

# **SLATE ROCK CROSSING PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made this \_\_\_\_day of \_\_\_\_\_, 2008, by Chestnut Ridge Properties, LLC, its successors and assigns (the "Declarant").

## RECITALS:

KNOW ALL MEN BY THESE PRESENTS: That the undersigned CHESTNUT RIDGE PROPERTIES, LLC, known and referred to as "Declarant", being the fee simple owner of certain real estate situate in Capon District of Hardy County, West Virginia, does hereby make the following declaration as to limitations, restrictions, reservations and uses to which lots of SLATE ROCK CROSSING Subdivision may be placed hereby specifying that said declaration shall be deemed to be covenants to run with the land, as provided by law and being upon all parties and all persons claiming under Chestnut Ridge Properties, LLC, and for the benefit of and as limitations upon all future owners of said lots, this declaration of restrictions being designated for the purpose of keeping said lots desirable, uniform and suitable in design and use as herein set forth.

TRACTS DEDICATED TO AND MADE A PART OF SLATE ROCK CROSSING: The real estate designated as Slate Rock Crossing shall include that certain real estate situate in Capon District of Hardy County, West Virginia, which was conveyed unto Chestnut Ridge Properties, LLC, by deed dated November 12, 2004, and of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 283, at page 82, consisting of a maximum of forty-five (45) numbered or lettered lots as designated upon the master plat(s) to be recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia.

WHEREAS, Declarant desires to provide for the preservation of the values, amenities and natural beauty of the landscape in said community and for the maintenance, including snow removal, of all roadways therein, and to this end, desire to subject the real property described as being a part of "Slate Rock Crossing" Subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an Association to which should be delegated and assigned the powers of maintaining and administering the community facilities, and administering and enforcing these protective covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant will incorporate under the laws of the State of West Virginia as a nonprofit, non-stock corporation, the Slate Rock Crossing Lot Owners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, it is hereby declared that the real property described as being a part of Slate Rock Crossing, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants, Conditions and Restrictions") hereinafter set forth.

## ARTICLE 1: DEFINITIONS

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

- a) "Association" shall mean and refer to Slate Rock Crossing Lot Owners Association, a not for profit association which the Declarants shall cause to be incorporated, its successors and assigns.
- b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, or any Supplemental Declaration, as described in Article II, Section I, hereof.
- c) "Roads and Other Common Facilities" shall mean the areas of land shown on any recorded subdivision plat(s) of The Properties which are intended to be devoted to the common use of the owners of The Properties as labeled on said plat(s). Roads will be designated upon said Plat for purposes of ingress and egress to the Lots within the subdivision and shall include the full width of the easement, regardless of the actual surface of the road. Roads shall remain unobstructed to all for free and unfettered travel.
- d) "Lot" or "Tract" shall mean and refer to any numbered or lettered Tract or Parcel of Land as shown upon any recorded subdivision plat of The Properties or any individual tract plat captioned as being a part of Slate Rock Crossing.
- e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Tract situated upon The Properties but shall not mean or refer to the beneficiary of any deed of trust unless such beneficiary has acquired title pursuant to foreclosure or proceeding in lieu of foreclosure.
- f) "Member" shall mean and refer to all those Owners who are or become members of the Association as provided in Article III, Section I, hereof.

## ARTICLE 2: REAL ESTATE DEDICATED TO AND MADE A PART OF SLATE ROCK CROSSING AND SUBJECT TO THIS DECLARATION

Section 1. TRACTS. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Capon District of Hardy County, West Virginia, and there shall be placed of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, plats of survey and descriptions of survey for the individual tracts comprising "Slate Rock Crossing."

Section 2. FURTHER SUBDIVISION. No other Lot within The Existing Property shall be further subdivided, divided or portioned in any way by sale, gift, devise or other method, except to allow for nominal boundary line adjustments, however, the Declarant reserves the right to resurvey, replat, re-subdivide or establish new division lines on any unsold lots or lots repurchased by the Declarant, then and in such event said tract shall be subject to all the covenants, conditions and restrictions as set forth herein.

Section 3. DEVELOPMENT RIGHTS. The Declarant may develop all or part of additional real estate as subsequent sections to Slate Rock Crossing, and Declarant reserves the right to incorporate all or part of such additional property into this Declaration at a later date by filing of a supplemental declaration or declarations for that purpose or by incorporating this declaration by reference in the deeds of conveyance for those lots.

