

**PUBLIC OFFERING STATEMENT**  
**FOR**  
**FALLING WATER SUBDIVISION**  
**A COMMON INTEREST RESIDENTIAL COMMUNITY**  
**UNION TAX DISTRICT,**  
**MONONGALIA COUNTY, WEST VIRGINIA**

**Prepared by Back Water Properties,  
LLC, Developer and Declarant**

**Prepared August, 2007 by Declarant**

## **FALLING WATER SUBDIVISION PUBLIC OFFERING STATEMENT**

**PREFACE:** This document is a general discussion of matters which are in many cases set forth with specificity in the Exhibits, attachments and documents referenced herein. The reader is advised to review all such Exhibits, attachments and documents carefully for a more specific and detailed explanation of the matters addressed in this Public Offering Statement. To the extent that any document including the Declaration of Protective and Restrictive Covenants for Falling Water Subdivision (“Declaration”) should in any manner conflict with or otherwise be inconsistent with the information in this Public Offering Statement, the terms and provisions of the Declaration shall govern in all matters and respects. All defined terms set forth in said Declaration have the defined meanings herein.

### **I Introduction.**

- 1.1 Falling Water (“Subdivision”) is a Planned Community form of Common Interest Community located in the Union Tax District of Monongalia County, West Virginia, and the project is being developed by Back Water Properties, LLC (“Declarant”). The Subdivision is a single family residential community which includes 79 Lots (“Units”) in one Phase (Phase 1) at the execution hereof. Phase 1 of the Subdivision comprised of Units of varying size all of which are limited to construction of single family detached residential dwellings. Phase 1 is divided into four sections, namely Sections A, B, C and D. Section B is known as “Falling Water Estates” or sometimes the “Estates”. Units in Section B are generally larger than the Units in the remaining Sections (A, C and D) of Phase 1 and are benefited by a private road which may be gated.
  
- 1.2 The Declarant has reserved the right to add land to the Subdivision as additional future Phases. Those future Phases may also be divided into multiple Sections. The covenants and restrictions controlling how a Unit may be used, or what improvements maybe made to a Unit will vary between Phases. As a result, future Phases and Sections may be dedicated containing Units which may be the site of detached dwellings, Patio Homes or Townhomes, or some combination of the same. Future Units may not be dedicated or added to the Subdivision at all, and if dedicated will vary in size depending on topography of the land and the type of dwellings which Declarant intends be constructed on the Units. If dedicated, Patio Homes and Townhomes may be attached rather than detached residential Units. In the case of Townhomes or Patio Homes, Declarant may elect for the Unit to be no larger than the physical boundary of the Townhome or Patio Home. Units in

future Phases may be larger or smaller than the Units in Phase 1. The covenants for Phase 1 vary between Sections with the covenants for the Estates Units varying significantly from Covenants for other Sections. With the exception of the restriction that Units must all be used for residential purposes, there is no assurance that future Units will be subject to covenants and restrictions consistent with the limitations on Units in Phase 1.

- 1.3 The Subdivision is being developed in segments known as Phases and the Declarant intends to dedicate additional Phases periodically as construction and sale of Units progress. It must be noted, however, that Declarant has no duty to dedicate any future Phase. Each Phase, when dedicated, will contain roadways, easements, utilities, Units and possibly common use areas known as Common Elements. The Declarant is responsible for providing utilities to the perimeter of each Unit and completing the roadways and Common Elements. The roadways and Common Elements will eventually be deeded either in fee or by easement to the Falling Water Property Owners Association, Inc., a non-profit West Virginia corporation ("Association"), created for the purpose of governing the Subdivision and maintaining the improvements therein and the standards set by the Declarant. All owners of all Units ("Unit Owners") are members of the Association by virtue of the fact that they own an interest in a Unit and are responsible for the management and operation of the Association and also a proportionate cost of the expenses of the Association.
- 1.4 During early stages of Development the Declarant will own the majority of Units which exist or may be created and thus Declarant will control the Association. Periodically, as an increasing number of Units are sold by Declarant to third parties, Declarant shall relinquish control of the Association to the Unit Owners. The Declarant's general schedule for completion of the Subdivision and the improvements to the Subdivision is attached as **Exhibit C**. This schedule is estimated based on a best case scenario and Declarant is not obligated to comply with the estimated schedule.
- 1.5 Declarant has recorded the Declaration which subjects all land in the dedicated Phases of the Subdivision to restrictive and protective covenants, rules, regulations, guidelines and standards for the purpose of maintaining the quality, character, market value and aesthetic value of the Subdivision and the Units. The Declaration, generally speaking, establishes: (1) the duties of the Declarant; (2) the rights reserved to the Declarant; (3) the minimum improvements which a Unit Purchaser may expect to be completed; (4) the powers, duties and operating structure of the Association; (5) the minimum architectural and landscaping guidelines and standards for all Units and houses; and (6) certain preliminary standards of, and limitations of the purposes for which, a Unit Owner may utilize a Unit, Common Element or a Limited Common Element. The Declaration also imposes certain limitations, restrictions and duties on you as a Unit purchaser. The Declaration also imposes certain duties on you as a Unit Owner and significantly limits what you may do with, and what you may allow to

