

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

517824
B34-10

THIS SECOND AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY FOR VILLAGE AT SLEEPY HOLLOW, effective the 25th day of January, 2007, 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, Envelope 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 is recorded in the Office of said Clerk in Deed Book No. 1279 at Page No. 698, and the First Amendment thereto is recorded in Deed Book No. 1306 at Page No. 534 (collectively "Declaration"); and

WHEREAS, There are 14 Units in the Subdivision and Declarant is owner of 9 of said Units; and

WHEREAS, Declarant is constructing certain sewerage treatment facilities, including appurtenances thereto ("Sewage Treatment Facility") on lands which may by exercise of statutory and expressly reserved Development Rights, be dedicated as future Common Elements or Limited Common Elements of the Subdivision; and

WHEREAS, Declarant is the owner of Units 11-14 and has elected to exercise its reserved Development Right to subdivided said Units and to change the boundaries thereof and also to create one additional Unit therefrom;

WHEREAS, Declarant has deemed it advisable to amend the Declaration as set forth herein with regard to such modification of Units, dedication of the Sewage System, and to provide certain changes with regard to other matters; and

WHEREAS, Declarant executes, acknowledges, delivers and records this instrument both in its capacity as Declarant and owner of 9 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; and

WHEREAS, the owner of two (2) additional Units joins in this Amendment for the purpose of evidencing its consent to the Amendments herein by an 11/14 majority of all Units.

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

Eckert Seamans Cherin & Mellott, PLLC, • 2400 Cranberry Square, Morgantown, WV 26508-9209

not be binding on Declarant or any Unit owned by Declarant and held by Declarant 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.

I SUBDIVISION OF UNITS 11-14:

1 Declarant hereby amends, modifies and adjusts the boundaries of Units 11 through 14, inclusive, to create Units 11 through 15, inclusive, as set forth on that certain map or plat entitled Plat of Survey Showing Revised Phase 1 of Village at Sleepy Hollow, a Residential Planned Community Located in the Clinton District of Monongalia County, West Virginia, prepared by Victor M. Dawson, PS # 956, Potesta & Associates, Inc., which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet D, in Envelope 90B ("Revised Plat").

2 All Common Expense Liability for the Subdivision is hereby reallocated on a basis wherein the total Common Expense Liability of each Unit is equal to a fraction wherein the numerator is 1, representing the Unit, and the denominator is 15, representing the total number of Units in Phase I of the Subdivision. All expenses shall be reallocated as additional Units are created, dedicated, merged, consolidated or withdrawn.

II DEDICATION OF COMMON ELEMENT "B":

3 Declarant hereby dedicates as a Common Element appurtenant to all Units in all existing or hereafter created Phases, that certain 5.252 acre Common Element "B" set forth and shown on the Revised Plat. Said Common Element is dedicated in the same manner and subject to the same covenants, rules, regulations, exceptions, reservations, limitations, rights-of-way, easements and provisions, as modified hereby, as all Common Elements in the Subdivision.

III DEDICATION OF SEWAGE TREATMENT FACILITY AS LIMITED COMMON ELEMENT:

4 Declarant hereby dedicates as a Limited Common Element appurtenant to Units 7 through 15, inclusive in Phase I, and such Units as Declarant may create in future Phases, the Sewage Treatment Facility which is described in the Declaration and is being constructed on Common Element "B" including the service lines and appurtenant systems which are in part situate in Phase I. The Sewage Treatment Facility is a Limited Common Element owned by the Association, and the cost of maintaining same is allocated to only those presently existing Units, and hereafter created Units, expressly granted the right to utilize same by Declarant or Association. At the execution hereof, Units 7 through 15 in Phase I, are the only Units granted the right to utilize the Sewage System and Units 1 through 6 in Phase I are not serviced by public or private off-site sewerage.

5 Units 7 through 15, in Phase I are further granted the right to tap into, tie onto and utilize the mains, ways, pipes, lines, and other amenities for transporting waste to the Sewage Treatment Facility, whether the same are now in existence or hereafter created, and whether the same are situate in Common Elements, Limited Common Elements, or easements over and across Units reserved to the Association or Declarant. No Unit may tap into, tie onto or utilize the Sewerage Treatment Facility until a "Tap Fee" is paid to Declarant at then ten prevailing rate changed by the Morgantown Utility Board for sewage taps. At the execution hereof, said fee is approximately \$375.00.

6 The Sewage Treatment Facility may only be utilized by any Unit or its owners in accordance with its design specifications and in accordance with any and all rules, regulations or requirements imposed by the Declarant, Association or any governmental agency with regard

Eckert Seamans Cherin & Mellott, PLLC, • 2400 Cranberry Square, Morgantown, WV 26508-9209

to same. No Unit Owner may cause, allow or permit, surface water, storm water or any hazardous substance or controlled substance, as defined by any applicable state or federal law, or as defined by the Association, to be discharged into the Sewage System.

