

**FIRST AMENDMENT TO
DECLARATION OF COMMON INTEREST COMMUNITY**

FOR

Falling Water

**a residential Planned Community in
Monongalia County, West Virginia**

THIS FIRST AMENDMENT DECLARATION OF COMMON INTEREST COMMUNITY FOR FALLING WATER, effective the 27th day of July, 2007, by Backwater Properties, LLC, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT"), both in its capacity as Declarant of the Subdivision, and also in its capacity as owner of 78 of 79 Units in the Subdivision, the owner of certain real estate and improvements for itself and its grantees and assigns, hereby make the following amendment to the Declaration of Common Interest Community for Falling Water Subdivision which is dated July 22, 2007, and is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1347 at Page No. 169 ("Declaration").

Whereas, the Declaration provides in Article XXII, that its provisions changed, modified or rescinded with regard to future Units, future Phases by an instrument in writing setting forth such change, modification or rescission and executed by Declarant or in certain cases executed by vote or agreement of Unit Owners owning Units to which not less than sixty-seven percent (67%) of the votes in the Association; and

Whereas, WV Code § 36B-2-117 provides that except in certain circumstances, "the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies"; and

Whereas, certain portions of the Subdivision are protected and regulated wetlands and waterways and in order to obtain approvals for development from the appropriate governmental authorities, Declarant agreed that the Declaration would contain certain provisions which are intended to protect and maintain the wetlands and waterways; and

Whereas, Declarant further agreed that the specific provisions aforesaid, would only be subject to amendment by 100% unanimous consent of all Owners of all Units in the Subdivision.

WITNESS, the undersigned, Backwater Properties, LLC, both as Declarant of the Subdivision and also as Owner of 78 of 79 Units therein which constitute ownership of 98.7% of all Units and votes allocated thereto, hereby amends the Article XXII of the Declaration to provide that the following provisions of the Declaration may hereafter only be amended by 100% unanimous consent of all Owners of all Units in the Subdivision:

IV. DEFINITIONS:

32. **Pond**: Any surface water, storm water or sediment retention or detention facility constructed or installed in or on any Common Element or Common Elements by Declarant.

35. Storm Water Facility: The Subdivision contains a comprehensive storm water and sediment control facility and appurtenant improvements designed by Volmer Associates, LLP, which are situate on Units, Common Elements and Limited Common Elements. The Storm Water Facility includes by various drains, pipes, ditches, catch basins, ditches, swales and other mechanisms. Any portion of the Storm Water Facility installed by the Declarant is a Common Element allocated to all Units, and owned and maintained by the Association for the benefit of all Units. To the extent that all, or any portion of the Storm Water Facility, or any component thereof, is subject to any governmental regulation, permit or bond, Declarant reserves the right to at anytime during development, unilaterally assign the same to Association, at which time, Association shall be liable for compliance with further all governmental regulations and requirements.

39. Wetlands: Certain portions of the Subdivision as depicted and shown on the Plats which are designated by governmental authorities as protected and regulated “wetlands” areas, including streams. All Wetlands, whether Common Elements, Limited Common Elements or Units, are subject to specific permits and/or bonds which Declarant may at any time unilaterally assigned to the Association and must thereafter be maintained by the Association in compliance with all governmental requirements. No Unit Owner may utilize or impact any Wetlands area in violation of any applicable law, regulation, permit, bond, governmental requirement, or provisions hereof.

VI EASEMENTS AND RIGHTS-OF-WAY:

12. Wetlands Easements: Non-exclusive easements are excepted and reserved for the purpose of permitting all applicable state and federal agencies, their agents and assigns, access to Wetlands for any reasonable and necessary purpose, by vehicular access over and across all roads in the Subdivision, and pedestrian access over and across all Common Elements in the Subdivision, but excluding therefrom, any Limited Common Element within any Townhome or Patio-Home.

VIII COMMON ELEMENTS/EXPENSE ALLOCATIONS:

2. Storm Water Facility: The Storm Water Facility in all Phases is a Common Element, dedicated to all Units and may not be modified, impacted, or changed in any manner by any Unit Owner without the prior written consent of the Association, and if applicable, then only as may be supported by sufficient engineering data and an Engineer certification as to the sufficiency of same.