Section 4. RESERVATION OF ROADWAYS. The Declarant reserves unto itself, its successors and assigns, a fifty foot (50') wide perpetual, alienable, and releasable easement over, upon, across and under each Lot for the construction, maintenance, upkeep, repair and use of the roadways and rights-of-way, the location or locations thereof are as shown on the master plat of Slate Rock Crossing or any duly recorded revisions thereof (This right of way will be forty foot (40') wide in Section II). The aforesaid reservations grant the Declarant such rights as are necessary to construct ditches, drains and install culverts on or off the rights-of-ways or roadways of the subdivision. Said roadways shall be used in common by the Declarant, Lot owners, and their respective heirs, successors and assigns, and the Declarant reserves the right to use, and grant unto others, any and all subdivision roads to access any property currently owned or obtained in the future adjacent to Slate Rock Subdivision. No lot owner may create any easement on or across any lot to be used as a road or right of way to any land outside the property.

#### ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. ASSOCIATION. A Lot Owners Association shall be established upon fifty percent (50%) of the lots being sold in the subdivision. The Declarant shall serve as the initial President of the Association, and the Declarant may appoint an initial board of directors which shall serve until a meeting of the Association can be called and officers elected. An election shall be held within one (1) year from the sale of fifty percent (50%) of the lots.

Section 2. MEMBERSHIP. Each lot owner shall be deemed a member of the lot owners association upon delivery of the deed for that lot and shall be subject by covenants of record to assessment by the Association. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January of each year hereafter. Lot owners purchasing from the Declarant will be responsible for payment at closing of the assessment prorated to the end of the year in which they purchase, at the rate of \$300.00 per annum.

Section 3. VOTES. Where more than one person or entity constitutes the owner of a lot, the vote with respect to such lot shall be exercised as if the persons or entities holding title are one (1) vote.

Section 4. MEMBERS VOTING RIGHTS SUBJECT TO ASSESSMENT: Each Member of the Association shall ensure that any assessment due for each Lot owned is current and any delinquent assessment, including any statutory interest due for the period of default, shall be reflected in the Association Minutes. The Association shall have the right to attach a lien to any Lot with past assessments and take such other legal remedies as may be available for the collection of assessments.

#### ARTICLE 4: PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. COMMON ELEMENTS. Declarant hereby dedicates as common elements which shall be used and maintained by the Association, all subdivision roads as shown and designated upon subdivision plat/plats, and the right to use same for purpose of ingress and egress to the public highway, shall be appurtenant to and with the title to every lot in said development.

Section 2. EXTENT OF MEMBERS' EASEMENTS. The rights and easements created hereby shall be subject to the right of the Association to dedicate or transfer the maintenance responsibilities for the roads to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, or determination as to the purposes for the same or as to the conditions thereof, shall be effective unless the provisions in the Articles of Incorporation for the Association as to such transfer are complied with.

## ARTICLE 5: UPKEEP OF COMMON INTEREST COMMUNITY

Section 1. CREATION OF COMMON EXPENSE LIABILITY. Except the Declarant and the Owners of Lots not subject to maintenance assessments under Section 8 herein, each owner of a Lot in Slate Rock Crossing, by acceptance of a Deed therefore, shall be deemed to covenant and agree to pay to the Association the annual assessments to be fixed and collected in accordance herewith. The annual 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 Lot or Lots against which the assessment is made and shall be the obligation of each person or entity owning the property at the time when the assessment became due. Nothing herein shall be construed as requiring the Declarant to maintain the roads after the Association is formed and in consideration of the initial construction cost Declarant shall further be exempt from collection of assessments.

Section 2. ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of improvement and maintenance of Roads within the subdivision. Such levies may be expended specifically to include, but are not limited to, the payment of insurance and expenses for any common elements, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof, and such other purposes as may be set forth in the Articles of Incorporation and the By-Laws of the Association. The Association shall obtain and keep current the insurance required by the West Virginia Code, as amended.

Section 3. BASIS OF ANNUAL ASSESSMENTS. The initial assessment for upkeep, maintenance, repair and replacement of common elements shall be a maximum of \$300.00 per assessed Lot. The assessment may be changed annually by a vote of the Members as hereinafter provided. The officers and Board of Directors of the Association shall at all times maintain and operate the Association on a nonprofit basis. Unless otherwise provided herein or in the Association articles and bylaws, any change in assessments shall be based upon the budget that is proposed by the Board and has the assent of 2/3 of owners/members who are voting in person or by proxy at a regular or duly called special meeting pursuant to the provisions contained in the Association documents.