7 Declarant reserves the right to the utilize the Sewage Treatment Facility for the benefit of any of Declarant's Retained Real Estate, any land which Declarant reserves the right to add to the Subdivision, or any present or future Units within the Subdivision. Such reserved right includes the right to utilize all easements, rights-of-way, lines, pipes, drains, conduits, wires, lift stations, grinders and other appurtenances to the Sewage Treatment Facility which are situate within the Subdivision and which are necessary for beneficial use and enjoyment of the Sewage Treatment Facility for its intended purpose.

8 The Association is responsible for maintenance, repair, replacement and upkeep of the Sewage Treatment Facility and all elements and components of same owned by or dedicated to the Association, provided, that the Unit Owner is responsible for all lines, ways, and other systems installed by the Unit Owner, or Unit Owner's predecessor in title, regardless of whether the same are situate on the Unit, within an easement or within a Common Element or Limited Common Element. The Association is only responsible for those elements of the Sewage Treatment System installed by the Declarant or the Association. The Association has a non-discretionary duty to at all times maintain the Sewage Treatment Facility in good condition and working order in compliance with all applicable laws and governmental regulations. Said duty specifically extends to long term operation and maintenance in accordance with the requirements of the West Virginia Department of Health and Human Resources, and its successors.

9 The Association's duty to provide public liability insurance on the Common Elements and Limited Common Elements as set forth in the Declaration includes those portions of the Sewage Treatment Facility owned by it and appurtenances even if granted to the Association by right-of-way or easement..

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

11 No Unit owner shall interfere with, or utilize in violation of any applicable rule or regulation, the Sewage Treatment Facility.

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

IV. AMENDMENTS TO ADDITIONAL PROVISIONS OF THE DECLARATION:

13 The following provisions of the Declaration are hereby modified and replaced with the provisions set forth below with the changes shown. To the extent not specifically modified, all other provisions shall remain in full force and effect except to the extent that the same may be affected by the following, which shall govern in the event of a conflict:

14 **ARTICLE VI, 2.** Set-Back and Boundary Perimeter EasementsDeclarant reserves unto Association and also to Declarant, its licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way ten (10) feet wide along each side

Eckert Seamans Cherin & Mellott, PLLC, • 2400 Cranberry Square, Morgantown, WV 26508-9209

of all road rights-of-way and along each side of each non Patio-Home Unit boundary, and fifteen (15) feet wide on Units 9 through 15, inclusive, for the purpose of:

Eckert Seamans Cherin & Mellott, PLLC, • 2400 Cranberry Square, Morgantown, WV 26508-9209

15 ARTICLE IX, 11. ~~Once asphalt is applied to any road surface in the Subdivision, each Unit Owner shall be required to post a road bond with the Association in an amount to be determined at the discretion of the BCC, for the purpose of assuring compliance with the roadway requirements set forth in the Governing Documents. Specifically, the Unit Owner has an affirmative duty to take reasonable and necessary steps to assure that all contractors, subcontractors, laborers, builders, delivery persons and other individuals or entities participating in construction or improvement of a Unit comply with the Governing Documents and do not damage the existing pavement. All road bonds shall be held in the Association's Road Fund Account and all interest accrued thereon shall belong to the Association. During 2005, road bonds shall be posted in the amount of \$1,000 per Unit for the purpose of initial construction of a dwelling on a Unit. The BCC may increase or decrease road bond amounts in the future commensurate with the actual risk to the roadways and the actual needs of the Association. The amount of all road bonds shall be subjective based on construction plans submitted by the Unit Owner and the amount of road bonds need not be uniform. Provided, however, that so long as Declarant owns at least one (1) Unit in the Subdivision, the BCC may not increase the road bond amount beyond \$1,000 for any Unit absent Declarant's prior written consent. In the event that approved construction is completed in substantial compliance with BCC construction approval, the road bond shall be refunded within twenty (20) days after notice of completion by the Unit Owner. The BCC, may, however, withhold in the Road Fund Account and not refund to any Unit Owner, such sums as are: (a) reasonably necessary to repair or remedy damage actually caused to the roads and directly attributable to construction on or improvement of the Unit; or (b) reasonable fines or penalties as a result of repeated and willful failure to utilize the construction entrance or to comply with Subdivision traffic regulations including, but not limited to, parking restrictions, speed limits, and stop or yield signs.~~

16 ARTICLE X, 8: No dwelling, except Patio-Homes shall contain less than **Two Thousand (2000)** square feet, of total finished living area. For the purpose of calculating "finished living area" walk-out basements which are finished with dry-wall may be included in area calculations but non-walk-out basements, porches, decks and finished garages may not be included in such calculations. Provided, however, that in the event Patio-Homes are constructed in any one or more Phases of the Subdivision, no Patio-Home dwelling shall contain less then **One Thousand Four Hundred (1,400)** square feet, of total finished living area.

