Deed Book 575, Page 195; Deed Book 581, Page 702; Deed Book 715, Page 213; Deed Book 715, Page 226; Deed Book 731, Page 513; Deed Book 784, Page 364; Deed Book 866, Page 738; and Deed Book 1223, Page 917 of the Louisa County Circuit Court Clerk's Office;

AND WHEREAS, by a unanimous vote of the Substitute Architectural Control Committee of Mountain Brook Subdivision, and pursuant to the terms of the Restrictive Covenants applicable to the subdivision, these said Restrictive Covenants are amended as set forth herein in order to protect and enhance the value of this subdivision.

NOW THEREFORE, the following Amended Restrictive Covenants, Easements and Conditions are hereby imposed on and made applicable to all lots in Mt. View Estates, Section III, Phase I, II, & III (Mountain Brook Subdivision) more particularly described by the Plat of Survey of James H. Bell, Jr., P.C., Professional Land Surveyor, dated July, 1993, and recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia in Plat Book 8, Page 683, *et seq.*

**ARTICLE 1-THE ARCHITECTURAL CONTROL COMMITTEE**

1.1 The Substitute Architectural Control Committee of Mountain Brook Subdivision is now composed of the following two persons: John Yuhn and Ronnie Jenkins.

1.2 Within sixty (60) days after the recording of this Seventh Declaration of Amended Restrictive Covenants and Easements, the current members of the ACC shall resign and an election shall be held for five members. Further elections of all five members shall be held at intervals of two years. The elections may be by mail ballot, or may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice and in accordance with Virginia Code § 55-515.3. Proxy and absentee ballots are permitted and need not be notarized. All ACC members must be lot owners of record and reside in the Mountain Brook Subdivision.

1.3 A majority of the ACC may designate a representative to act for it in specified routine matters. In the event of death or resignation of any member of the ACC, the remaining members shall have full authority to designate a successor to serve until the next election.

1.4 Neither the members of the ACC, nor its designated representative, shall be entitled to any compensation for services rendered as a member of the ACC. They may investigate or prosecute any violation of these Restrictive Covenants but have no duty to do so. Each landowner has that authority pursuant to Paragraph 6.7 of these Restrictive Covenants. As a result, neither the members of this committee, nor their predecessors, nor their successors shall have any personal liability for any acts or omissions committed as a member of this committee.

1.5 At any time the recorded owners of at least fifty one (51%) percent of the lots shall have the power through a duly recorded written instrument to change the membership of the ACC.

## ARTICLE 2 – NEW CONSTRUCTION

2.1 No lot shall be used except for residential purposes. Not more than one single-family dwelling house may be erected on any such residential lot. Outbuildings not inconsistent with residential use may be erected upon approval by the ACC as provided in Paragraph 2.2 herein.

2.2 No building, out building, garage, animal house or enclosure, fence, tennis court, swimming pool, wall or structure of any type shall be erected, placed, added or altered on any lot until the proposed building plans, specifications, exterior color of finish, and landscape plans have been filed with and approved by the ACC. Refusal of approval of plans, location or specifications may be based by the ACC upon any ground, including aesthetic considerations, which in the sole discretion of the ACC shall seem sufficient, PROVIDED, HOWEVER, the ACC shall not approve any dwelling or house with a total floor or living space, exclusive of all basements, porches, breezeways, garages, tool rooms and unfinished spaces, of less than 1500 square feet for a one-story house, or 1700 square feet for a two-story house, or 1600 square feet for any tri-level or one-and-a-half story house, and PROVIDED FURTHER, that no construction shall be commenced and no lot shall be graded except in accordance with such plan or modification thereof which has been approved by the ACC. No alterations may be used in such plans, nor made in the external appearance of any building or structure after approval by the ACC except by and with the written consent of the ACC. House locations cannot be moved once approval is granted unless the new location is staked and resubmitted for approval. One copy of all plans and related data shall be retained by the ACC for its records.

