

**FIRST AMENDMENT TO
DECLARATION OF COMMON INTEREST COMMUNITY
FOR
VILLAGE AT SLEEPY HOLLOW
a residential Planned Community in
Monongalia County, West Virginia**

THIS FIRST AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR VILLAGE AT SLEEPY HOLLOW, effective the 26th day of August, 2005, by Sleepy Hollow Properties, LLC, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT").

WHEREAS, Declarant is the Developer of Village at Sleepy Hollow Subdivision ("Subdivision"); and

WHEREAS, Phase I of said Subdivision is laid down, designated, described and depicted on that certain map or plat prepared by Potesta & Associates, Inc., dated April, 2005, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet D, Envelop 32A, ("Plat") which said map or plat is incorporated herein by reference for a descriptive and all other pertinent purposes; and

WHEREAS, the Declaration of Common Interest Community for Village at Sleepy Hollow ("Declaration") is recorded in the Office of said Clerk in Deed Book No. 1279 at Page No. 698; and

WHEREAS, Declarant is the owner of all Units in the Subdivision; and

WHEREAS, Declarant is constructing certain surface water detention and/or retention facilities, including appurtenances thereto ("Ponds") on lands which may by exercise of statutory and expressly reserved Declarant's Rights, be dedicated as future Units, Common Elements or Limited Common Elements of the Subdivision; and

WHEREAS, Declarant has deemed it advisable to amend the Declaration as set forth herein with regard to such Ponds; and

WHEREAS, Declarant executes, acknowledges, delivers and records this instrument both in its capacity as Declarant and owner of all Units in the Subdivision for the purpose of amending the Declaration to impose certain additional requirements, covenants, restrictions, agreements and conditions all as set forth hereinbelow.

WITNESSETH, Declarant, for itself and its grantees and assigns, hereby makes the following declaration and amends the Declaration to impose upon all Units, whether presently dedicated as depicted on the Plat or created and dedicated hereafter, the following covenants, restrictions, limitations, regulations and agreements for the benefit of Declarant and Association. Said restrictions shall be binding upon all purchasers or any and all other parties having any interest therein but shall not be binding on Declarant

or any Unit owned by Declarant and held for sale or development purposes. These restrictions are covenants running with the land and may change from time to time either by amendment to this document.

1 Declarant expressly reserves the right to construct one or more Ponds in or on any Common Element or Limited Common Element in Phase I of the Subdivision, or on any land which Declarant has reserved the right to dedicate as one or more future Phases of the Subdivision.

2 Declarant expressly reserves the right to grant and convey any such Pond or Ponds and the systems and improvements appurtenant thereto to the Association by easement or right-of-way and/or by dedication of the same as Common Elements or Limited Common Elements, at which time the same shall be owned by the Association. Declarant may reserve the right to the use of such Ponds by Declarant and/or as appurtenant to any lands now owned or hereafter acquired by Declarant.

3 Any Pond or Ponds situate on any Common Element or Limited Common Element may, at Declarant's election, be for the purpose of surface water control, aesthetic enhancement of the Subdivision or both.

4 The Association is responsible for maintenance, repair, replacement and upkeep of any Ponds situate on any Common Element or Limited Common Element, or otherwise within any easement or right-of-way conveyed to Association. For the purposes of this instrument, "appurtenances" to Ponds includes, but is not limited to, pipes, ditches, drains, streams and other improvements and systems necessary for the Ponds to perform those functions for which the same are intended. The term "appurtenances" shall also include all signage, fencing, landscaping and similar amenities associated within the Pond(s).

5 The Association's duty to provide public liability insurance on the Common Areas and Limited Common Areas as set forth in the Declaration includes the Ponds and appurtenances even if granted to Association by right-of-way or easement.

6 The Association may enact and enforce rules, regulations and policies with regard to the Ponds for the purpose of causing proper, reasonably and orderly administration, management and use of same.

7 No Unit owner shall interfere with the Ponds in the Subdivision and each Unit Owner has an affirmative pro-active duty to advise his family, children, guests, invitees and licensees, of all risks inherent in the Ponds, and all rules, regulations, policies, procedures, covenants and restrictions applicable to the Ponds whether set forth in the Declaration and this instrument or amendments thereto, or otherwise promulgated or enacted by the Declarant and/or Association hereafter.

8 Children are not permitted in the vicinity of the Ponds unless accompanied and at all times supervised by an adult.

9 By acceptance of a deed from the Declarant, each Unit Owner covenants and agrees, for and on behalf of himself, his successors and or assigns, to at all times exercise extraordinary care to protect all family, residents, visitors, guests, tenants, invitees, and licensees of the Unit Owner from Pond related hazards of injury to person or property.

10 By acceptance of a Deed from Declarant, each Unit Owner further covenants and agrees to: (i) defend, hold harmless and indemnify the Association and Declarant from any cost or expense, including legal fees and Court costs, resulting from any injury to the Unit Owner or the Unit Owner's family, children, guests, invitees, tenants and licensees, or their real or personal property, as the result of the Ponds; (ii) to include in any lease or document granting occupancy or tenancy of any Unit an express provision that all tenants of the Unit Owner shall defend, hold harmless and indemnify the Association and Declarant from any injury to the tenant or the tenant's family, children, guests, invitees, tenants and licensees, or their real or personal property, as the result of the Ponds and that Tenant will at all times exercise extraordinary care to protect tenant, and all family, residents, visitors, guests, tenants, invitees, and licensees of the tenant from Pond related hazards of injury to person or property.

11 The Association shall hold harmless defend and indemnify the Declarant from any liability, damages or expenses resulting from any injury to person or property as the result of its ownership, maintenance and management of the Ponds.

12 To the extent that any Pond or Ponds are subject of governmental regulation and any permit(s), bond(s) or other securities, Declarant expressly reserves the right to unilaterally transfer or assign any or all of its obligations for and under same to Association at the time ownership of Pond(s) subject thereof is transferred to Association by declaration, deed, right-of-way or easement. Association, as owner of the Pond(s) shall unconditionally accept such transfer or assignment.

Except as expressly modified hereby, all provisions of the Declaration shall remain in full force and effect.

All terms defined in the Declaration shall have the same meaning herein with such definitions incorporated herein by reference.

Witness this 26th day of August, 2005:

**Declarant: Sleepy Hollow Properties, LLC, a
West Virginia limited liability company,**

**By: _____
Richard W. Brant, Manager**

**STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, to-wit:**

This instrument was acknowledged before me, the undersigned Notary Public, this 26th day of August, 2005, by Richard W. Brant, in his capacity as manager of Sleepy Hollow Properties, LLC, a West Virginia limited liability company.

My Commission Expires: _____

Notary Public

**This instrument prepared by Steven M. Prunty
Eckert Seamans Cherin & Mellott, PLLC
2400 Cranberry Square
Morgantown, WV 26508-9209
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