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**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR EAGLES NEST "PHASE ONE"**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, MADE AND ENTERED into as of the 18th day of June, 2003, as hereinafter provided, applies to that portion designated as Phase One of that certain tract or parcel of real estate situate on Cheat Mountain, in Edray District, Pocahontas County, West Virginia, described in that certain deed dated the 2nd day of January, 2003, of record in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Deed Book No. 282 at page 237, from

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in the Office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Deed Book No. 186 at page 307, which real estate is now referred to as Eagles Nest. This declaration does not apply to declarants except as otherwise provided herein.

The remainder of Declarants property or additional property owned by Declarant adjacent to this tract may become subject to this Declaration in the following manner: The Declarants, their heirs and assigns, from time to time for a period of fifteen (15) years commencing with the date of this Declaration, without further consent of the Eagles Nest Property Owners Association, may bring within the plan and operation of this Declaration any real estate for further development. From and after the expiration of the aforesaid fifteen (15) year period, additional real estate may be annexed to Eagles Nest, provided that each such annexation is approved by two-thirds (2/3) of the votes cast at a duly convened meeting of the Eagles Nest Property Owners Association. The additions authorized under this paragraph shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of the Declaration to such additional real estate.

In order to ensure the attractiveness of the subject property and to preserve, protect, and enhance the values and amenities of all properties therein, and to prevent future impairment thereof and nuisances thereon, the aforesaid real estate which is hereafter conveyed by specific reference to this Declaration, is and shall be subject to the following restrictive covenants, provisions, conditions, easements, reservations and agreements, which are and shall be appurtenant to the real estate so conveyed and shall run with the land, so as to be binding upon the assigns, successors, and heirs of the Declarants, to wit:

1. All lots within Eagles Nest Phase One are and shall be known and designated as residential lots, and, as such, shall be used for residential purposes only. Furthermore, no lot shall be used as a driveway, roadway, or means of access to any adjoining real estate without the written consent of the Declarants or the Eagles Nest Property Owners Association, or both, as the case may be, by joinder in the deed or deed of easement.

2. Only one (1) single-family residential dwelling is and shall be permitted on each residential lot, and there shall not be conducted therefrom, any commercial business or endeavor that requires business visits to the premises, with the exceptions that (a) the operation of a bed and breakfast or other variance approved, in writing, in advance, by the Declarants or the

Property Owners Association, as the case may be, by recordable document, (b) a building lot may be used by the Declarants' realtor for a model home or for a real estate office during the period of development of some or all of the Subdivision, (c) however, homes may be rented to families or groups.

3. No dwelling which contains less than fifteen hundred (1500) square feet of interior living space, not including porches, decks, patios, and garages, on the ground floor shall be constructed on any lot. No residential dwelling which is greater than two and one-half (2 1/2) stories in height shall be constructed on any lot.

4. No outbuilding, utility building, garage or garage apartment exceeding one and one-half (1/2) stories in height shall be constructed on any lot within subject property. There shall be no outbuildings, other than a utility building, a garage, or a garage apartment, placed upon any lot within subject property, and any such utility building, garage or garage apartment shall not be placed upon the lot until such time as the owner shall have built a residence thereon containing the minimum requirements as set forth in these covenants, unless a written waiver has been granted by the Architectural Review Committee. Detached outbuildings and garages shall reflect the architecture of the residence, be appropriate to the setting, and shall be approved prior to commencement of construction, by the Architectural Review Committee.

a. The Architectural Review Committee shall consist of not less than three (3), nor more than five (5) members, appointed by the Declarants, Robert A. Bonwell and Robert A. Bonwell, Jr., their duly appointed agent, or chosen by the Property Owners Association as hereinafter provided, from which Committee written approval must first be obtained prior to commencement of construction.

b. The initial Architectural Review Committee shall be composed of Robert Bonwell, Sr., Larry Kemper, and Mike Gibbs, and in the event of the death or resignation of one or more members of the Committee, the remaining members of the Architectural Review Committee may appoint successors to replace those persons resigning or otherwise ceasing to serve on the Committee. The initial Architectural Review Committee shall serve until the formation of a Property Owners Association, as hereinafter provided, and at such time as the Declarants deem appropriate. Upon formation of a Property Owners Association, the Property Owners Association shall elect from its number, three (3) persons to serve as the Architectural Review Committee as provided in the by-laws of the Property Owners Association.