Section 4. INITIAL ASSESSMENT. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January of each year hereafter. Lot owners purchasing from Declarant will be responsible for payment at closing of the assessment prorated to the end of the year in which they purchase at the initial rate of Three Hundred Dollars (\$300.00) annually. Such prorated assessments may be utilized for the maintenance of the roads. Assessment paid to the Declarant at time of closing shall be transferred to the Association upon its creation.

Section 5. DELINQUENT ASSESSMENTS. If not paid by the date due, that assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof, become a continuing personal obligation of the Owner, his/its heirs, devisees, and assigns, unless reduced to a lien when it shall pass to his successors in title. The Association upon written request shall furnish to the Lot Owner a statement setting forth the amount of unpaid assessments against the Tract.

Section 6. LIEN FOR ASSESSMENTS. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest legal rate. The Association may bring an action at law against the Owner personally obligated under this section shall include the costs of filing the complaint and reasonable attorney fees.

Section 7. PRIORITY OF THE LIEN. A lien under this section is prior to all other liens and encumbrances on a Lot except those liens and encumbrances now or hereafter filed prior to the declaration.

Section 8. EXEMPT PROPERTY. Notwithstanding anything herein to the contrary, the following special properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- a) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use;
- b) all properties exempted from taxation by the laws of the State of West Virginia, upon the terms and to the extent of such legal exemption;
- c) all properties owned by Declarant during the period of Declarant's ownership only, whether during initial, original ownership or pursuant to foreclosure or proceedings in lieu of foreclosure.

#### ARTICLE 6: COMMON PROTECTIONS AND PROTECTIVE COVENANTS

Section 1. SETBACK MINIMUMS. No building or any part thereof shall be erected on any Lot closer or nearer than forty feet (40') to all roads (interior and exterior as depicted on the recorded plat); and twenty feet (20') to all other interior property boundary lines. For purposes of this covenant, eaves, steps and open porches shall be considered as a part of the building. Should a building be erected on more than one lot, this restriction shall apply to the side lines of the extreme boundary of the multiple lots.

#### ARTICLE 7: UTILITY EASEMENTS

The Declarants reserve unto themselves, their successors and assigns, the right to construct and maintain all utility and electric lines, or to grant rights-of-ways therefore, with the right of ingress and egress for the purpose of installing or maintaining the same on, over or under a strip of land fifteen feet (15') from the edge of the fifty feet (50') (Forty foot (40') wide in Section II) road right of way and five feet (5') on either side of the interior lot lines and rear boundary lines of each Lot. All utilities constructed on the interior boundary lines shall be installed underground. Such utility easements are to include, but are not limited to, telephone, electric or water lines. Any Owner placing structures, plantings or improvements or other materials within the aforesaid easements undertakes any interference with the utility easements at his or her own risk and is deemed to waive any and all rights to monetary recovery and release any and all parties from any and all claims or damages to said improvements if and when maintenance or other work is performed within the easement area. Each road right-of-way is fifty feet (50') (Forty foot (40') wide in Section II) in total width, as designated on plat or plats. The road lines shall be measured from the edge of the right-of-way, as referenced above.

Nothing herein shall be construed as creating any duty on the Declarant, its successors or assigns, to install or maintain any utility services, as it is contemplated that actual installation will be made by a utility company at the request of the Lot Owner.

#### ARTICLE 8: RESIDENTIAL HOME AND AREA USE

Section 1. All Lots shall be used for single family residential and recreational purposes only. With the exception of structures existing as of the date hereof, no residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one (1) single family dwelling containing a minimum of 900 square feet total area, exclusive of porch, decking, basement, garage, overhanging eaves or outbuilding. Any garage constructed on a lot must conform generally in appearance to the dwelling on said Lot.

All plans must meet with the approval of the Declarant, its successors or assigns. No building, fence, wall, structure, excavation, driveway or other improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or alteration therein be made until the detailed plans and specifications thereof, shall have been submitted to and approved in writing as to harmony of external materials and location in relation to surrounding structures and to the compliance to the other covenants and restrictions as set out in this Declaration and as may be established in the future by the Declarant, its

successors or assigns, or by an architectural committee appointed by the Declarant, its successors or assigns. In the event said Declarant, its successors or assigns, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with.

