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ERA Creekside REALTY

9/12/82

Mark H. Shingleton Jr.  
 Attorney at Law  
 204 N. Washington St.  
 Berkeley Springs WV

Aug 19,  
 2003

CABIN AT CAPON BRIDGE

35394

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 26th day of August 1982 by Sweetwater Farm, Inc., a Pennsylvania corporation, hereinafter referred to as "Declarant":

## WITNESSETH:

That, whereas Declarant is the owner of certain real property in Hampshire County, West Virginia, having acquired the same by deed records in Deed book 258 at Page 680, among the land records of Hampshire County, West Virginia, which is more particularly described as follows: All that certain tract of land which was conveyed to Sweetwater Farm, Inc. by James R. Jacques and Robert E. McDowell, et ux, by the deed mentioned above and containing 479.751 acres, more or less, as described in said Deeds and located and situate in the Bloomery District, Hampshire County, West Virginia.

WHEREAS, The Declarant will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth:

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, reservations and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of real property, and which shall run with the real property, and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each and every owner thereof.

## ARTICLE I DEFINITIONS

1. "Association" shall mean and refer to the Cabin at Capon Bridge Owners Association its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Property" shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision plat of the Properties.
5. "Declarant" shall mean and refer to Sweetwater Farm, Inc. its successors and assigns, if such successors or assigns should acquire the remaining undeveloped lots from the Declarant for the purpose of development.
6. "Common Properties" shall mean and refer to those areas of land shown on the subdivision plat, as amended from time to time in accordance herewith, as being intended to be devoted to the common use and enjoyment of all the Owners and any lots that may be transferred to the Association for use as Common Properties.

RENAME  
 Ray Taylor  
 856-3997

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## ARTICLE II

## MEMBERSHIP AND VOTING RIGHTS

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1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership which is subject to assessment.

2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant, who shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On May 30, 1983.

## ARTICLE III

## COVENANT FOR MAINTENANCE ASSESSMENTS

1. The Declarant may assess initially, for each Lot (excepting specifically Lot 1 of Section A, having no subdivision road frontage), up to Seventy-Five (\$75.00) Dollars per year, for the use, upkeep, and maintenance of the rights-of-way within all sections of said Capin at Capon Bridge Subdivision, and such other common facilities as the said Declarant may provide therein, subject to any increase as provided herein after.

2. Any assessment made pursuant to this paragraph, including late fee of Five (\$5.00) Dollars, interest at the rate of ten (10%) percent per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof, shall constitute a lien on the property until paid and all grantees do bind themselves, their heirs, and successors in title to this lien and to the covenants herein written. The lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. This assessment may not be raised by more than ten (10%) percent per year without the written affirmative vote of two-thirds (2/3) of the members of the Association entitled to vote. Sweetwater Farm, Inc., assumes the responsibility for the collection of the monies due and under the lien assessment and for the maintenance of the roads, rights-of-way and common areas until May 30, 1983, or until 80% of the property has been sold, whichever is first. At that time, the rights and responsibilities as created by this Declaration of Protective Covenants will be delegated to the Capin at Capon Bridge Property Owners Association, who shall assume full responsibility for the collection of the fee and the maintenance of the roads, rights-of-way and common areas. The payment of said assessment and levy shall initiate upon sale of any parcel in the Capin at Capon Bridge subdivision, and on or before the thirty-first day of January of each year. In the event of a resale of one or more parcels in said subdivision, the obligation shall become the obligation of the new owner(s).

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# ARTICLE IV USL RESTRICTIONS

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1. Lots may be used only for single-family residential purposes and for purposes incidental or accessory thereto, including a guest apartment or guest house, which may be rented when not otherwise occupied. No dwelling may be constructed or maintained on any lot with a ground floor area of less than 480 square feet, exclusive of porches and garages; provided that the Declarant or Board of Directors of the Association may authorize a lesser area in unusual cases where justified by architectural design, location on lot, and landscaping. Nor shall any dwelling be erected less than twenty-five (25) feet from the side or rear line of any lot, nor less than forty (40) feet from the center line of any road or right of way; provide that the Board of Directors of the Association may authorize lesser setbacks where dictated by terrain conditions; and provided that side line setbacks shall not apply to a property line between lots in single ownership. All exterior construction must be completed and closed within eight (8) months of the commencement of 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 four (4) months. This shall not prohibit the construction of a toilet complying with provisions of Article V, Paragraph 4, below.

2. No owner shall construct or suffer to be constructed any structure within, or otherwise obstruct, an easement across his lot, nor divert or otherwise interfere with the natural flow of surface water, nor obstruct any drainage ditch. Consequently in construction of a driveway into any lot, a twelve (12) inch diameter culvert, or larger, if necessary, shall be used in constructing the driveway in order to prohibit blockage of natural drainage or any drainage ditch. No parking is permitted upon any road within the Property at any time; and as part of the development of any lot, the Owner shall provide adequate off-road parking for himself and his guest(s).

3. No sign of any kind larger than one square foot shall be displayed on any lot, except temporary signs in connection with the construction, lease, or sale of buildings or lots, except road name and directional signs.

4. The use of mobile homes and camping trailers is permitted on Lots B 10, B 11, B 12, B 13, B 20, B 21, B 22, B 23, C 1, C 2, C 3, C 4, C 5, C 6, C 7, D-6 through D-26, inclusive, provided they are installed on a permanent perimeter foundation, or pier foundation, have skirting of a material similar to the construction of the mobile home. ON ANY OTHER LOTS within said subdivision the use of trailers is unauthorized, except for the use of temporary camping trailers. Camping trailers may not exceed twenty-five (25) feet in length. This covenant shall not be construed to permit the use of a camping trailer or camper as permanent housing; no such camping trailer or camper shall be permitted to remain on any lot for a period in excess of four (4) months.