5. Any residence or structure built upon any lot within the subject property shall be constructed with a minimum setback of fifty (50) feet from any road, or street, and with a minimum setback of twenty-five (25) feet from any property line, unless waived, in writing, by the Architectural Review Committee.

6. The exterior of any structure within the subject property must be completed within one (1) year after construction of the same shall have commenced, and all structures shall be fully completed within two (2) years of the beginning of construction.

7. All structures constructed within the subject property shall have natural exteriors of wood, stone, glass or brick, as approved by the Architectural Review Committee. No residence or other structure shall be constructed with an exterior of exposed cement block and any concrete or block foundation must be covered with stone, brick, stucco, or other appropriate facing approved by the Architectural Review Committee.

8. Prior to the commencement of construction on any lot, complete architectural and landscape plans, including plans for lot development, driveways, swimming pools, or any other improvement or alteration, including, but not limited to, plans for the location, design, color, type of material to be used in the construction of any residential dwelling and any utility building, garage, or other outbuilding constructed on any lot subject to this Declaration, must be submitted to the Architectural Review Committee. Within thirty (30) days after receipt of the plans, specifications and supporting documents, the Architectural Review Committee shall approve or disapprove, in writing, any development plan submitted in accordance with this Declaration; however, that Committee will not pass on or be responsible for the structural soundness of any building. Advice and an opinion as to such matters should be obtained from a competent and qualified engineer. The following shall constitute grounds for disapproval:

- a. Failure of such plans or specifications to comply with any of these Covenants and Restrictions;
- b. Failure to include information in such plans and specifications as may have been reasonably requested;
- c. Objection to the design or appearance of any proposed landscaping;
- d. Incompatibility of any proposed building or use with existing buildings or uses upon other building lots in the vicinity;
- e. Objection to the location of any proposed building upon any building lot or with reference to other building lots in the vicinity;
- f. Objection to the grading, lighting, landscaping, parking areas, or drainage plan for any building lot;
- g. Objection to the color scheme, finish, proportions, style of architecture, height, elevations, bulk, quality, or appropriateness of, or any other purely aesthetic objection to, any proposed building;
- h. Any other matter which, in the sole judgment of the Architectural Review Committee, would render the proposed building, buildings, or uses inharmonious with the general plan of improvement of the real estate, or with buildings or uses located upon other lots in the vicinity.
- i. In the event the Committee does not issue a decision within thirty (30) days, the application will be deemed disapproved without prejudice to reapply.

9. No trailer, mobile home, double-wide mobile home, barn, tent, shack, or shed shall be located on any lot within the subject property except as specifically approved on a temporary basis by the Architectural Review Committee.

10. No car, bus, truck, or other vehicle maybe used as a residence or storage structure, and no unlicenced or uninsured vehicle shall be permitted on the property.

11. No lot shall be subdivided, except that if two (2) adjacent lots are purchased by a single purchaser, the interior lot line may be disregarded for purposes of setbacks for the construction of a single dwelling as heretofore described, subject to the prior approval of the Architectural Review Committee. For all other purposes, any two lots so combined shall be considered as two separate lots, and the owner thereof shall have voting privileges and be responsible for dues and assessments for each lot.

12. No sign of any kind shall be displayed on any lot, except that a tasteful or estate sign used to designate the property, approved in advance, by the Architectural Review Committee, may be permitted. Normal and customary signs advertising property for sale or rent, or signs used by a builder to advertise property during construction or sales, shall be permitted at the discretion of the Architectural Review Committee.

13. Prior to the occupation of any residence, the owner thereof shall, at his or her expense, furnish written documentation to the Declarants or the Architectural Review Committee that they have complied with all applicable County, State, and Federal laws and regulations for providing safe drinking water and proper sewage disposal. In the event that a public or private water or sewage system shall become available, any lot owner may elect to connect to that water or sewage system, as aforesaid, provided that any such election by any lot owner is made in compliance with all applicable laws, rules and regulations.

14. The Declarants reserve unto themselves, their successors, and assigns, all necessary and convenient rights-of-way and easements over and through the premises for the purpose of construction, installation and maintenance of roadways, drainage easements, and utility services necessary and convenient to the development.

