

cc Del: Nancy C. Feller

1-17-12

51393

331

582

PEACH LAKE FARMS
Dedication of Plat and
Declaration of Protective Covenants,
Conditions and Restrictions

from: Richard L. Feller, single

to: PEACH LAKE FARMS Lot Owners Association:

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, referred to as "Declarant", does hereby record the plat of a subdivision known as PEACH LAKE FARMS Subdivision, consisting of Phase I and Phase II, both of which are included on the plats of survey to be recorded with these Covenants, and containing a total of sixty eight (68) Lots, lying and being situate in Gore District, Hampshire County, West Virginia, and being more fully described on a 3 sheet plat and survey of K. F. SNYDER, L.L.S., and dated October, 1991, and made a part hereof, and recorded in the Clerk's Office of the County Commission of Hampshire County, West Virginia, on January, 1991, in Map Book No. 6, pages , to which reference is hereby made, and said real estate being the same real estate conveyed unto Richard L. Feller by deed from Homer L. Feller and Nancy C. Feller, his wife, dated March 18, 1991, and of record in the Hampshire County Clerk's Office in Deed Book no. 325, page 228.

Declarant hereby claims an exemption from the W. Va. Uniform Common Interest Ownership Act, Ch. 36B, pursuant to W. Va. Code Ch. 36B-1-202 (2), because the average common expense liability of all lots may not exceed \$100.00, except as set forth herein.

All lots in the PEACH LAKE FARMS shall be subject to the following protective covenants, conditions, and restrictions and easements which shall run with the land and shall be binding upon all subsequent owners of the lots:

ARTICLE I - DEFINITIONS

1. "Association" shall mean and refer to PEACH LAKE FARMS Property Owners Association, its successors and assigns. The PEACH LAKE FARMS Property Owners Association may, from time to time, be referred to as the "Lot Owners Association," but it is understood that they are one and the same entity.

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 buyers, but excluding those having such interest merely as security for the performance of an obligation. If Declarant should sell lots on a contract basis, Declarant shall notify the Association of the name and address of any contract buyer. If a Buyer should default in the payment of a contract and lose his contract rights in a Lot, Declarant shall promptly notify the Association of the default. Upon receiving notice from Declarant that a contract buyer has defaulted, that contract buyer shall lose his designation as an "Owner", and will lose all benefits and privileges conferred on Owners by this Declaration. Declarant is considered an "Owner" for purposes of voting in the

his heirs, successors, and assigns. In consideration of the Declarant's creation of this subdivision, and the installation of the roads, the Declarant shall be and is forever exempt from payment of the annual assessment for all lots Declarant owns or should hereafter reacquire.

5. "Common Elements" shall mean and refer to the easements reserved for the benefit of the Association, including the rights of way for ingress and egress, shown on the plat of survey this date recorded. Also included as a common element is a tract of land containing 5.99 acres, more or less, which includes a pond which is now dedicated to the PEACH LAKE Property Owners Association for their common use. The Declarant agrees to execute such additional legal documents as necessary in order to place legal title to the pond in the name of the Association.

6. "Limited Common Elements" are easements or property rights which benefit only a limited number of Lot Owners, and accordingly, they are to be maintained only by the Lot Owners who derive benefits therefrom. The pond located on Lots 44 and 46 is now designated as a Limited Common Element. Each of the Lot Owners of Lots 44 and 46 are granted the right to use the entire pond, even though the pond is located partially on each of the two foregoing lots. Included as a part of the limited common element is a pedestrian, or foot easement around the edge of the pond so that the unit owners may walk the entire pond; or park boats at any place he/she desires on the pond.

7. "Assessment" each lot will be subject to an annual assessment for installation, maintenance, repair and replacement of the common elements. This assessment may not exceed \$100.00 per year, except as specified herein. Declarant is exempt from this assessment.

ARTICLE II- ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

1. Every owner, including the Declarant, of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. Immediately after closing on the first outsale from this subdivision, Declarant shall form appoint an initial Board of Directors of three to five persons, who are lot owners, which shall serve until the first meeting of the Property Owners Association. The Declarant, and his agents and employees may serve on the Board of Directors, but as the number of sales made increase, the Declarant will obtain participation from the Lot Owners. After 25% of the sales are completed, the Board shall have at least one member who is independent of the Declarant. The initial Board of Directors shall: 1. organize the Association by determining the time, date and place of the first meeting; 2. notify the Owners of the meeting; 3. draft a proposed set of Bylaws to be presented to the Association for its consideration and adoption, if ratified by a majority of its members; 3. collect the assessment for maintenance of the common elements by immediately mailing an invoice to the owners requiring payment of the assessment not later than July 1, 1992.