happen on, your Unit.

- 1.6 Declarant formed the Association by filing Articles of Incorporation (“Articles”) with the West Virginia Secretary of State and Declarant passed the initial By-Laws of the Association (“By-Laws”) prior to the sale of the first Unit. The Articles are the operational structure of the Association which cause the Association to exist as an independent legal entity. The By-Laws are the daily operating rules and guidelines of the Association which may be modified and amended from time to time to address the operational needs of the Association. The Association’s may also pass Rules and Regulations which address issues not contemplated by the Declarant or which the Declarant elected to leave to the discretion of the Unit Owners at a future date. The Articles of Incorporation of the Association are attached as **Exhibit D** and the By-Laws are attached as **Exhibit E**.
- 1.7 The Declaration is the supreme governing instrument of the Subdivision. In the event of any conflict, the Declaration is the governing instrument which supersedes all provisions of this Public Offering Statement, the Articles of Incorporation, By-Laws, all promotional materials utilized in the sale of Units and all representations and warranties made by any realtor or real estate broker. The maps or plats of the Subdivision which are recorded in the Monongalia County Clerk’s Office are part of the Declaration but promotional maps and plats are not. The Declarant is not obligated to complete any improvement or amenity depicted on any map or plat, specifically including promotional maps, unless the Declaration or the map or plat specifically state to the contrary.
- 1.8 This Public Offering Statement sets forth the Declarant’s vision for the Subdivision and some of the pertinent considerations which will impact your decision to purchase a Unit or home in the Subdivision. This “Public Offering Statement” is a summary and generalization of matters set forth in the Declaration and other Exhibits and **you should read each of said documents carefully!**

1.9 **WARNINGS**

THROUGHOUT THIS PUBLIC OFFERING STATEMENT THERE ARE SPECIFIC WARNINGS CONCERNING THE DECLARANT, THE OWNER AND DECLARANT, AND THE SUBDIVISION OR INDIVIDUAL UNITS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY PURCHASE CONTRACT OR AGREEMENT.

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**II GENERAL INFORMATION**

2.0 The Subdivision presently contains Seventy-Nine(79) Units, and Declarant has reserved the right to create up to Eight Hundred (800) Units.. At the execution hereof, the Subdivision is in the early stages of development and only one (1) Phase, containing Seventy-Nine (79) which are situate in four separate Sections. It must be noted that Declarant also has the right to restructure, remove and withdraw Units to the extent permitted by law, as a result not all of the Units in Phase I may remain in the Subdivision, the boundaries of the Units in Phase I may be modified, or Units in Phase I may be combined or subdivided. Although it is the Declarant's intention to fully develop all of its property, Declarant is under no duty to do so. As a result, Declarant may never build, dedicate and sell more than the Seventy-Nine (79) Units in Phase I. Even if additional future Phases are dedicated, no portion of Declarant's land is part of the Subdivision or subjected to the restrictions in the Declaration except the land specifically dedicated as future Phases by an amendment to the Declaration. Declarant has reserved the right to acquire additional real estate contiguous to or near the Subdivision and to incorporate some or all of such additional real estate into the Subdivision by dedication of additional future Phases. The Declarant has no obligation to dedicate such additional real estate if acquired. The protective and restrictive covenants in the Declaration apply only to those Units and Common Elements which have, from time to time, been dedicated as Phases in the Subdivision. The restrictions and covenants may vary with regard to future Units and Phases except to the extent that Declarant all future Phases and Units must be limited to residential use.