15. All power, telephone, television cable and other utility lines shall be buried underground from the utility right-of-way to any residence, structure, or location on the Phase 1 premises. For a period of fifteen (15) years from the date of this Declaration, the owner of any lot along WV Route No. 66 or any lot located along the outside line of Eagles Nest Subdivision shall not grant to any person or entity owning real estate outside the Subdivision an easement for a utility line from the Subdivision to that outside real estate without the consent of the Declarants which consent shall be evidenced by joining them as grantors in the deed of easement.

16. All heating oil, fuel oil, L.P. gas, or other similar storage tanks shall not be exposed to view, and shall be screened with shrubs, natural lattice, buried, or enclosed within a dwelling or accessory building, or screened in some other manner approved by the Architectural Review Committee.

17. Each owner of any lot within the subject property shall be responsible for the proper storage and disposal of household garbage and trash, and shall store such garbage and trash in appropriate containers which shall be screened or enclosed in a manner similar to that described in the preceding paragraph relating to fuel tanks.

18. No trees measuring six (6) inches in diameter, or greater, across the stump may be cut or removed without written approval of the Declarants or Architectural Review Committee, unless any such tree is within twenty (20) feet of the residence or other approved outbuilding, or in the driveway or roadway to the residence, except as approved by the Architectural Review Committee.

19. Any and all private driveways to any residence within the subject property which enter the public road or any road in this development, shall have a drain or culvert installed which is at least fifteen (15) inches in diameter and twelve (12) feet in length, or in accordance with the West Virginia Department of Highways regulations. The owners of all lots which front on West Virginia Rt. No. 66 shall cooperate with each other in the cutting and removal of brush and bank grade modification so as to provide adequate sight distance required by the Division of Highways for the construction of entrance driveways.

20. No television or radio antenna, tower or satellite dish larger than eighteen (18) inches in diameter may be erected or maintained on any of the lots within the subject property, without prior written consent of the Architectural Review Committee. All electrical, radio, television and electronic equipment must be approved by the Architectural Review Committee and be in accordance with the requirements of the National Radio Observatory regulations.

21. Without written waiver, parking of boats, trailers, campers, motor homes, or other similar mobile units for a period of greater than two (2) weeks is prohibited.

22. No animals, livestock or poultry of any kind shall be raised, bred, or kept on the aforesaid real estate, or any portion thereof, without written approval of the Declarants or the Property Owners Association, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred or maintained for commercial purposes, and further provided that such animals shall not cause any disturbance, whether by frequent barking, other noise, or otherwise.

23. There shall be no activity on the premises which constitute an annoyance or nuisance to the owner of any lot within the subject property. No lot may be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear in an unclean, disorderly or untidy condition. Likewise, debris of any kind shall not be placed or permitted to remain on any lot which would cause such lot to appear unclean, disorderly, untidy or that would otherwise be considered obnoxious. No obnoxious or offensive activity shall be carried on at any lot within the development, nor shall anything be done, placed, or stored thereon which may become an annoyance or nuisance to the neighborhood, or occasion noise or odor which will, or might, disturb the peace, quiet, comfort or serenity of the other residents.

24. Declarants are vested with all authority of the Property Owners Association specified in this Declaration until the association is formed by them. After formation, all property owners within the Subdivision, whether they be the owners of residential lots, townhouses, or other properties, shall be members of the Property Owners Association after the Declarants have established the Property Owners Association, and be entitled and subject to all of its rights, privileges, duties and responsibilities. Membership shall be appurtenant to, and may not be separated from, ownership of any lot which is subject to this Declaration, either partly or in total.

25. The Eagles Nest Property Owners Association shall accept and hold title, by deed, assignment, lease, grant of easement, or otherwise, to the Common Areas as may be conveyed or granted to it by the Declarants or otherwise, and shall operate and maintain the same for the benefit of the Members. "Common Areas" shall mean and refer to those tracts of real estate, whether improved or unimproved, which are dedicated for the benefit of the Members and designated as "Common Areas" or "Common Properties". All such areas are to be devoted to and intended for the common use and enjoyment of the Members, their families and guests, and visiting members of the general public to the extent permitted by the Board of Directors of the Association, subject to the fee schedules and operating rules adopted by the Association.

a. Common Areas, including equipment and improvements installed or constructed thereon, may be devoted to the following uses:

1. For roads or roadways and parkways along those roads or roadways throughout the Subdivision.

2. For appropriate Subdivision entrance ways and signage, sidewalks, walking paths or trails, bicycle paths, and bridal paths throughout the Subdivision.