4. Each owner shall have one vote on all Association matters for each lot that he owns. The Association shall be governed by majority vote owners, when a quorum exists.

5. The initial meeting of the Association shall be held in Hampshire County, W. Va., but subsequent meetings may be held at any place designated in the Bylaws.

6. The Association may have such legal form as desired by its Owners. That is, it may be an Association or Corporation, same to be determined at the initial meeting of the Association.

7. The Association shall have the following Powers:

- (1) adopt and amend bylaws and rules and regulations.
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from owners.
- (3) hire and discharge managing agents, and other employees, agents, and independent contractors.
- (4) institute, defend, or intervene in litigation, or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting PEACH LAKE FARMS.
- (5) make contracts and incur liabilities.
- (6) regulate the use, maintenance, repair replacement, and modification of common elements
- (7) cause additional improvements to be made as a part of the common elements;
- (8) acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property.
- (9) grant easements, leases, licenses, and concessions through or over the common elements.
- (10) impose and receive any payments, fees, or charges for the use, rental or operation of the common elements, and for services provided to Owners.
- (11) impose charges for late payment of assessments and after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association.
- (12) impose reasonable charges for the preparation of statements of unpaid assessments.
- (13) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

persons entitled to cast twenty percent of the votes that may be cast for an election of the Board of Directors are present in person or by proxy. Note: Nothing shall prohibit the Association from adopting a more restrictive requirement for a quorum in its Bylaws.

9. Except for making Amendments to the Declaration, where a supermajority, specified above, is required, all business to be transacted by the Association is by majority vote of those Owners present at a duly constituted meeting.

10. Cumulative Voting is permitted on all elections of the Board of Directors of the Association. Thus each Owner shall have one vote for each director to be elected, and may cast all of the votes for one or more of the directors, as the Owner should desire. i.e. If five directors are up for election, the Owner would have 5 votes, and the Owner may cast all five votes for one candidate, or split the votes between the candidates as the Owner should desire.

11. A meeting of the Association must be held at least once each year. Special meetings of the Association may be called by the president, a majority of the Board of Directors, or by owners having twenty percent of the votes in the Association. Not less than ten nor more than sixty days in advance of any meeting, the secretary, or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and items on the agenda, including the general nature of any proposed amendments to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the executive board.

12. Voting at Association Meetings;

(1) If only one of several owners of a lot is present at a meeting of the Association, that owner is entitled to cast all the votes allocated to that lot.

(2) If more than one of the owners are present, the votes allocated to that lot may be cast in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(3) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. An owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

2. Appointment by the Board of Directors of the President, Treasurer, Secretary and any other officers specified by the Bylaws.

3. The qualifications, powers, and duties, terms of office and manner of electing and removing board of director members and officers and filling vacancies.

4. Which powers, if any, the Board of Directors or officers may delegate to other persons or to a managing agent.

5. Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the Association.

6. A method for amending the bylaws.

7. Any other matters the Association deems necessary.

ARTICLE IV BOARD OF DIRECTORS & OFFICERS

2. The Executive Board appoints Officers.

5. Board Members and Officers must be Owners.

6. Notwithstanding any provision of the bylaws or Declaration to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board of Directors with or without cause.

Powers of Board of Directors

A. The Board of Directors shall have all power granted to it by the ByLaws, and may act in all instances upon behalf of the Association. However, the Board may not:

1. Amend the Declaration;
2. Terminate PEACH LAKE FARMS Protective Covenants;
3. Elect members to the Board;
4. Determine qualifications, powers and duties, or terms of the office of the Board of Directors;

B. The Board may fill vacancies in its membership for the unexpired portion of any term.

C. The Board shall adopt a proposed budget for PEACH LAKE FARMS annually, and shall provide a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Quorums of the Board of Directors

3. Board members may not attend a meeting by proxy, but must attend in person to be considered as part of the quorum.

Officers

1. The day to day business of the Association shall be administered by the President, who is the chief executive officer of the Association. The President shall be appointed by the Board of Directors, and shall serve at the pleasure of the Board, but shall be reappointed each year after the annual Owners' meeting.