2.1 The name of the Declarant is:

Backwater Properties, LLC  
75 Lewellyn Road  
Morgantown, WV 26508  
(304) 216-4723

2.2 The initial address of the Association is:

Falling Water Property Owners Association, Inc.  
75 Lewellyn Road  
Morgantown, WV 26508  
(304) 216-4723

The address and phone number of the Association will change in the future when Declarant is no longer the primary Unit Owner or in control of the Association.

Answers to questions and information about this subdivision may be obtained by telephoning the Declarant and/or the Association at the numbers listed above.

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### **III RISKS OF BUYING LAND**

- 3.0 Declarant is selling Units which are either building lots or lots containing a home. The initial purchase price of each Unit reflects the cost of land to the Declarant, the cost of the improvements furnished by Declarant and expenses incurred by the Declarant in developing the Subdivision. Those expenses include the costs of engineering, legal, services, surveying, governmental approvals, construction, utilities, interest, and various other expenses which were required for the creation of the Subdivision. The cost of the Units is determined by factoring Declarant's costs and Declarant's desired return on its investment. As a result, certain amenities are not being provided (e.g. sidewalks, comprehensive curbing and underground storm sewers) and as a Unit purchaser, you are not paying for those amenities in the initial purchase price of your Unit.
- 3.1 Future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.
- 3.2 The value of your Unit may be affected by date of completion of, and completed quality of, the roads, utilities and all proposed improvements. At any given time the value of your land may also be affected by the number of Units for sale. If the Declarant adds additional Phases, the variety and quantity of available Units in the Subdivision alone may have a negative impact on the value of your Unit.
- 3.3 If you attempt to resell your Unit during development of the Subdivision and at a time when Declarant is actively marketing and selling Units, Declarant will be competing with you.
- 3.4 Development of this Subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse or beneficial and the degree of impact will depend on the location, size, planning and extent of the Subdivision. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your Unit and your ability to sell it.
- 3.5 In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a significant expenditure of money, it is recommended that you seek professional advice before you obligate yourself to purchase a Unit. A number of the considerations appurtenant to the

purchase of land are addressed below.

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#### **IV METHOD OF LAND SALE, CONTRACTS, DEEDS, DUE DILIGENCE**

- 4.0 If you desire to purchase a Unit from the Declarant you must sign a written purchase contract and pay an earnest money deposit. No agreement is an enforceable contract unless it: (i) is written; (ii) is signed by all buyers and sellers; (iii) contains a specific description of the land to be conveyed and all terms of sale; and (iv) is accompanied by an earnest money deposit paid as consideration by the buyers. No negotiation or correspondence between you and the realtors or the Declarant shall constitute a contract unless there is one written agreement fulfilling the above requirements. No sales pitch, promise or assurance made to you by any party is enforceable against the Declarant unless reduced to writing in the contract. No promise that any service will be provided or any improvement made is enforceable if inconsistent with the Declaration. **To the extent that Declarant offered and entered into any Pre-Sale Agreements or Reservation Agreements, the same are not contracts for the sale of land. Rather, Pre-Sale Agreements or Reservation Agreements require the Declarant to give a specified potential purchaser the first option to enter into a contract to buy a Unit, when completed, within a specified time period, and on such terms and conditions as Declarant may elect. If you entered into a Pre-Sale Agreement or Reservation Agreement, you must convert the same to a contract by executing the Declarant's Uniform Purchase Contract in a timely manner, and without material modification to the terms or provisions thereof.**
- 4.1 Declarant intends to use cash-only purchases for the sale of all Units. A minimum deposit is required at the time of the signing of the sales contract in order for the sales contract to be binding. The remainder of the purchase price will be due at closing which will be no more than sixty (60) days from the signing of the contract. With this method of purchase, you will receive at closing a general warranty deed free and clear of all liens and encumbrances except those matters disclosed in the Public Offering Statement and subject to those restrictions, reservations, easements and covenants of record that apply to the property.
- 4.2 The Declarant does not offer any standard policy of financing of Unit purchases. Any contract offered to Declarant may include such provisions. Declarant reserves the right to decline such offers for any non-discriminatory reason permitted by law.
- 4.3 A restriction or an encumbrance on your Unit, or on the Subdivision, could adversely affect your title to the Unit. You should retain the services of a lawyer with real estate experience to provide you with a title certification prior to purchasing your Unit.