2.3 All houses in this subdivision must also meet the following criteria, to-wit

- a. The house shall be built with a basement or crawl space and not on a concrete pad.
- b. The house shall have a brick foundation on all four sides of the residence with the color and type of brick to be approved by the Committee. At least seven (7) courses of brick must be exposed on all four sides of the residence. In plans that call for basements, the entire foundation must be brick all the way around the house. It is not permitted to brick evenly on the sides then drop to seven courses on the rear. The brick must maintain an even "collar" around the residence.

c. The exterior should be siding or brick and the siding color, brick color, shutter color, roof type, and roof color shall be included in the submission for approval.

d. Chimneys on the exterior of residences, if included in the plans, must be constructed of brick or stone, the type and color of which must be approved by the ACC. Gas fireplaces are permitted.

e. The location of the house shall be staked on the lot and approved prior to beginning construction, and a landscaping plan shall be submitted for approval showing the location of the driveway, shrubbery, etc.

f. The house must be a minimum of 100 feet from the road unless a variance is granted by the ACC.

g. No porch or projection to any residence or appurtenant building thereto shall extend nearer than 60 feet from the front line of the property, nor within 20 feet of the line of the abutting owner.

h. No house may be closer than 100 feet to any pond or stream unless a variance is granted.

2.4 A 20-foot buffer area shall apply to the rear of the following lots, where they abut property not included in Mountain Brook Subdivision, to-wit: Lots 118, 119, 120, 121, 131, 147A-G, 191C-D, 257, 192, 193, 194, 196, 197, 198, 200, 223, and 227. No building or construction may be done in this buffer area. The trees that are currently located in this buffer area may be subjected to a real estate thinning. Additional trees and shrubbery may be planted in this buffer area but may only be removed upon approval of the ACC.

2.5 All homes must be completed within 12 months of the date of issuance of a building permit for such construction.

2.6 If any structure on any lot is wholly or partly destroyed by fire or wind or suffers damage from any other cause, it must be rebuilt, or if not rebuilt, the debris removed within a reasonable time after such casualty, provided, however that no such condition shall be suffered to remain on any lot for more than six (6) months, the purpose for this requirement being to protect and preserve the values of other properties in the subdivision.

2.7 Prior to any other improvement on a lot, there shall be constructed a driveway surfaced by gravel or crushed rock for a minimum distance of thirty-five (35) feet onto the lot from the margin of the subdivision road. No other improvement may be commenced until the driveway requirement has been met and the driveway must be maintained during construction so as to prevent mud, dirt, rock, other materials or debris from the construction site being deposited on subdivision roads.

2.8 The driveway shall be the sole means of access to the lot during construction. If debris from the construction site is deposited on subdivision roads, it must be promptly removed by the lot owner or the agent of the lot owner. If such materials or debris are not promptly removed, after notification, the ACC shall have the right to summarily remove

the same at the expense of the lot owner.

### ARTICLE 3 – RESTRICTIONS AND OBLIGATIONS

3.1 The appearance of each house and yard must be maintained in such a way as not to detract from the property values in the subdivision

3.2 No alterations in the exterior appearance of any building or structure shall be made without approval of the ACC.

3.3 Fences and other structures designed to retain children or pets must be approved by the ACC. If not visible from the road, wire or chainlink fencing may be permitted.

3.4 All easements for electric lines, telephone lines, cable television lines, or any other easement of any type in this subdivision must be approved by the ACC, regardless of the ownership of the property at the time of proposed dedication of such easement.

3.5 No sign of any kind shall be displayed to the public view on any lot except for one election sign within 30 days prior to an election and one real estate "for sale" sign, each approximately 2 x 2 feet. Election signs shall be removed within 3 days after the election.

3.6 No trailers, mobile homes, tents, shacks, or other structures designed for living purposes shall at any time be brought or stored on any lot. Recreational campers, trailers, and boats are permitted so long as they are not used as a residence and their placement on the property and any tarps or covers used for protection or concealment do not detract from the appearance of the subdivision. No accessory or temporary building shall be used as living quarters.

3.7 No outside toilets shall be allowed on any lot unless approved in advance by the ACC. However temporary use by building contractors is permitted. The placement of outside toilets is restricted to the rear of the lot out of plain view from the road.

3.8 No animals or fowl of any type shall be kept or maintained on any of the said lots, except customary household pets that can be kept totally inside a household and cause no nuisance to their neighbors. Dogs must not be allowed to run at large within the boundaries of the subdivision.

3.9 Use of firearms, and bows and arrows are prohibited within this subdivision. BB guns are allowed under the supervision of a responsible adult.

3.10 No noxious or offensive trade or activity shall be carried out on any lot, nor shall anything be done thereon which shall be or become an annoyance or nuisance to any of the property owners in this subdivision.