2. The Bylaws shall also provide for the powers and duties of the Secretary and Treasurer, and if desired, a Vice President.

ARTICLE V ASSESSMENTS, RIGHTS OF WAYS, ETC.

1. Declarant agrees to maintain the road system until February 1, 1991, or until 30% of the lots are sold and closed upon, whichever comes first, at which time the Association shall make the first assessment. Thereafter the Property Owners Association shall see to the maintenance of same. To the extent that Declarant has unsold lots within the subdivision, he should meet with the Board of Directors and agree to pay or see to reasonable share of the maintenance occasioned by Declarant in showing lots to prospective buyers.

2. At such time as the initial assessment is made, but not later than July 1, 1992, each lot will be subject to an annual assessment for maintenance, repair and replacement of the common elements. Declarant shall be exempt from the assessment, but so long as Declarant has Lots for sale within PEACH LAKE FARMS, Declarant must contribute to the maintenance of the subdivision roads, to be agreed upon between Declarant and the Board of Directors.

3. The present assessment is \$100.00 per year. The maximum assessment for upkeep, maintenance, repair and replacement of the common elements is set at one hundred fifty dollars, unless this declaration is amended by the owners.

4. The Assessment shall be adjusted according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All Items 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the Index). The Index for December, 1979, which was 230, is the Reference Base Index.

5. The Declarant hereby states that it has a reasonable and good faith belief that the maximum stated assessment shown of \$100.00, above, will be sufficient to maintain the common elements.

6. The maximum assessment may be altered by Amending the Declaration. The Declaration cannot be amended to increase the assessment above one hundred dollars during the period of Declarant's control without the consent of ALL OWNERS.

9. Allocation of Common expense Liability:

(1) Each Owner shall have pay his fractional share of the maintenance expenses of the common expense liability for PEACH LAKE FARMS.

(2) It is contemplated that the total number of lots may increase if one or more eligible Owners should further subdivide his/her/its Lot. Each Owner shall pay his pro rata share of the maintenance expenses of the common expense liability for PEACH LAKE FARMS, determined as follows:

a. If an Owner should subdivide his Lot at any time during the year, the successor lot shall, from the date of the recordation of the amended plat, become liable for its prorata share of the maintenance expenses.

b. The prorata share of each Owner shall be determined by dividing the total number of Lots as shown by the most recently recorded subdivision plat into the number one, yielding a percentage which shall constitute the pro rata liability of each Owner.

c. Any Lot that is created by further subdivision shall be required to pay its prorata share for the entire year in which it was created, even though it may have been in existence for only a part of the year.

d. Declarant is exempt from paying the assessment on Declarant's lots owned within the subdivision, but the Declarant is to share in the maintenance of the subdivision roads during the time period that the lots are being marketed to the public. Declarant is to reach agreement on the amount that he should pay annually toward upkeep and maintenance while Declarant is selling lots. Declarant reserves the right to have Declarant's agents or employees perform in kind road maintenance by using Declarant's equipment, in lieu of a cash payment to the Association.

10. Each Lot Owner is individually responsible for obtaining telephone and/or electric service to his property. The utilities easements described on the plat of survey may be used by any Lot Owner, as necessary to obtain service to his/her property.

11. Homer L. Feller & Nancy C. Feller have granted rights of way from the public road across their real estate to benefit PEACH LAKE FARMS. Homer L. Feller and Nancy C. Feller also shall have the right of ingress and egress over, across and through such of the subdivision roads as is reasonably necessary in order to obtain access to their adjoining real estate shown on the plat of survey.

