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BOOK 454 PAGE 337

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF SLEEPY MEADOWS SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SLEEPY MEADOWS SUBDIVISION, is made this 4th day of April, 2006, by Sleepy Creek Holdings, LLP, ("the Declarant"), as the owner of all that certain tract of land originally containing 57.710 acres, more or less, situate in Gore District, Hampshire County, West Virginia, known as Sleepy Meadows Subdivision, as shown on that certain plat of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Map Book 10, at pages 168-171, and is the same tract or parcel of real estate conveyed unto Sleepy Creek Holdings, LLP, duly recorded in the aforesaid Clerk's Office in Deed Book No, 446, at Page 515. The tract of land thus identified shall be referred to in this declaration as "the Property".

NOW, Therefore, Declarant hereby declares that Lot Nos. 10 through 30, inclusive, shall be subject to the Road Assessment described hereafter. All of the Property described above, Lots 1-30, inclusive, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which shall be covenants running with the Property and every lot and parcel contained therein, whether or not specific reference is made to this Declaration in any Deed or other instrument transferring or conveying any portion or all of such property, shall also be subject to these covenants. These covenants shall be binding on all parties having any right, title or interest in the described Property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

Sleepy Meadows Subdivision is an unincorporated association organized under the West Virginia Uniform Common Interest Ownership action (Sections 36B-1-101 et seq. of the West Virginia Code) (the "Act") for the following purposes: (a) to administer the covenants, conditions and restrictions of Sleepy Meadows Subdivision in such a manner as to conserve and protect the value of all the Property; (b) to assess, collect and disburse the assessments authorized by Article II of this Declaration; (c) to promote the peace, health, comfort, safety and general welfare of its members; and to do all other things permitted to similar associations by the Act.

11

Every owner of a lot designated as such on the above referenced Plat(s) shall, upon accepting a deed to such lot, automatically become a member of Association by reason of such ownership so long as he remains an owner of such lot. (One who owns an interest in a lot solely as security for the repayment or an obligation shall not be a member.) Members shall be personally liable, jointly and severally with all other owners of their lots, for complying with the provisions of this Declaration and the reasonable rules and regulations promulgated under it by the Executive Board of the Association, and for the payment of all assessments and charges imposed upon their lots during the period of their ownership. A member may not escape his membership responsibilities by non-use of the Association facilities or abandonment of a lot.

The affairs of the Association shall be managed by an Executive Board consisting of not less than three members. The initial members of the Executive Board, consisting of one to three members, shall be appointed by Declarant, or its assigns. Except for the Executive Board members appointed by the Declarant, a majority of the Executive Board members must be owners of lots within the Property. The Executive Board shall elect officers of the Association, which shall include at least a president, secretary and treasurer. The initial executive Board shall adopt By-Laws for the Association prior to the conveyance for the first lot to an owner other than by the Declarant; such By-Laws may thereafter be amended by a majority vote of the owners of Lot Nos. 1 through 30, inclusive, at a meeting of owners called for that purpose, but during the period of Declarant control any By-Laws may not be amended without the Declarant's consent.

Subject to the provisions of Section 36B-3-103 of the Act, the Declarant shall, during any period of Declarant control, have the right to appoint or remove any officer of the Association, or any director of the Association appointed by it. Unless the Declarant voluntarily surrenders it sooner, the period of Declarant control shall terminate sixty (60) days after the Declarant has conveyed seventy-five percent (75%) of the lots to owners to other than the Declarant.

The owner(s) of each lot shall be entitled to one vote for each lot owned in the election of the Executive Board members and on such other matters as may properly come before the membership. Voting shall be in accordance with Section 36B-3-110 of the Act.

The Executive Board of the Association shall have the powers necessary and appropriate for carrying out the purposes the Association except as may be specifically reserved by this Declaration to the members or to the Declarant.

**ARTICLE II - ASSESSMENTS**

Each owner of each lot agrees to pay, as his personal obligation, such assessments as are authorized by this Declaration and levied by the Executive Board. Every such assessment shall also be a continuing lien upon the lot against which the assessment is made. The sale of any lot pursuant to a foreclosure of a deed of trust on the lot (or deed in lieu of such foreclosure), shall extinguish the lien of such assessments as to payments which became due prior to such foreclosure sale or deed in lieu of foreclosure, but shall not extinguish the personal liability of the owner of such unpaid assessments which became due during his period of ownership. The lien provided for herein shall be subordinate to the lien of any first deed of trust, except for assessments which accrued prior to the date such deed of trust was recorded.