3.11 No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in customary household trash containers in rear yards and disposed of promptly. Incinerators are not permitted.

3.12 No tractor-trailers, tow trucks, commercial vehicles over 8,000 lbs. GVW, heavy

machinery, commercial equipment, unlicensed vehicles, or inoperable vehicles shall be kept on any lot.

3.13 The entrance signs and the median between the entrance and exit ways of the Mountain Brook Subdivision shall be maintained by the owners of the lots in the subdivision. Future maintenance of the signs and median area shall become the mutual obligation of all lot owners of the Subdivision and each lot shall carry with it the burden of an equal pro-rata share of this cost. The appropriate amount of such cost shall be determined by the ACC according to procedures set forth in the Mountain Brook Subdivision By-laws.

#### ARTICLE 4 – THE LAKES

4.1 Two lakes containing approximately 8 - 10 acres each, more or less, have been constructed in the subdivision. One lake covers portions of Lots 146, 147, 148, 149, 150, 152, 191, and 255, and the other lake covers portions of Lots 122;123, 124, 125, 126, 127, 128, 130, 131, 247, and 248.

4.2 The lakes themselves belong to the owners of these lots pursuant to their property lines as noted on the Plat of Subdivision recorded in Plat Book 8, Page 683. However, all lot owners in Mountain Brook Subdivision have the right of use of the said lakes and all lot owners are responsible for the maintenance of the lakes. Lake is defined as the body of water impounded by its dam. It does not include the impounding dam, components thereof, or requirements imposed by government agencies relative to the safe construction, maintenance and operation of the dams. Both lakes are available for boating, fishing, swimming and general recreation, but no gasoline motors are allowed. All users of the lakes will do so at their own risk, understanding that there are no lifeguards or other safety personnel on duty. Electric powered motors are permitted.

4.3 It is understood and acknowledged that all lots which adjoin either lake have the right of access and use of the lakes through their property, and all the landowners in Mountain Brook Subdivision have the right of use of the said lakes as well. Access has been provided to the lakes for all property owners of Mountain Brook Subdivision and their guests to use the said lakes through a 50 foot right of way easement access to each lake across portions of Lots 147B & 147C, and of Lots 130 & 131. Vehicles shall not be left unattended on boat ramps or easement access roads. In addition, the ACC has the right of access to and use of the lakes and dams.

4.4 Maintenance of the said 50 foot right of way easement access to each lake and the lakes themselves shall be the mutual obligation of all lot owners in the Mountain Brook Subdivision and each lot shall carry with it the burden of an equal pro-rata share of the cost of maintaining said 50 foot right of way access easements to each lake, such pro-rata share being determined by dividing the cost of any expense of maintenance by the number of lots in the aforesaid subdivision. The appropriate amount of such cost shall be determined by the ACC according to procedures set forth in the Covenant By-laws.

## ARTICLE 5 – BUFFERS AND WESTLANDS

5.1 A 50-foot buffer area shall apply to the following lots where they abut the stream bed located on the subject property, *to-wit*: Lots 121-134, 145,146, 147A-C, 147G, 148-150 152,153, 164-167, 173-175, 180,219, 220, 181, 182, 184, 185, 187 - 189, 190,254 - 256, 191A-C, 232, 233,235,242, 247 - 250. This will create a 100-foot buffer area around all stream beds located on the subject property.

5.2 In addition, no construction or land disturbance activities of any kind may be conducted on the subject property within any wetland area as shown on the Plat recorded in the Clerk's office of the Circuit Court of Louisa County in Plat Book 8, page 691. Construction and land disturbance activities are specifically defined as follows:

- a. Destruction or alteration of wetlands on the property other than those alterations authorized by the Norfolk District, U.S. Army Corps of Engineers under permit number 93-8694-18;
- b. Ditching, draining, diking, filling, excavating, land clearing, plowing, removal of topsoil, sand, or other materials, and any building of roads or alteration in the topography and/or hydrology of the land in any manner.
- c. Construction or maintenance of buildings; however, by way of example and not limitation, structures such as boardwalks, foot trails, wildlife management structures, observation decks, picnic tables, and children's playground equipment may be placed in the wetlands provided that any such structure permits the natural movement of water and preserves the natural contour of the ground. Notwithstanding the above, this shall not apply to the road crossings, the two lakes and other land disturbing activities, which have been permitted by the Army Corps of Engineers.