- 4.4 A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a Unit may give you possession but it doesn't give you legal title. You won't have legal title until you receive a valid deed. A general warranty deed will be used to convey title to Units.
- 4.4 The recording of the sales contract gives actual notice to any other prospective purchaser of the subject Unit that there is legal claim against that Unit. It is not the local custom to record sales contracts. The general warranty deed which transfers title to the property will be delivered to you at closing and should be recorded in the Office of the Clerk of the Monongalia County Commission, Morgantown, West Virginia.
- 4.5 Before you purchase a Unit you should conduct certain due diligence to determine that the Unit is, in fact what you expect. Therefore, you should make your contract contingent upon your ability to complete appropriate due diligence investigations. As part of your due diligence investigations you should hire licensed and qualified professionals to, among other considerations: (i) examine and certify the title to the Unit; (ii) survey the Unit; (iii) determine whether the substrata and geological formations of the Unit permit your intended use of the Unit; and (vi) if the Unit is to be serviced by on-site septic system, to determine whether, and if appropriate what part of, the Unit meets County regulatory requirements for such a treatment system. You may also want to consider obtaining: (i) an appraisal to determine the market value of the Unit; (ii) a structural or engineering inspection of the Unit; (iii) testing to determine the presence of, and if present the volume of, radon gas present on and in the Unit; (iv) an opinion as to the presence of any wood destroying or wood infesting insects and whether there is any damage to the Unit as the result of same; and (v) such other examinations and investigations as are customary and prudent including investigations of those matters are addressed below.
- 4.6 Under West Virginia law, the recording of your deed will protect you from any claims by subsequent purchasers, from former owners, and from any claims of creditors of former owners which may arise subsequent to the date of recording. It is your responsibility to record your deed upon its delivery to you by us.

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UNLESS YOUR DEED IS RECORDED YOU MAY LOSE YOUR UNIT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR OF SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

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- 4.7 The Declarant believes that the land in the Subdivision has historically been utilized primarily for agricultural and residential purposes and Declarant has no knowledge of any underground storage tanks, burial sites or strip mining. Most land in Monongalia County has been mined to some degree and you may want to determine whether your Unit has been undermined. The Declarant has no knowledge of any mine subsidence in the Subdivision.
- 4.8 The land being developed is, at the execution hereof, encumbered by security instruments which are identified on **Exhibit F**. Each Unit will remain subject to the applicable liens until the closing of the sale for that Unit at which time Declarant shall pay a portion of its proceeds to the secured lender(s) in exchange for a release of the Deed of Trust to the extent that it constitutes a lien against the Unit. The Common Elements, including the easements and the rights-of-way serving the Subdivision, have not been released in full from these liens; however, each partial release will release the undivided ownership interest in the Common Element, easements and rights-of-way apportioned to the Unit. State law requires that lien holders provide a release within thirty (30) days after the lien holder's receipt of the sale proceeds.
- 4.9 You should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership that you are acquiring in the Unit. We recommend that you have an attorney or other appropriate professional interpret the opinion or policy for you. You should also have your attorney interpret the Declaration and other documents included in this Public Offering Statement.
- 4.10 The oil and gas rights to the Units in this Subdivision will not belong to the purchasers of those Units. The exercise of these rights by their respective owners could affect the use, enjoyment and value of your Unit. To the extent that Declarant may own any of such rights, Declarant shall not utilize the surface of the Subdivision or any Unit or Common Element for the purpose of extracting same.
- 4.11 Declarant is offering the Subdivision and Units for sale subject to those limitations and exceptions which: (a) existed when Declarant acquired the land; (b) Declarant imposed as part of the development process; (c) which Declarant has and may from time to time establish to maintain the character and quality of Units in the Subdivision; and (d) include the above referenced security instruments, and any subsequent financing by Declarant. West Virginia law provides that you take your Unit subject to such limitations and exceptions regardless of whether the same were disclosed to you by Declarant prior to your closing.
- 4.12 As noted above, you should retain the services of an attorney to examine the title to your Unit. Notwithstanding the foregoing, the liens and encumbrances which are known to affect the Subdivision are identified on **Exhibit F**.