3. For other purposes as may be determined by the Board of Directors of the Association, or purposes set out in deeds, easements, or long-term leases by which Common Properties are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association.

b. The Association is authorized, but not required, to provide the following services or undertake the following functions:

1. Cleaning and maintaining all roads, roadways, including snow removal, roadway medians, parkways, and other Common Properties within the Subdivision.

2. Landscaping of roads and parkways, sidewalks and walking paths, and mowing and maintenance of any Common Areas.

3. Lighting of roads, sidewalks and walking paths throughout the Subdivision.

4. Supervising, or contracting for, garbage and trash collection and disposal.

5. Constructing improvements on Common Areas to carry out any of the purposes or as may be required to provide the services authorized herein.

6. Enforcing all covenants and restrictions affecting the Subdivision and performing any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Subdivision.

7. Providing the services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the business and obligations of the Association.

c. There shall be two (2) classes of Members in the Association. The Declarants shall be Class B Members, and all other property owners shall be Class A Members. In order for the Association to discharge its obligations as hereinabove set forth, the Association shall levy an assessment against each Class A Member, to be used exclusively for the improvement, maintenance, repair, replacement, relocation, substitution, enhancement, enlargement and operation of the Common Properties and to provide services which the Association is authorized to provide.

1. Each Class A Member of any lot in the Subdivision shall be required to pay an annual assessment of dues for each lot owned. Additionally, the Class A Members of lots served by roads or roadways within the Subdivision shall pay a road assessment for the reasonable use, maintenance, upkeep or improvement of common access roads within the Subdivision. Also, the Association may levy Special Assessments for any purpose, such as improvements or additions, for which it is authorized, but for which funds are not available from the Annual Assessment. Before being charged such assessments must be approved by a majority of the votes of the Members responding to a mail Referendum within thirty (30) days of mailing. The Referendum shall include one statement from the Directors favoring the Special Assessment and one statement from any Directors opposing the same, both of which shall contain reasons for their support of, or opposition to, the assessment. The Annual Dues and Assessments shall be billed quarterly, in advance, commencing on the first day of the calendar quarter following the date one becomes a Member. Special Assessments shall be billed the first quarter after they are approved by the Members. All assessment bills shall be due and payable thirty (30) days from the date of mailing the same.

2. The Association may establish reserves from the Annual Assessments to be held in an interest bearing account or investments as a reserve for (a) major rehabilitation or major repairs, (b) emergency or other repairs required as the result of storm, natural disaster or other casualty loss, (c) recurring periodic maintenance, (d) initial costs of any new service to be performed by the Association, and (e) any other purpose approved by the Association.

3. The Annual and Special Assessments, together with the interest thereon and costs of collecting the same, shall be a charge as a continuing lien on the real estate and improvements against which each such assessment is made, and also shall be the personal obligation of the owner of that real estate at the time when the assessment first became

due and payable. In the case of co-ownership, all co-owners shall be jointly and severally liable for the entire amount of the assessment.

4. The lien for the assessments provided herein shall be subordinate to the lien of any deed of trust now or hereafter placed upon the real estate subject to the assessment; provided however, that such subordination shall apply only to the assessments which accrued after the date of such deed of trust and which have become due and payable prior to a sale or transfer of such real estate pursuant to foreclosure, or any other proceeding or deed in lieu of foreclosure.

5. The first time any meeting of the Members of the Association is called to take action under this Paragraph 25, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of the total vote of the membership shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast twenty-five percent (25%) of the total vote of the membership of the Association.

6. The Board of Directors of the Association shall fix the amount of the Dues and Assessments and at that time shall direct the preparation of an index of the real estate and assessments applicable thereto. That index shall be open to inspection by any Member. Written notice of assessments shall thereupon be sent to every Member.