## ARTICLE 6 – MISCELLANEOUS

6.1 The approval or disapproval of the ACC as required in these covenants shall and must be in writing to be effective.

6.2 The ACC may waive in writing the violation of any of the restrictive covenants referred to herein except for the violation of any restriction listed in Article 5 - Buffers and Wetlands.

**6.3 The ACC shall establish procedures for collecting from the owners of lots in the subdivision, the pro-rata share of the expense of maintaining the lakes and easements to the lakes, the expense of maintaining the entrance signs and median, administrative costs, and insurance. To meet the financial obligations of Mountain Brook Subdivision, the ACC shall levy an annual assessment of \$125.00 per lot per year unless or until such an annual assessment value must be changed to satisfy the**

~~future financial obligations of Mountain Brook Subdivision. Any special assessment or emergency assessment shall require the prior written approval of at least 51% of all the lot owners in the subdivision, to wit: the owners of 73 lots. The ACC shall establish procedures for collecting from the owners of lots in the subdivision their pro-rata share of the expense of maintaining the lakes and easements to the lakes, the expense of maintaining the entrance signs and median, administrative costs, and insurance. In no event shall the total assessment for each lot exceed \$75.00 per year. Any special assessment or emergency assessment shall require the prior written approval of at least 51% of all the lot owners in the subdivision, to wit: 73 lot owners.~~

6.4 In the event that any of the owners of lots refuse to bear their pro rata share of the said expenses the same shall become upon recordation of a bona fide list or bill of expenses in the Clerk's Office of the Circuit Court of Louisa County, Virginia, a lien against their property and interest will be charged thereon at the rate of 8% per annum until such time as the expenses with interest thereon are paid.

6.5 Pending, the purchase of appropriate insurance, this subdivision shall defend and hold harmless each member of the ACC for actions taken in an official capacity in good faith. Such indemnification shall include reasonable expenses actually incurred (including reasonable attorney fees and court costs), judgments, fines and amounts paid in settlement incurred by such member in connection with such action, suit or proceeding, and shall be subject to the limitations set forth in Va, Code § 13.1-876.

6.6 All subsequent Declarations of Amended Restrictive Covenants and Easements for Mt. View Estates, Section III, Phases I, II, & III (Mountain Brook Subdivision) or any modifications or amendments to these restrictive covenants shall require the written consent of at least a majority of the recorded owners of lots in the subdivision. However, nothing herein shall alter the provisions of Article 5 regarding maintenance of the wetlands and buffers surrounding said wetlands unless approved in writing by the Army Corps of Engineers, or any Successor State or Federal agency responsible for this maintenance.

**6.7 The ACC, and any individual member thereof, is authorized to enforce the terms of the Declaration and utilize any remedies permitted under the Declaration and applicable law to enforce the Declaration and correct breaches or violations thereof.** Enforcement of these Restrictive Covenants shall be by proceedings at Law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. All property owners in this subdivision by recordation of their Deed of conveyance subject to these Restrictive Covenants agree to be responsible for any violation of these aforesaid Restrictive Covenants and further agree to be responsible for all reasonable attorney's fees and damages incurred in the prosecution and enforcement of these Restrictive Covenants.

6.8 These Restrictive Covenants shall be considered as covenants running with the land and shall bind the purchaser of all lots as shown on the Plat of the subdivision, referred to previously herein or as amended, and their successors and assigns. If any of the aforesaid owners, their heirs, executors, successors or assigns shall violate or attempt to violate any of the Covenants and Restrictions contained herein, it shall be lawful for any person owning any lot in the development in which said lot is situated to prosecute any proceeding at Law or in equity against the person violating or attempting to violate



any such covenants or restrictions and either to prevent them from so doing or to recover damages for such violation. Any invalidation of any one of these covenants and restrictions shall in no way affect any other of the provisions thereof, which shall thereafter remain in full force and effect.

6.9 All houses, garages, decks, sheds, swimming pools, swing sets, fences, gardens, or landscaping completed before August 4, 2011 are hereby approved with the exception of unresolved allegations of violations under investigation by the ACC on that date.

6.10 Lot 242A, containing 14 acres more or less, is presently owned by all the individual lot owners in the subdivision. This property is to remain a nature preserve. The ACC is prohibited from accepting a deed to this property if the deed contains restrictions or covenants requiring a different use.