4. Wetlands: Certain portions of Common Elements and/or Limited Common Elements are Wetlands as designated by state and federal agencies and subject to regulation by various governmental entities. The Wetlands are an asset to the Subdivision and enhance the character and quality of life in the community. The Association is charged with maintaining all Common Element Wetlands and all Wetlands governmental permits as required by law. No Unit Owner may utilize any Wetlands area in violation of any applicable law, requirement or permit, nor allow any third party present within the Subdivision at the Unit Owners’ request, direction or invitation to do so.

X CONSTRUCTION STANDARDS (Building Control Standards or “BCS”):

11. No dwelling or building shall be located nearer to the perimeter of the Unit than the established set-back lines set forth below. Provided, however, that due to the topography of the Units, and utility and septic concerns, Wetlands issues, the minimum set-back lines for certain Units may be reduced or increased as designated or shown on the plats of the Subdivision or as otherwise set

forth below. Declarant and the Association are each vested with authority to grant reasonable variances to the established non-Wetlands set-back lines to prevent undue hardship and accommodate unforeseen and unknown circumstances. Provided, however, that all Unit Owners, by acceptance of such a variance, waive and release any and all claims, rights and causes of action which the Unit Owner may have against the Association or Declarant with regard to any and all damages that might arise with respect to such variance. For the purpose of this requirement, the “front” of each Unit shall, unless otherwise designated by Declarant or BCC, be the boundary or boundaries of the Unit contiguous to a road in the Subdivision and the “rear” of the Unit shall be the opposite boundary or boundaries of the Unit. Declarant and BCC expressly reserve the right to make alternative designations to the extent necessary to assure maximum usability of Units and to compensate for issues arising with regard to topography and Units contiguous to multiple streets, roads or common elements. No improvement, dwelling or building may be constructed within any Wetlands area except as permitted by law

33. In order to maintain the rural and wooded character of the Subdivision, no tree may be removed from certain portions of Units except as specified in the following tables or as otherwise permitted by written approval of the BCC. In determining whether to grant such approvals, BCC shall consider, the potential hazard resulting from the condition of any tree, topography of the land and reasonable risk to existing or approved improvements and BCC may require a report from a certified and licensed tree specialist in making such determinations. For the purpose of this paragraph: (a) dwellings, detached buildings and detached garages are considered “structures”; and (b) the term “base” shall mean a point 18" above ground. Any tree not within the following specified locations may be removed without BCC consent. Notwithstanding anything herein to contrary, no tree situate within any Wetlands area of a Unit may be removed except as permitted by law.

Trees	Phase 1 Section A
Trees within any approved surface structure	May be removed.
Trees within 15 feet of a dwelling or building	May be removed.
Trees within 5 feet of a driveway, pool, deck, patio, or sidewalk but no nearer than within 10 feet of the side or rear property line	May be removed.
Trees within side or rear set back and within 10 feet of a side or rear property line	May only be removed if less than 10" in circumference at base

Trees	Phase 1 Section B Units 10 to 19	Phase 1 Section B Units 20 to 27
Trees within any approved surface improvement	May be removed	May be removed

Trees within 15 feet of a dwelling, detached garage or outbuilding	May be removed	May be removed
Trees within 5 feet of a driveway, pool, deck, patio or sidewalk	May be removed	May be removed
Trees within side set back and within 20 feet of property line	If less than 6" in circumference at base	If less than 6" in circumference at base
Trees within side set back but not within 20 feet of property line	If less than 10" in circumference at base	If less than 10" in circumference at base
Trees within rear set back or otherwise within 40 feet of rear property line which abuts Lake Lynn.	May be removed	Not applicable.

35. In addition to the foregoing, each Unit Owner shall during final Unit landscaping cause five (5) trees of a variety and size suitable to BCC to be planted on the Unit for the purpose of compensating for trees removed as a result of the construction of the dwelling and conversion of green space to paved and improved area. The Unit Owner shall further have a duty to replace any such tree which shall not survive for a period of at least twenty-four (24) months from planting. Varieties of trees pre-approved for the purpose of this provision include maples and hardwoods which are at least ten (10) feet in height, and pines, evergreens and holly trees which are at least three (3) feet in height.