5. No noxious or offensive trade or activity shall be carried on upon any lot or right of way, nor shall anything be done thereon which may be or become an annoyance or nuisance to the community. Without exclusivity, the following items and activities must be thoroughly screened by appropriate planting or a fence of approved design:

- a. Refuse containers. All refuse must be kept in closed sanitary containers at all times.
- b. Fuel storage tanks.
- c. Garden equipment and supplies.

6. The discharge of firearms for hunting or target shooting is strictly prohibited within 150 yards of any improvement, cabin, or living area on any lot within said subdivision.

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7. The use of any motorcycle or motor vehicle without proper noise abatement and equipment is prohibited within the subdivision.

8. The Owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any Lot owned by him. Owners likewise agree to repair and restore promptly to its prior condition any part of a subdivision road damaged by equipment of Owner or his contractor enroute to or from Owner's Lot. All Lots improved or unimproved, must be maintained by Owner in a neat and orderly condition at all time. No garbage, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any Lot. In the event any Owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Declarant or Board of Directors of the Association, upon two-thirds (2/3) vote of the Board of Directors, and after fifteen (15) days notice to the Owner, shall have the right, through its agents and employees, to enter upon said Lot and perform necessary maintenance, repairs and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and all cost of same when performed by the Declarant or Association shall be added to and become part of the assessment to which such Lot is subject.

9. The "conservation zones" shown on the subdivision plat shall constitute an easement for the use of all property owners and their guests in order that they may enjoy more fully the ecology and natural environment of Cabin at Capon Bridge subdivision. Therefore, no permanent structure shall be erected within these zones.

10. No Part of any Lot may be sold or used as a road or right-of-way to any Land outside the property without the advance, written permission of Declarant.

11. The Association, by a vote of two-thirds (2/3) of its members may make additional rules, covenants and restrictions for the use of the Property, which together with the above, may be enforced by fines or other penalties.

#### ARTICLE V GENERAL PROVISIONS

1. Declarant reserves the right to replat any Lot or Lots prior to delivery of a deed to an original purchaser. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any Lot not already conveyed by it. No Lot in said subdivision may be resubdivided by the Purchaser, his heirs, successors and assigns into more than two (2) Lots. The minimum size of each Lot subdivided, including the Lot retained by the Owner, shall not be less than five (5) acres.

2. This property is currently subject to an oil and gas lease dated December 6, 1977 and of record in the Hampshire County Clerks office in Deed Book No. 230 at Page 510 with Weaver Oil and Gas Corporation. Weaver Oil and Gas Corporation assigned their interest in and to said oil and gas lease to Exxon Corporation. Upon purchase of property within the Cabin at Capon Bridge subdivision, the owner of record of any lot or lots shall be entitled to any royalties derived from said lease, said right to be assigned to owner in the deed of conveyance.

3. In the event, state, local government, and utility, co-operative, or municipality expects or requires the installation of a public utility system within the area of which this is a part, the grantee or grantees by the acceptance of the Deed do hereby agree to pay their proportionate share for the cost and expense of the erection, maintenance and operation thereof, as the same cost are to be determined by the appropriate authority.

4. All sewage disposal systems constructed on said lots shall conform to the regulations of the appropriate West Virginia Department of Health. Free standing toilets are also subject to the aforementioned requirements and shall be placed in a secluded area whenever possible. No building shall be constructed and no water well shall be drilled on any lot until a sewage disposal permit has been obtained from the West Virginia Sewage Enforcement Office.

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5. Two (12) inch diameter culverts must be used in all driveways leading from any subdivision roads.

6. No trucks, buses, old cars, or unsightly vehicles of any type or description may be left or abandoned on said lots.

7. Declarant reserves the right to grant easements for installation and maintenance of public utilities between the property lines and the building set-back lines of all lots, in addition to easements reserved by any other instrument duly recorded.

8. The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges not and hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9. Additional property may be annexed to the Property with the consent of two-thirds (2/3) of the members of the Association.

10. The covenants, restrictions, and other provisions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75) percent of the Lot Owners.

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

Whenever in this Declaration the context so required, the masculine gender includes the feminine and neuter, singular number includes the plural and the plural number includes the singular.

IN WITNESS WHEREOF, the said Sweetwater Farm, Inc., being the Declarant herein, has caused this Declaration to be signed by its President and its corporate seal to be affixed, duly attested.

SWEETWATER FARM, INC.

By: Margorie I. Palmer  
Its President

ATTEST:

Tonya M. Group

STATE OF PENNSYLVANIA: SS:  
COUNTY OF FRANKLIN:

I, Tonya M. Group, a Notary Public of the County and State aforesaid, do hereby certify that MARGORIE I. PALMER, whose name is signed to the writing above as President of Sweetwater Farm, Inc., a corporation, has on this 26th day of August, 1982, acknowledged the said writing before me to be the act and deed of said corporation.

Given under my hand this 26th day of August, 1982.

Tonya M. Group  
Notary Public PETERS TWP., FRANKLIN COUNTY  
MY COMMISSION EXPIRES MAR. 11, 1985

My commission expires in the presence of witnesses

PREPARED BY:  
Sweetwater Farm, Inc.  
1679 Mountain Road  
Martinsburg, Pennsylvania 17236

STATE OF WEST VIRGINIA, County of Hampshire, to-wit:

Be it remembered that on the 15th day of September, 1982, at 11:49 A.M., Protection Covenants presented in the Clerk's Office of the County Commission of said County had with the certificate thereof annexed, admitted to record.

Attest: Nancy C. Zeller Clerk  
County Commission, Hampshire County, W. Va.