**6.11 Notwithstanding anything contained in this Declaration to the contrary, prior to or upon the recordation of this Amendment in the Clerk's Office of the Circuit Court of Louisa County, Virginia ("Clerk's Office") any assets and liabilities or what certain Virginia nonstock corporation known and which did business as "Mountain Brook of Troy, Inc." (the "Association") shall be transferred to and assumed by the ACC and the ACC is authorized to accept such transfer and assumption of assets and liabilities from the Association. The ACC may not borrow money and can only enter into a contract if it has funds on hand to pay for it.**

**6.12 In addition to any other powers or rights the ACC possesses, pursuant to this Declaration or applicable law, the ACC has the power to do all things necessary or convenient to carry out its business and affairs pursuant to the Declaration and in addition is granted the express power and authority to do the following: (i) to make contracts and incur liabilities; (ii) to collect from lot owners assessments and other amounts owed pursuant to this Declaration, adopt rules, policies and resolutions to assist with collection thereof, and take any other action permitted under this Declaration, including, but not limited to, filing liens against lots or lawsuits against owners, to secure or collect amounts owed pursuant to the Declaration; (iii) to initiate, maintain or defend lawsuits brought pursuant to this Declaration; (iv) to pay bills and other liabilities incurred on behalf of the ACC or which benefit the lot owners, including, but not limited to, the authority to any taxes assess or owed on lot 242A; (v) to make, adopt, and amend bylaws, rules and resolutions; (vi) to open and maintain bank and other depository accounts for use in conjunction with fulfilling its duties and responsibilities; (vii) to open, administer and maintain a mailing address (both a physical and electronic mailing address); (viii) to insure the Mountain Brook Subdivision, ACC, and any other persons or entities it deems necessary or convenient to carry out its business and affairs pursuant to the Declaration; (ix) to perform maintenance and repairs within the Mountain Brook Subdivision; (x) to obtain legal advice and consult with legal counsel; and (xi) to have and exercise all such powers necessary or convenient to effect any or all of the purposes for which the ACC was formed and do such other acts not inconsistent with applicable law and this Declaration that further the business and affairs of the ACC which do not require the consent of the lot owners pursuant to this Declaration. Only the ACC, with the approval of the majority of homeowners, can contract for subdivision work. Any contracts for subdivision work by individual lot owners will be at their expense.**

6.13 This subdivision shall not be governed by a Property Owners Association.

6.14 This Seventh Declaration of Amended Restrictive Covenants and Easements supersedes all previous Declarations of Amended Restrictive Covenants and Easements for Mt. View Estates, Section III, Phases I, II, & III (Mountain Brook Subdivision).

**INSTRUMENT OF CONSENT**

**FOR AMENDMENTS TO THE SEVENTH DECLARATION OF AMENDED  
RESTRICTIVE COVENANTS AND EASEMENTS FOR MT. VIEW ESTATES,  
SECTION III, PHASES I, II, & III (MOUNTAIN BROOK SUBDIVISION) AND  
RELEASE OF EIGHTH DECLARATION OF AMENDED RESTRICTIVE  
COVENANTS AND EASEMENTS FOR MOUNTAIN VIEW ESTATES, SECTION III,  
PHASES I, II, & III (MOUNTAIN BROOK SUBDIVISION)**

By execution of this Instrument I/we hereby certify that as an owner(s) of a lot subject to the Seventh Declaration of Amended Restrictive Covenants and Easements for Mt. View Estates, Section III, Phases I, II, & III (Mountain Brook Subdivision, recorded in Deed Book 1254, Page 278, *et seq.*, in the Louisa County Circuit Court Clerk's Office, as may be amended from time to time ("Declaration"), I/we agree, approve, consent and ratify the amendments proposed to **Article 6, Sections 6.3, 6.7, 6.11, and 6.12** of the Declaration and that this Instrument may be recorded to memorialize my/our agreement, approval, consent and ratification of such amendments to the Declaration.

\_\_\_\_\_  
**Lot Address**

\_\_\_\_\_  
**Owner's Signature**

\_\_\_\_\_  
**Printed name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Owner's Signature**

\_\_\_\_\_  
**Printed name**

\_\_\_\_\_  
**Date**

I approve these amendments, and accept them as applicable to the Mountain Brook Subdivision.

I do not approve these amendments.