12. Cabin in the Pines, formerly, Mill Mountain II, is an adjoining subdivision, which consists of 27 Lots. It is understood that the owners, guests and invitees of Cabin in the

Owner of any of the Lots in Cabin In The Pines, irrespective if he is the original owner, or reacquires same by foreclosure, etc., it is understood that he is exempt from paying the annual assessment. PEACH LAKE FARMS Lot Owners Association is exclusively responsible for the maintenance of the Peach Lake Drive. PEACH LAKE FARMS Property Owners Association shall make such repairs, improvements, etc. to the Peach Lake Drive, as it sees fit, but if a complaint is made about the state of repair of Peach Lake Drive by one of the Owners of Cabin in the Pines, the PEACH LAKE FARMS Executive Board shall account to Cabin in the Pine Lot Owners Association to prove that it is adequately maintaining said right of way. It is also understood that Norman W. Davidson and Linda M. Davidson own real estate adjacent to Cabin in the Pines, and that they have the right to use the Peach Lake Drive for ingress and egress. Since their ownership predates the creation of the Cabin in the Pines and PEACH LAKE FARMS Subdivision, they are exempt from paying any assessment to the Lot Owners association of either subdivision. Nothing is intended to waive the Davidson's duty to contribute to the maintenance of Peach Lake Drive should they use heavy equipment on the road way which should damage the road.

Lien for Assessments

1. The Association has a lien on any Lot for the assessment levied against that Lot and its owner from the time the assessment becomes due. Fees, charges, late charges, fines and interest imposed by this Declaration are enforceable as assessments.
2. A lien under this section is prior to all other liens and encumbrances on a lot except liens and encumbrances recorded before the recordation of the declaration.
3. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.
4. A judgment or decree in any action brought under this section must include costs and reasonable attorneys fees for the prevailing party.
5. The Association upon written request shall furnish to the Owner a statement setting forth the amount of unpaid assessments against the lot. The statement must be notarized and in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the Association, the executive board and every owner.
6. For purposes of perfecting and preserving the lien, the Association shall give notice to the Owner as follows:
 - (1) personal service by the Sheriff or other credible person.
 - (2) by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment.

- b. name or names of the owners.
- c. amount of unpaid assessments due together with the date when each fell due.
- d. the date of recordation.

7. The Clerk of the County Commission where the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the owners and the Association. The cost of recordation shall be assessed against any owner found to be delinquent in a subsequent proceeding to enforce the lien.

8. Upon payment of the assessment, the Association shall execute a written release of the lien, to be recorded at the Clerk's office at the expense of the Association.

ARTICLE VI AMENDMENTS TO THE DECLARATION

1. This Declaration may be amended only by vote or agreement of Owners of lots to which at least sixty percent of the votes in the Association are allocated.

2. No action to challenge the validity of an amendment adopted by the Association may be brought more than one year after the amendment is recorded.

3. No amendment may increase the number of lots specified herein, change the boundaries of any lot, change the allocated interest of a lot, or the uses to which any lot is restricted, in the absence of unanimous consent of the owners.

4. Amendments to the Declaration to be recorded must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or by the President of the Association.

5. The Declaration may never be changed in such a manner as to limit the access of Cabin in the Pines to the public road over Peach Lake Drive unless the Owners of Cabin in the Pines expressly agree to same. Because adequate access to one's real estate is important in maintaining and preserving its long term value, it is understood that any material changes to Peach Lake Drive which could affect the access of or right to access of Cabin in the Pines, even if purportedly agreed to by the Owners of Cabin in the Pines and Peach Lake Farms, shall not be valid unless or until a summary proceeding is filed before the Circuit Court of Hampshire County, West Virginia, and it has determined that the proposed agreement should be enforced. Nothing herein shall prohibit the installation of culverts, widening of the road from time to time, repair, maintenance and resurfacing of the road as its use and the needs of the two subdivisions would require.

ARTICLE VII ASSOCIATION RECORDS

The Association shall keep financial records sufficiently detailed to enable the association to comply with this

more, and must comply with all applicable health laws, zoning ordinances, and the Hampshire County Subdivision Control Ordinance. Before subdividing any lot, the Owner is encouraged to contact the Hampshire County Planner for more information as to local regulations.

2. Any Owner of a qualifying lot who may desire to subdivide his Lot must, at the Owner's expense, cause a new subdivision plat to be made and presented to the Board of Directors of the Association for approval, which shows the mother lot and the newly subdivided lot. The newly created lot shall bear a number or numeral which will identify it as being derived from one of the existing lots of PEACH LAKE FARMS.

3. The Board of Directors may not unreasonably withhold permission to record the Amended Plat of Survey, and once approved for recordation by the Board of Directors (and the local county officer in charge of approving plats for recordation), the Owner may record the Amended Plat, after which he may freely transfer his subdivided lot to any person of his choosing.