This restriction shall not prohibit the construction of a "guest" house upon a lot for the use of visitors upon the premises, so long as said structure is not used as a place of residence by any other persons other than family members, and is in compliance with all other applicable county regulations and state and federal laws affecting the right of an Owner in the use of said lot. The duty of inquiry rests with the Owner to assure compliance.

Section 2. Before construction begins on any residence or dwelling, the lot owner shall install an appropriate driveway or entrance to the Lot. Such entrance shall include the installation of a culvert of at least fifteen inches (15") in diameter and of such length as is necessary to permit proper drainage in any drainage ditches the driveway will cross. No exterior siding of masonry block or cinder block shall be permitted. All dwellings shall have an enclosed permanent foundation. All external construction and external finishing of a dwelling on said Lots shall be completed within twelve (12) months from the commencement of construction. Failure to externally complete a dwelling within twelve (12) months from commencement of the construction shall be deemed to be a violation of these covenants. All construction waste material must be removed from property within two (2) months from completion of any dwelling, residence or structure. In the event of destruction by fire or natural causes of a dwelling or other structure, removal of debris and reconstruction of a building thereon shall likewise comply with this covenant.

Section 3. There shall be no single-wide or double-wide mobile homes or manufactured homes (as they are defined in West Virginia Code 37-15-2 and 21-9-2 (j)), nor basement dwelling shall be constructed, placed or maintained upon said lots or any part thereof. Owners shall further not use trailers, or buses situate on any Lot as a residence or for the storage of materials therein, either temporarily or permanently. This section shall not be construed to exclude modular homes constructed according to BOCA or CABO code and designed with a minimum roof pitch of 5-12, and any such modular home must be factory built, transported in sections, placed and affixed to a solid foundation without wheels or towing hitch or tongue. This provision shall not prohibit Owners from keeping boats and travel trailers on their lot (off roadway parking is required) so long as same are not used for residential purposes for any period of time whatsoever.

Section 4. Improvements and construction for the maintenance of animals shall be kept in good repair, shall be constructed of new materials and must conform generally in appearance with any dwelling upon the Lot, although such improvements need not be constructed of materials identical to an existing dwelling. No such improvements shall precede the construction of the dwelling. Each Lot Owner shall maintain any such improvements placed upon any Lot and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot.

Section 5. No dwelling house shall be erected or maintained on any Lot unless there is constructed with it a sewage disposal system which conforms to the regulations of and must be approved by the West Virginia Division of Health. Free standing toilets or closets are prohibited; however, portable toilets may be utilized only during the construction period of a residence.

Section 6. All purchasers shall be required to apply for and connect to the Hardy County Public Service Districts Public Water System.

Section 7. Use of any Lot (s) or activities conducted upon said Lot(s) shall not pollute or cause waste water to contaminate or flow into any spring, lake, pond, river, drain or stream crossing such property or situate near such property.

Section 8. In order to maintain the ascetic value of surrounding lots, clear cutting of any lot for either personal or commercial purposes is prohibited, however, the reasonable cutting of trees for construction purposes only is permitted so long as no more than Fifty Percent (50%) of the standing trees on a lot in said subdivision be cut. No additional timber shall be cut or removed from the real estate described herein without the written consent of the Board of Directors of the Lot Owners Association, and should such cutting occur without consent, the Board shall make an assessment as to the damage caused and a lien assessed against the land owner for the replacement value of those trees removed. In the event the Board of Directors has not been established at the time of sale of any particular lot, the Declarant shall make the assessment as to any damage caused by excessive cutting.

#### ARTICLE 9: ROADWAYS, PARKING AND JUNK AUTOMOBILES

Section 1. No automobiles or other motor vehicles shall be parked in or within fifteen feet (15') from the rights- of -way or roads of the subdivision, and no on-street parking is permitted by Lot Owners. Visitors, guests, delivery vehicles or others legitimately using said roads and streets are expected and are permitted to temporarily park along said streets.

Section 2. Junk, inoperable or unlicensed vehicles may not be stored or kept on any Lot unless housed in a garage of the type described above.

Section 3. The speed limit on subdivision roadways shall not exceed twenty (20) miles per hour and Lot Owners, in consideration of the other Members, shall limit the use of the roadways for ingress and egress to their own properties unless a guest of other Lot Owners.