17 ARTICLE X, 10: The construction set-backs are the following number of lineal feet from as follows:

	Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side boundary(s)	Minimum distance from any Unit boundary which is also the perimeter of the Subdivision	Minimum distance from any Unit boundary abutting a Road or Common Element
--	--	---	---	--	---

PHASE I Units 1-7 and 11-14	50 feet	15 feet	15 feet	25 feet	25 feet
PHASE I Units 8-10	50 feet	15 feet or 5' from the "10' Utility Easement (5' Either Side)" as shown on Revised Plat.	15 feet	25 feet	25 feet
Future Phases	To be determined	To be determined	To be determined	To be determined	To be determined

Eckert Seamans Cherin & Mellott, PLLC, • 2400 Cranberry Square, Morgantown, WV 26508-9209

18 ARTICLE X, 12: The exterior wall surfaces of all buildings shall be of either masonry construction, wood, or high end vinyl siding with not less than twenty (20%) per cent of the front facing of each dwelling being "Masonry Construction". "High End" vinyl siding shall be such vinyl which has the appearance of wood as determined by the BCC. Masonry construction shall be completed from not less than 8" below grade to at least the lowest level of the main floor of the dwelling. To the extent that the front facing of a dwelling is finished with masonry to any corner, the masonry finish shall continue around the corner and if the same degree of masonry is not utilized on the side facing, it shall be gradually "stepped" down to avoid dramatic contrasts between masonry and non-masonry finishes as a result of dwelling corners. Specific and appropriate variances to this requirement may be granted on a Unit basis under special circumstances, depending on the style, location, size, character and over-all post construction esthetics of the dwelling at issue. Synthetic sidings such as "Hardy Plank" are permitted. "Masonry Construction" shall be limited to that of brick, drive type material, stucco or natural or cultured stone. No building or other improvement shall have concrete or cinder blocks or concrete masonry exposed in any manner.

19 ARTICLE X, 17: BCC shall establish standards for the size, color, style and appearance of all mailboxes and the structures to which same are mounted. Mailboxes may not be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. All mailboxes shall be maintained in good condition by the Unit Owner at all times and Developer reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of repairing and/or replacing mailboxes and the structure on which same are mounted. In the event Declarant shall establish a uniform mailbox and mounting system for uniform mailboxes, all Unit Owners shall purchase and install same and no non-conforming mailboxes shall be permitted. In the event that the United States Postal service requires that "cluster boxes" or any system other than single on-Unit boxes be utilized for mail delivery, all affected Units shall comply with said requirements, provided, that each Unit shall nonetheless include the mailbox mounting structure and light as set forth hereafter.

20 ARTICLE X, 24: Declarant shall provide public natural gas service to each Unit. No Unit may be serviced by any fuel tank or similar fuel storage receptacle. ~~In the event that such fuel tank or similar fuel storage receptacle is approved by the BCC, the same may not be exposed to public view and must either be located under ground or completely shielded from view by "year round" foliage or attractive screening.~~ The fuel used in the dwelling or other structures shall be of the smokeless-type; however, so-called fireplaces and/or wood stoves, in which wood is used as a fuel shall be excepted from this provision. No such fire-place or wood stove may, however, produce any fume, smoke or affluent which is an unreasonable nuisance or annoyance to the Subdivision. Wood stoves, fire-places, fire-pits, barbecue pits and wood burning appliances and/or devices are not permitted on the exterior of any Unit absent prior written consent of the BCC.

- 21 ARTICLE X, 33: All Unit Owners who construct a dwelling on any of the Units of the Subdivision after the paving of the streets of said Subdivision has commenced, shall deposit with the Association a construction bond in an amount equal to the sum of **Five Thousand Dollars (\$5,000.00)** or cash equivalency (as calculated on a U. S. Dollar value basis for the year 2007) to pay for the cost of any damage that might be done to the streets, flora or utilities by the owners or their contractor in the process of constructing and landscaping the Units. In the event that any damage is caused to the streets by said Unit Owners or their contractor, then the Association shall repair said damage deducting the cost of such repair from said deposit and shall refund the balance thereof to Unit Owners, if any. The Association may make reasonable concessions to the construction bond requirement with regard to any individual or entity constructing multiple Patio-Homes on multiple Patio-Home Units. For the purpose of this provision, no land is subject to the construction bond requirement until after the land is dedicated as a Unit by this document or an amendment to this document, and if construction commences prior to such dedication, no construction bond may thereafter be required with regard to construction which commenced prior to dedication.

V. GENERAL:

- 22 Except as expressly modified hereby, all provisions of the Declaration shall remain in full force and effect and are incorporated herein by reference. To the extent that any modification hereto imposes a construction requirement on the completed dwellings situate on Units 4, 7 and 8, and there partially completed dwellings on Units 5 and 6 and those Units are completed in accordance with the approved plans, the same are approved, grand-fathered and granted standing variances, "as is" and "as built", provided that any subsequent amendment to, or modification of, such dwellings shall be made in accordance with this instrument.
- 23 All terms defined in the Declaration shall have the same meaning herein with such definitions incorporated herein by reference.
- 24 The owners of Units previously conveyed by Declarant join herein for the exclusive purpose of evidencing their consent hereto and ratification hereof for the purpose of establishing the requisite majority.

Witness this 25th day of January, 2007:

Declarant: Sleepy Hollow Properties, LLC, a
West Virginia limited liability company,
By: Richard W. Brant
Richard W. Brant, its Managing Member