The Executive Board shall fix each year an annual assessment equally against each lot in an amount appropriate to, and used exclusively to, carry out the purposes of the Association described in Article 1, including the funding of reasonable reserve for construction, maintenance and repair of the roadways, and the timely construction, repair, and replacement of capital improvements. The maximum annual assessment for each lot, until changed by vote of the membership as hereafter described, shall be One Hundred Dollars (\$100.00) per lot, indexed automatically for inflation as provided in Section 36B-1-114 of the Act. The Executive Board may, prior to the beginning of each year, set an annual assessment for such year which does not exceed this maximum, and if the Board should fail to fix an assessment for any year, the previous year's assessment shall apply. The maximum annual assessment may be modified or waived for one or more years with the approval of the Executive Board and a majority vote of the members, provided that during the period of Declarant control it may only be modified or waived with the unanimous consent of all owners.

The Executive Board may also levy a special assessment against some or all of the lots on the Property, for the purpose of defraying, in whole or in part, the cost of any acquisition or construction,

reconstruction, repair or replacement of capital improvement, including fixtures and personal property thereon, provided that such special assessment is approved by majority vote of the owners of those lots which would be subject to the proposed special assessment.

The Executive Board may also levy a maintenance assessment on any lot whose owner fails to maintain or restore the lot and improvements on it, as required by Article III of the Declaration. Such a maintenance assessment shall be limited to the amount necessary to meet the cost of the maintenance or restoration, and other charges, if any, permitted under this Declaration, and may not be imposed until the Board has given the owner at least thirty days notice of its intention to undertake such maintenance or restoration and afforded the owner an opportunity to be heard by the Board on the matter.

The Association may charge the owner: a) a late fee on overdue assessments, not to exceed ten percent of the assessment; b) the costs, including attorney's fees and court costs, for collection of assessments and of enforcing any of the provisions of this declaration; and c) interest on overdue sums, up to the maximum rate permitted by law. Any such charges shall be added to and become a part of the lienable assessment of the lot, and they may be awarded by a court as part of its judgment in any proceeding in law or in equity.

At no time shall Declarant be liable for any assessment whatsoever.

#### ARTICLE III - USE RESTRICTIONS

The following restrictions shall apply to Lot Nos. 1 through 30 of the Property.

- a) No signs of any nature shall be erected on any lot, except for sale or rental signs, and for directional and informational signs of Declarant.
- b) No owners of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot, consequently, in the construction of a driveway into any lot, a fifteen (15) inch in diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to prohibit blockage of natural drainage. No parking is permitted upon the rights-of-way called Sandy Drive and Eve Court at any time.

- c) Any motor vehicle which does not have a current license plate or inspection sticker will not be permitted on lot longer than three (3) months after the expiration date. The use of any dirt bikes, 3 or 4 wheelers, motorcycles without current license or inspection stickers, all terrains vehicles, or other similar motorized conveyance within the subdivision is prohibited.
- d) No buildings of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building operations, and in such cases, for a period not to exceed eight (8) months from the commencement of a construction. No building shall be erected closer than ten (10) feet from any interior property lines, nor closer than Twenty (20) feet from any exterior property lines, nor twenty (20) feet from any road and/or right of way, as shown on the plat of said subdivision as referenced above.
- e) Not more than one single family residence shall be erected on any lot. The residence shall contain a minimum of one thousand (1,000) square feet of living area, excluding basement, garage, and porches.
- f) All residences shall be constructed with a 4-12 roof pitch.
- g) No portion of any lot may be used as a roadway or a right-of-way to any property not included on the above reference plats, except this restriction shall not apply to roadways or right-of-ways to any land now owned or hereafter acquired by Declarant, as well as established easements for adjoining land owners.
- h) Each lot shall be used for residential purposes only, and any garage or out building must conform generally in appearance and material with the dwelling on said lot.
- i) No livestock may be grazed, raised or otherwise maintained within the subdivision. No poultry of any type may be raised or maintained within the subdivision. Household pets, such as dogs or cats are permitted, provided that no owners have more than a total of two (2) such animals per lot or household, whichever is less. All dogs must be restrained within the owners lot so as to not trespass on other owners lots.
- j) No home less than twenty-four (24) feet wide are allowed.
- k) All dwellings must be placed upon a permanent masonry foundation. The owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any lot

owned by him. All lots improved or unimproved must be maintained by the lot owner in a neat and orderly condition at all times. No garbage or trash shall be permitted to accumulate or remain on any lot. All lots, once purchased, must be kept mowed and neat in appearance.