36. Declarant has retained the services of professional engineers for the purpose of designing and installing a comprehensive Storm Water Facility within the Subdivision. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual Unit, with any excess storm water discharged into the comprehensive Storm Water Facility system to be installed by the Declarant. No Unit Owner may: (a) discharge or release any substance other than unadulterated surface water into the Storm Water Facility or any Wetlands; (b) discharge storm water in the Storm Water Facility in excess of its capacity or in excess of the capacity allocated to the Unit; © make or cause any modification to the Storm Water Facility without prior written consent of the Association; or © discharge water in concentrated flows into the streets, Common Elements, Wetlands or other Units except in compliance with the design specifications of the Storm Water Facility.

37. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining Units, Common Elements or Wetlands and/or the Storm Water Facility. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.

XII UNIT AND COMMON ELEMENT USE AND OCCUPANCY RESTRICTIONS:

1. Units may only be utilized for single family residential purposes. No more than one (1) dwelling shall be erected or maintained on any Unit. All Units except Townhomes or Patio Homes shall be detached. Townhomes and Patio Homes are only permitted in Phases or Sections expressly

dedicated for same by Declarant. Certain limited home office uses are permitted provided that: such use does not entail the travel of clients, invitees, delivery persons or any other individual or entity to the Unit for any business purposes other than normal deliveries by such service providers, such as UPS and Federal Express, who customarily make residential deliveries in the Subdivision.

2. All Units, including all landscaping and improvements in or on Units, shall at all times be aggressively maintained in an attractive manner consistent with the Governing Documents. Each Unit Owner shall also be responsible for maintaining the landscaping with that portion of any adjacent Common Element located between the Unit and improvement to a contiguous Common Element. This obligation of maintenance includes the duty to monitor and maintain drainways, ditches and drainage systems and to report any deficiencies or defects in same to the Association. No Unit Owner shall, however, have the right to remove any landscaping, trees, shrubs or vegetation caused to be located in such area by the Association or the Declarant without prior written permission from the Association. Responsibility of the Unit Owner for maintenance of landscaping includes, but is not limited to, mowing, trimming and watering of lawns as reasonable or necessary to maintain the same in a healthy condition, reasonable trimming of shrubs and trees, and removal and replacement of dead and diseased trees.

5. No Unit may be utilized for any activity which: (a) tends to cause an unclean, unhealthy or unsafe condition to exist outside of the enclosed structure of the Unit; (b) emits a foul or obnoxious odor or any fumes, dust, smoke, or pollution; or (c) which creates any noise, unreasonable risk of fire or explosion, or other conditions such as music or noise which are a public or private nuisance.

6. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees, yard waste and all other materials is prohibited in the Subdivision absent prior written consent by the Association. Provided, however, that the Association may designate and utilize a portion of the Common Elements for disposal and controlled incineration of wood and debris and promulgate reasonable rules and regulations pertaining to same. Said exception for controlled incineration is intended to benefit the Association in management of the Common Elements and shall not be deemed to permit use of such designated areas by individual Unit Owners except as may be authorized by the Association. This paragraph shall not be deemed to be a prohibition against approved wood burning fireplaces which are otherwise permitted if the same comply with the remainder of this document.

7. No Unit may be utilized for any activity which violates any local, state or federal law or regulation.

11. No Unit Owner shall cause, permit or allow, the dumping or placement of grass clippings, leaves or other debris, petroleum products, fertilizers, herbicides, pesticides, or other potentially hazardous or toxic substances in any Common Element, Wetlands, or portion of the Storm Water Facility.