7. Any owner liable for an assessment may request that the Association provide a certificate signed by an officer setting forth whether the assessment has been paid. That certificate shall be conclusive evidence against all but the owner of the payment of any assessment therein stated to have been paid.

8. The president, treasurer, or such other officer as may have custody of the funds of the Association shall annually prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of the fiscal year, and a statement of revenues, costs and expenses. A copy of the same may be furnished to a Member, either in person or by mail, and a copy shall be furnished to each Member of the Association who requests the same within thirty (30) days after receipt of that request. The Board of Directors shall prepare and make available to all members a budget outlining anticipated receipts and expenses for the following fiscal year. The financial books of the Association shall be available for inspection by all Members at reasonable times during regular business hours.

26. The roadways or rights-of-way constructed in the development are for the use in common of the Declarants, their heirs, successors and assigns. Each owner of any lot within the subject property shall have a non-exclusive perpetual easement and right-of-way for ingress to and egress from his lot, over and across all common areas, walkways and access roads within the development, provided that the owner is current with all assessments and dues, due and owing to the Property Owners Association.

27. There is reserved to the Declarants, or the the Eagles Nest Property Owners Association, the right to dedicate and transfer all or any part of the utilities or roads to any public agency, authority, or utility for such purposes and subject to such conditions as maybe agreed to by the Declarants or the Property Owners Association.

28. Only licensed vehicles maybe used on the roadways or rights-of-way in the development. Vehicles such as motorized dirt bikes, three or four wheelers, A. T. V.' s, snowmobiles, or other recreational vehicles are strictly prohibited within the development and, if present, must be trailered or garaged. The exception to this covenant is the use of lawn and garden implements, bicycles, and equipment being used in the construction of dwellings within the development, or by written waiver by Declarant or Property Owners Association.

29. No hunting of any kind will be permitted, nor shall any firearm be discharged, within the development.

30. In the event of the violation or breach of any of these covenants or restrictions, or any additions or amendments hereto, by any property owner, his agent, guest, or invitee, the Declarants or the Property Owners Association shall have the right to proceed at law, or in equity, to compel compliance with the terms hereof, or to prevent the violation or breach of any covenant herein. In addition to the foregoing, whenever a breach, violation or attempted breach shall have occurred, the Declarants, or the Property Owners Association, shall have the right, to enter upon the property where such violation exists and to summarily abate or remove the same at the expense of the owner, if thirty (30) days have elapsed after written notice of such violation is received by the owner or his agent, and the owner has failed to abate or remove the same. Any such entry and abatement or removal shall not constitute a trespass. All costs incurred as a result of abating or removing a breach shall be paid by the owner and any unpaid costs shall constitute a lien upon the real estate.

31. The failure to enforce any right, reservation, restriction or condition contained in these covenants and restrictions, however long continued, shall not constitute a waiver of the right to do so thereafter, and shall not bar or affect its enforcement.

32. The invalidation of any restriction in this Declaration of Covenants and Restrictions, by any Court, shall in no way affect any of the other covenants and restrictions which shall remain in full force and effect.

33. No part of these Declarations is intended to be used, nor shall the same be used by the Declarant, any property owner, or their successors or assigns, to discriminate against any person, whether a purchaser or prospective purchaser, upon the basis of race, creed, color, national origin, sex, age, or religion.

34. Each purchaser and grantee of any lot or parcel of real estate subject to this Declaration, by acceptance of a deed conveying title thereto, specifically agrees to accept such title upon and subject to each and every one of the provisions, restrictions, conditions, reservations, easements, covenants, agreements, and assessments herein contained, and specifically covenants and agrees with the Declarants, all other owners of property within the

development, and the Property Owners Association, to keep, observe, and comply with and perform said provisions, obligations, duties, covenants, agreements, and restrictions.

35. Should any of the provisions of these Covenants and Restrictions be deemed inconsistent or conflicting, it is understood and agreed that the more restrictive interpretation of those Covenants and Restrictions shall apply.

36. This Declaration shall be limited in its scope and binding effect on such real estate as shall be expressly conveyed subject hereto, and nothing herein set forth or contained shall be deemed to, in any manner, prohibit, limit or restrict the development of any property not expressly made subject to this Declaration.

IN WITNESS WHEREOF, the Declarants have caused this instrument to be executed as of the 18<sup>th</sup> day of June, 2003.