## **V PURCHASER DEPOSITS AND RIGHTS OF CONTRACT CANCELLATION**

- 5.0 Any deposit made in connection with the purchase of a Unit will be held in an escrow account. The escrow agent will be either a realtor or Declarant's attorneys Eckert Seamans Cherin & Mellott, PLLC, 2400 Cranberry Square, Morgantown, West Virginia 26508-9209 (304) 594-1000, or such successors as declarant may from time to time engage. No interest shall accrue on any deposit for the benefit of any purchaser. **Money deposited pursuant to Pre-Sale Agreements is not earnest money and will not be held in an escrow account and interest will not accrue thereon.**
- 5.1 The earnest money will be returned to you if: (a) Declarant does not accept your offer of purchase; (b) Declarant refuses to sell the Unit to you; or (c) if you elect to cancel your purchase contract pursuant to those rights detailed hereunder in Section 5.2. Deposits made pursuant to Reservation Agreements or Pre-Sale Agreements will be refunded if you do not enter into a binding contract within a specified time period after notice of your right to do so. If a contract is entered into, the Reservation Agreement or Pre-Sale Agreement deposit will be credited as earnest money under the contract.
- 5.2 WITHIN 15 DAYS AFTER RECEIPT OF A PUBLIC OFFERING STATEMENT, A PURCHASER, BEFORE CONVEYANCE, MAY CANCEL ANY CONTRACT FOR PURCHASE OF A UNIT FROM THE DECLARANT;
- IF DECLARANT FAILS TO PROVIDE A PUBLIC OFFERING STATEMENT TO A PURCHASER BEFORE CONVEYING A UNIT THAT PURCHASER MAY RECOVER FROM THE DECLARANT TEN PERCENT (10%) OF THE SALES PRICE OF THE UNIT PLUS TEN PERCENT (10%) OF THE SHARE PROPORTIONATE TO HIS COMMON EXPENSE LIABILITY, OF ANY INDEBTEDNESS OF THE ASSOCIATION SECURED BY SECURITY INTERESTS ENCUMBERING THE UNIT and,
- IF A PURCHASER RECEIVES THE PUBLIC OFFERING STATEMENT MORE THAN 15 DAYS BEFORE SIGNING A CONTRACT OF SALE, HE CANNOT CANCEL THE CONTRACT.
- CANCELLATION SHALL BE MADE BY HAND-DELIVERING A NOTICE THEREOF TO THE DECLARANT OR BY MAILING NOTICE THEREOF BY PREPAID U. S. MAIL TO THE DECLARANT OR ITS AGENT FOR SERVICE OF PROCESS.
- 5.3 All sales will be cash to the Declarant. You are responsible for obtaining any financing you may require. Your contract may not permit you the right to terminate your purchase obligations due to failure of financing unless you specifically include such a provision.

- 5.4 If you default in the performance of your obligations under the sales contract, Declarant has the right to retain all earnest money and other deposits that you have paid pursuant to the terms of the contract as damages for your default, require specific performance of the sales contract, or demand payments of a deficit after resale.

## **VI SUBDIVISION RESTRICTIONS ON THE USE OF YOUR LAND**

- 6.0 All Units are subject to certain restrictive covenants which are established by Declarant for the purpose of protecting and maintaining the character, value, aesthetics and appearance of the that land actually dedicated as Phases of the Subdivision. The restrictive covenants for the Subdivision are contained in the "DECLARATION OF COMMON INTEREST COMMUNITY FOR FALLING WATER", and amendments thereto, and in certain cases in documents referenced therein. The Declaration is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, and attached hereto as **Exhibit B**. The brief discussion of the Declaration below serves only as a highlight of some of the more significant restrictions and you should review the entire Declaration with your attorney prior to contracting to purchase a Unit from Declarant. It must be noted that there are no restraints on alienation of any of the Units or on the amount for which a Unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the Unit or to the Subdivision on termination of the Common Interest Community status. Provided, however, that Declarant has reserved a Right of First Refusal to any dirt or earth removed from the Unit during construction. This Right of First Refusal is for the purpose of development of the Subdivision and potential development of other lands owned by Declarant which may by dedicated as future Phases of the Subdivision.
- 6.1 The Declaration is primarily comprised of four sections namely: (1) Declarant's intentions, rights, reservations and obligations; (2) Building Control Guidelines and limitations with regard to each Unit; (3) use restrictions and limitations with regard to each Unit; (4) the Association and its powers, duties and operating procedures. Each of the foregoing impose certain duties, obligations and rights which affect you and in some cases significantly limit you and your use of your Unit.
- 6.2 The Declarant's intention is to complete a Subdivision of between 79 and 800 Units. Declarant has not conclusively determined the total number of Units which may be created, the size of the Units to be created, the residential use of the Units to be created, or the time period in which the Subdivision will be completed. Declarant has determined that it will complete construction of certain amenities and improvements which are itemized on **Exhibit C**. **BE ADVISED THAT ANY ADVERTISEMENT OR REPRESENTATION MADE BY ANY PARTY THAT DECLARANT WILL COMPLETE**

OR INSTALL ANY IMPROVEMENT IS VOID TO THE EXTENT THAT SAME IS IN ANY MANNER IN CONFLICT WITH **GOVERNING DOCUMENTS**.