Section 4. The use of subdivision roads is restricted to legally registered and licensed vehicles operated by licensed drivers. This restriction is not intended to limit the use of (a) non-motorized vehicles, (b) such non-registered and non-licensed vehicles as are needed in the maintenance, improvement or upkeep on an owner's property, or (c) the use of special purpose vehicles (such as snowmobiles) when circumstances warrant.

#### ARTICLE 10: ADVERTISING

No advertising signs or billboards of any nature shall be erected, placed or maintained on any Lot, with the exception of address, identification signs, builders' job location signs and real estate signs offering the premises for sale, none of which exceptions shall exceed four foot by four foot (4'x 4') in size. Declarant shall have the right to construct any form of sign or billboard upon Tract (to be determined), for so long as Declarant owns all or any portion of said Tract (to be determined), and shall further have the right to construct subdivision entrance signs, which shall remain erected on the Lot upon which each is situate. The Association shall repair and maintain such signs, and shall have the right to enter upon The Existing Property on which the same are affixed as is reasonably necessary for maintenance.

#### ARTICLE 11: AGRICULTURE

There shall be no sheep, goats, swine, cows, or fowl, raised, maintained, bred or kept upon any lot in the subdivision. No owner may keep or maintain on a lot a Pit Bull or other viscous dog as defined by West Virginia law. Other household pets, such as cats and a maximum of two (2) dogs, may be kept provided they are kept within the physical boundaries of each Lot and not permitted to run at large or become a nuisance or danger to other Lot Owners and a continually barking dog shall be deemed to be a public nuisance.

Under no circumstances may cats, dogs or other domesticated animals be bred or maintained for commercial purposes upon any Lot. West Virginia has strict laws which change an owner or keeper of dogs with liability for damages inflicted by a dog regardless of the disposition of the animal. Each pet owner has a non-delegable duty to inquiry with the State of West Virginia concerning his/her duties as a pet owner.

#### ARTICLE 12: COMMERCIAL USE

No Lot shall be used for commercial purposes.

#### ARTICLE 13: NUISANCE

Section 1. No noxious, noisy (including excessively barking dogs) or offensive activity shall be carried on within The Existing Property, nor shall anything be done therein which may be or which may become an annoyance or nuisance to the neighborhood. No toxic or hazardous materials shall be produced or stored within The Existing Property at any time.

Section 2. No high intensity street lights nor any flood lights automatically controlled whose general illumination shall extend beyond the boundary lines of the lands of any person making such installation shall be erected or maintained upon the land hereby conveyed without the unanimous written consent of all property owners affected by such installation whose source of title is derived from the undersigned.

#### ARTICLE 14: WASTE

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste must be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All Owners must comply with state and federal regulations pertaining to installation and maintenance of fuel storage tanks. All Lots shall be kept free and clear of trash and rubbish at all times. All improved lots shall be kept mown. No salvage or junk yard operations are permitted within The Existing Properties.

#### ARTICLE 15: VIOLATIONS

The Association, or any Owner, shall have the right, to enforce by any proceedings, at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Declaration. In the event of violations or the Association's enforcement of any of the covenants and restrictions applying to The Existing Property, the costs and expenses attendant thereto shall be paid by the violator as part of any judgment or remedy obtained. Failure by the Declarant, Association or Owner, to enforce any provisions herein shall in no event be deemed a waiver of the right to do so thereafter.

#### ARTICLE 16: AMENDMENT

Declarant reserves the right to correct any deficiencies or errors found in this Declaration as necessary or appropriate for the purpose of maintaining the desirability and value of all lots within the subdivision, or to bring the subdivision into compliance with the requirements of any government regulations.

ARTICLE 17: GENERAL PROVISIONS

Section 1. The invalidation of any one of the covenants by judgment or court order shall in no way effect any of the other provisions contained herein which shall remain in full force and effect.

Section 2. All applicable West Virginia State and Hardy County Health Department, Zoning and Subdivision Control Ordinances, rules and regulations shall be adhered to by all Owners.

WITNESS the following signatures and seals:

CHESTNUT RIDGE PROPERTIES, LLC,

DECLARANT

BY: \_\_\_\_\_  
JOHN B. BOWMAN

BY: \_\_\_\_\_  
CHARLOTTE BOWMAN

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by John B. Bowman and Charlotte Bowman, member/managers of Chestnut Ridge Properties, LLC, a West Virginia Limited Liability Company on behalf of said company.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public