4. Any Owner who creates a new Lot by further subdivision of his lot agrees that the newly created lot shall have a vote in PEACH LAKE FARMS, just as any other Lot has, but it must pay its annual pro rata share of the maintenance costs of PEACH LAKE FARMS as set forth herein. Furthermore said Lot is bound by all of the rules and regulations of PEACH LAKE FARMS as a Lot of same.

5. No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs not to exceed six (6) square feet in area, except for directional and informational signs of Declarant.

6. No owner 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 twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to alleviate blockage of natural drainage. No parking is permitted upon any subdivision roads within the subdivision at any time and as part of the development of any lot, the Owner shall provide adequate off-road parking for owner and his guest(s).

7. Due to the unsightliness of junk vehicles on lots, no motor vehicle which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any Lot. House trailers may be placed on any lot so long as any Hampshire County regulations, if any, with regard to house trailers (mobile homes) are complied with. Where possible, house trailers shall be placed in wooded areas on the lot. Setback lines for mobile homes shall be 100 feet from the center line of the subdivision road unless physical terrain and/septic tank considerations make this impractical. Any variance must be obtained from the Bd. of Directors of the Property Owners Association. Approval cannot be arbitrarily withheld. All house trailers must be permanently placed on a block foundation or the foundation must be enclosed by aluminum

obtained from the West Virginia Health Department.

593

15. Each Lot has been perked, and each lot owner shall receive proof of percolation test results at the time of closing. The Declarant covenants that Owner's lot has been approved for installation of a sewage disposal system, but Declarant does not guarantee what size home will be allowed on the lot, or the type of sewage disposal system which will be required before a home is installed or built. Any fees due the Health Department to obtain the Health Permit must be paid by the Owner. The cost of the soil percolation test has been added to the price of the real estate.

16. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers. All trash, garbage, fuel storage tanks, garden equipment, supplies and stored raw materials must be kept from view of the public. In the event any lot owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Property Owners Association, upon majority vote of the Board of Directors, and after fifteen (15) days notice to the Lot Owner, the Association shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance repairs (including mowing and removal of grass over 12" high by brush hogging the lot), and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of same when performed by the Association shall be added to and become a part of the assessment to which such lot is subject.

17. The Declarant reserves for its benefit and the benefit of the Association an easement for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, conduits and related equipment, and/or sewer, gas, telephone, cable t.v., electric and water lines on, over, above, and under a strip of land twenty (20) feet wide along all property lines not serving as the centerline for rights-of-ways, and twenty (20) feet along the outer boundary of all subdivision roadways, in addition to easements reserved by any other instrument duly recorded. Nothing herein shall be construed as creating any duty on Declarant to install or maintain any utility services however, as it is contemplated that actual installation will be made at the expense of the utility and/or the owners. The area reserved for easement installation is the same area shown on the plat for building set back.

18. (1) Each lot owner shall have an unobstructed and right of ingress and egress to and from his lot over the rights-of-ways and roadways as shown on the subdivision plat. The width of all subdivision rights of way is designated on the plat of survey. Most rights of way are sixty feet in width, Cresthaven Drive is forty foot feet in width. Reference is made to the subdivision plat for more information. The Property Owners Association shall be responsible for maintenance of the subdivision roads (common elements). Nothing shall require Declarant to install roads to the full width of the easement. Subdivision roads need be wide enough for convenient two way motor vehicle traffic.

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.

29. 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.

Dated this the 3rd day of January, 1992.

Richard L. Feller
Richard L. Feller
Declarant

State of West Virginia,
County of Hardy, to-wit:

The foregoing instrument was acknowledged before me this the 3rd day of January, 1992, by Richard L. Feller, single.

My commission expires

Jan. 12, 1996.
Ada Kay Webster
Notary Public

This instrument prepared by
Oscar M. Bean, Attorney,
Drawer 30
Moorefield, W.Va. 26836.

COMMISSIONED
ADA KAY WEBSTER

OFFICIAL SEAL
ADA KAY WEBSTER, Notary Public
State of West Virginia
My Commission expires January 12, 1996
116 Washington St., Moorefield WV 26836

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

Be it remembered that on the 17th day of January 1992, at 2:08 P M.,
this Covenants was presented in the Clerk's Office of the County Commission of said County
and with the certificate thereof annexed, admitted to record.

Attest Nancy C. Feller Clerk
County Commission, Hampshire County, W. Va.