l) All dwellings placed on any lot must have septic systems and wells that comply with the regulations of Hampshire County Health Department. No free standing toilets are allowed in the subdivision except while the house is being built. All waste must be kept in sanitary containers. All trash, garbage, fuel storage tanks, garden equipment, supplies and stored raw materials must be kept out of the view of the public.

m) The Declarant reserves unto himself and his assigns, the right to erect, maintain, operate, and replace telephone and electric light poles, conduits and related equipment and/or sewer and water lines, and the right to grant easements therefore on, over and under a strip of land ten (10) feet wide along each side of all interior property lines and twenty (20) feet wide from the edge of all road rights of way, in addition to any other easements to run along the side of the forty (40) foot rights-of-way known as Sandy Drive and Eve Court. The rights-of-ways shall be subject to the common usage of the Declarant, their heirs and assigns.

n) Each lot owner shall have the right of ingress or egress from his lot over the right-of-ways and roadways as shown on the above referenced subdivision plat.

o) If any lot owner shall violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situate in said subdivision to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any such covenant, either to prevent him or them from so doing, or to recover damages or other dues for such violation. The Board of Directors, upon a favorable 2/3 vote of it's members may act to enforce any violation of the covenant or other terms of these covenants. Failure to enforce any Provision herein contain shall in no way be deemed a waiver of the right to do so hereafter.

p) The association, by vote of 2/3 of its members, may make additional rules, covenants, and restriction for the use of the property,

which together with the above, may be enforced by fines, or other penalties. By-laws may be established by the association upon a 2/3 vote of the owners.

q) All exterior construction must be completed and closed within nine (9) months of the commencement of the construction. No building of a temporary nature shall be erected or placed on any of said lots except those customarily erected in connection with building construction operations, and in such cases for a period not to exceed six (6) months.

r) As part of the development of any lot, the owner shall provide adequate off-street parking for himself and his guests.

s) All rights of way as shown on the plat of the property shall be maintained as private roads by the Association. At such time as a majority of the lot owners shall request that the State assume control of said right of way in the subdivision, and the State agrees to accept the road, each lot owner shall execute any and all documents necessary to accomplish dedication of the roads to the State. This paragraph shall not be interpreted, however, as implying any obligation on the part of the Declarant to make any changes or improvements in the road, other than as required for approval of the subdivision plan.

t) Any damage done to a roadway by an owner, or the family member, guest, or invitee of an owner, shall be the responsibility of such owner to repair. If an owner fails to make any repair required of him under this section within thirty (30) days of written notice from the Association, then the Association may make such repairs as the agent of the owner and the costs of such repairs shall constitute a maintenance assessment against such owner's lot. Such assessment shall bear interest and be collectible as provided for in Article II of this Declaration.

u) Approval of seventy-five (75%) percent of lot owners is required to change covenants. Any amendments to these covenants, unless prepared by Declarant, shall be in no way binding upon Declarant.

**ARTICLE IV  
DECLARATIONS REQUIRED UNDER ACT**

In accordance with Section 36B-2-105 of the West Virginia Code (as amended), and other provisions of the West Virginia Common Interest Ownership Act, the party of the first part does hereby declare, in addition to other matters set forth in this declaration:

1. The name of this common interest community shall be Sleepy Meadows Subdivision and it is a "planned community" within the meaning of the aforesaid Act;
2. The community is located entirely in Hampshire County, West Virginia;
3. The real estate included in the community is set forth on the above referenced Plat;
4. Declarant reserves the right to develop this property, and to add any additional lots to Sleepy Meadows subdivision.
5. The boundaries and "set backs" of each lot are shown on the above referenced Plat;
6. The Declarant reserves the following: "special Declarant rights" within the meaning of Section 36Bd-1-103(29) of the said Act; to maintain offices for sales if desired and a reasonable number of signs advertising the community until the last lot owned by the Declarant is sold and conveyed; to use easements through the Property for the purpose of making improvements within the community, until the last lot owned by Declarant is sold and conveyed; and to appoint or remove officers of the Executive Board members of Sleepy Meadows Subdivision Association, during the period and under the circumstances described in this Declaration;
7. The annual assessments for the common expenses of the community shall be levied equally against each lot, and each lot shall be entitled to one vote in the Sleepy Meadows Subdivision Association;
8. The restrictions on use of the lots shall be as set forth in this declaration. There are no restrictions on occupancy of the lots. There are no restrictions on alienation of the lots, nor on the amount for which lots may be sold;
9. Easements and rights of way not of record presently, if any, used by other users appurtenant to or included in the community are shown on the herein referenced plat;
10. The recording data on easements and licenses appurtenant to or included in the community, if any, are shown on the herein referenced plat.

**ARTICLE V GENERAL PROVISIONS**



a) The association, through its board of directors, by 2/3 favorable votes of the owners attending an annual meeting or a special meeting called for that purpose, or any individual owner, shall have the right to enforce, by any proceedings, at law or inequity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or association or by any owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

b) The covenants, restrictions and other provisions of this Declaration shall run with and bind the land. This Declaration may be amended by an instrument signed by not less than seventy-five (75%) of the lot owners. Any amendments to these covenants, unless prepared by Declarant, shall be in no way binding upon Declarant.

c) Invalidation of any of the covenants, restrictions or other provisions of this Declaration by judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.

d) In construing this Declaration, the use of the gender or number shall imply the use of any other gender or number as the context may require; the requirement for a percentage approval by the lot owners of any amendment to the Declaration, the By-Laws or conduct any business of the Association must be approved by the percentage of lot owners required to approve any amendment to the Declaration, the By-Laws or any business of the Association, said vote of each lot owner may be in person, or by proxy if not present, at the meeting called for such purpose, as set forth in 36B-3-110 of the West Virginia Code (as amended).

The determination by any court that any provision of this document is unenforceable, invalid or void shall not affect the enforceability or validity of any other provisions.

This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purposes of protecting and enhancing the value, marketability and desirability of the Property. The Executive Board shall have the right to interpret all provisions of this Declaration so as to advance those purposes.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of

Covenants, Conditions and Restrictions of Sleepy Meadows Subdivision, to be executed this 4th day of April, 2006.

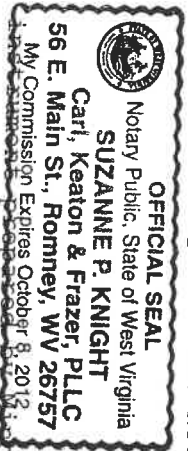
SLEEPY CREEK HOLDINGS, LLP,  
a Limited Liability Partnership

BY: Malcolm C. Berman (SEAL)  
Malcolm C. Berman, Class A Partner  
Fred Greenberg  
Fred Greenberg  
By: Malcolm C. Berman Attorney in Fact (SEAL)  
Fred Greenberg, Class A Partner,  
by Malcolm C. Berman,  
his Attorney in Fact

STATE OF West Virginia,  
COUNTY OF Hampshire, TO WIT:

I, Suzanne P. Knight, a Notary Public, in and for the county and state aforesaid, do hereby certify that Malcolm C. Berman, Class A Partner of Sleepy Creek Holdings, LLP, and Fred Greenberg, Class A Partner of Sleepy Creek Holdings, LLP, by Malcolm C. Berman, his Attorney in Fact, whose names are signed and affixed to the foregoing instrument, dated the 25<sup>th</sup> day of April, 2006, have this day acknowledged the same before me in my said county and state.

Given under my hand and Notarial Seal this 25<sup>th</sup> day of April, 2006.



Suzanne P. Knight  
Notary Public

This \_\_\_\_\_ day of \_\_\_\_\_, 2006, at \_\_\_\_\_, West Virginia.  
Notary M. Watts, Jr.

SHARON H LINK  
HAMPSHIRE COUNTY 02:12:14 PM  
INSTRUMENT NO 84044  
RECORDED DATE 04/25/2006  
DOCUMENT TYPE C&R  
BOOK-PAGE 454-337  
REC/ADD FEE 10.00 2.00

STATE OF WEST VIRGINIA, Hampshire County Commission Clerk's Office 4:12:14 PM  
The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Treasurer Sharon H. Link