12. Use of non-biodegradable lawn and yard herbicides and pesticides are required and use of minimal environmental impact and natural fertilizers is encouraged. To the extent that any lawn or yard herbicide, pesticide, or fertilizer is permitted or required, the same shall be in strict compliance with the manufacturer's recommendation as to volume and application so as to minimize down stream impacts on the water table and wetlands

13. The Association and all Unit Owners, whether acting individually as a Unit Owner, or in concert as the membership of the Association, are charged with affirmative duties to all at times: (a) aggressively protect all Wetlands situate within the subdivision whether the same are located on a Common Element or Unit; (b) to not directly or indirectly make any material modification to any Wetlands of a Unit or Common Element except as permitted by law; © to not allow, permit or cause any substance or material including, but not limited to, herbicides, fertilizers, pesticides and other migratory substances detrimental to the Wetlands, to be discharged or released directly or indirectly into the water table or water systems which contribute to the regulated areas. Each Unit Owner by acceptance of a deed further covenants and agrees, for and in behalf of the Unit Owner and his successors and assigns, that the Unit Owner shall: (a) at all times comply with the foregoing requirements, including any and all governmental permits pertaining to the same and all applicable provisions of state and federal law; (b) cause all occupants, residents, tenants and invitees of the Unit, including their family and guests, to be fully apprised of, and to fully comply with, the foregoing Wetlands restrictions and limitations, and to at all times comply with the same; and © not at any time utilize, develop or improve any portion of the Unit in any manner inconsistent with the foregoing.

14. No animals or livestock of any description, except the usual household pets, shall be kept on any Unit. Large snakes, alligators, crocodiles, and aggressive canines commonly known as Rotwilers and Pit Bull terriers are prohibited. All pets that are kept upon any Unit shall not be permitted to run at large or cause damage or injury to Common Elements, Wetlands, other Units, other Unit Owners or their property. Dog houses are permitted on Estates Units and otherwise as permitted by the Association.

24. No vehicle or vehicle with a motor or engine shall, except during permitted construction, be operated on any non-roadway Common Element, Wetlands, path, walkway or trails at any time other than during construction. No vehicle which is not licensed by the West Virginia Department of Motor Vehicles, including, but not limited to, golf carts, go carts, dirt bikes, and all terrain vehicles, may be operated on any roadway or Common Element.

XIII THE ASSOCIATION - PURPOSE, MEMBERSHIP, POWERS, STRUCTURE:

4. Non-Discretionary Maintenance Obligations of Association: The Association shall, beginning at the time each improvement to a Common Element or Limited Common element is completed by Declarant, be responsible for maintenance, repair, replacement and upkeep of the Common Elements and Limited Common Elements, including, but not limited to: (a) snow removal and roadway repairs; (b) lawn care and maintenance of the entryway and all Subdivision signage; (c) paying property taxes; (d) maintaining insurance on all Common Elements; (e) monitoring, maintenance and upkeep of the Storm Water System including all drainways and drainage systems constructed or installed by the Declarant or the Association; (f) use, maintenance, operation, control and regulation, of all Wetlands, StormWater facilities and other Common Elements subject to governmental permitting and approvals, and the respective permits therefor, in accordance with, and as required by said governmental authorities. The Association is not charged with the duty to maintain drainage systems and surface water controls installed or constructed on Units by the Unit Owner. The Declarant alone is liable for all expenses in connection with real estate owned by Declarant and subject to the Development Rights. No other Unit Owner and no other portion of the Subdivision is subject to a claim for payment of those expenses.

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

Witness this 16th day of August, 2007:

Declarant: Backwater Properties, LLC, a West Virginia limited liability company,

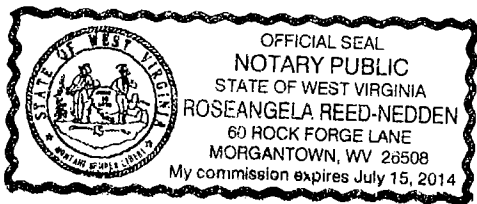
By:  , Manager

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 13th day of August, 2007, by Craig A. Edmond, in his capacity as manager of Backwater Properties, LLC, LLC, a West Virginia limited liability company.

My Commission Expires: July 15, 2014



Rose Angela Reed-Nedden
Notary Public

This instrument prepared by Steven M. Prunty
Eckert Seamans Cherin & Mellott, PLLC

2400 Cranberry Square
Morgantown, WV 26508-9209