- 6.3 The Building Control Standards (“BCS”) are covenants set forth in the Declaration and imposed by the Declarant which limit the improvements which may be made to Units and establish the criteria and process for such improvements. Building Control Guidelines {“BCG”) are rules and regulations promulgated from time to time by the Association for each and every improvement that any party other than the Declarant may make to any Unit. BCG and BCS are managed, enforced and administered by the Building Control Committee (“BCC”). The Building Control Committee is actually two separate committees, one controlled by the Declarant to protect the Declarant’s investment in the Subdivision for the purposes of maintaining the value of all of Declarant’s unsold Units, and the second controlled by the Unit Owners. The Declarant controlled BCC has approval authority for construction of the initial dwelling and appurtenances on each Unit. The ABCC assumes authority over all subsequent improvements when the improvements subject to DBCC approval are completed. Declarant will, not later than when Declarant no longer owns any Unit in the Subdivision, assign all BCC rights and authority to the Association at which time the BCC shall be a single committee controlled by the Association. The BCS and BCG are not applicable to the Declarant but are applicable to all purchasers from the Declarant. All improvements must conform to the general character of the development and more specifically the Section in which the improvements are to be completed. Because the character of each Section may vary, improvements may be inconsistent between Sections but only to the extent permitted by the Declaration and the BCC. In considering requests for approval of an improvement the BCC is charged with paying particular attention to style, character and design (including approval of building materials and colors used), sidewalks, driveways, landscaping, fences, lighting, and all other similar concerns. No improvement may be made to any Unit until complete plans and specifications for the improvement are approved, in writing, by the BCC. The Unit owner has the burden of providing, at its cost, such plans and specifications as the BCC may deem reasonable or prudent with regard to the proposed improvement and there is no guarantee that any improvement will be approved even if a similar improvement already exists in the Subdivision. The BCC does not have control over improvements to the interior of any completed and detached dwelling but only to the extent such improvements are not visible from the exterior of the Unit. The BCC may from time to time designate an engineering firm to review all plans submitted and to otherwise participate in the approval process. All costs of such review will be allocated to the Unit Owner.
- 6.4 The use restrictions are for the purpose of maintaining the quality, character and appearance of the Subdivision and also to prevent any one Unit Owner’s use and occupancy of his or her Unit from materially and negatively impacting any other Unit Owners. You should review each and every use restriction carefully.

- 6.5 ***The Declarant has expressly reserved the right to approve any and all builders who construct dwellings in the Subdivision. All Units are conveyed by Declarant subject to this right of approval which applies only to the initial construction of any dwelling. Declarant's approval right is predicated on Declarant's desire to maintain character and quality of construction and to assure compliance with the Declaration. In the event that Declarant, for any legitimate business purpose should deny approval of any Builder, the Unit Owner shall have the option to proceed to utilize the services of such Builder after posting a Bond with Declarant in the amount of five (5%) per cent of the construction value of the Unit to assure compliance with the Declaration, BCS, BCG and Rules and Regulations of the Association.***
- 6.6 The Association's duties are generally to: (a) maintain and manage all portions of the Subdivision other than Units; (b) to enforce and administer the restrictive and protective covenants in a manner consistent with the overall well being of the Subdivision and the interests of the majority of all Unit Owners; and (c) to manage all financial aspects and administrative functions of the Subdivision. The Association will charge all of its costs to the Unit Owners and the Association has the ability to enforce the Declaration and collect monies due it by Unit Owners by civil action or a lien against a Unit. The Association's duties are, however, to be enforced in a manner consistent with the collective interests of all Unit Owners rather than the subjective interests of a single Unit Owner or group of Unit Owners.
- 6.7 If one or more future Phases or Sections are dedicated for construction of Patio Homes or Townhomes, the covenants, restrictions, limitations and guidelines pertaining to same shall, to the extent applicable differ from those applicable to standard Units which are restricted to detached homes. Those variations are expected to include: (a) reduction in the minimum dwelling area requirements; (b) reduction in the minimum Unit size requirements; (c) reduction in the minimum setback requirements; (d) approval of similar exterior appearance, design and style of nearby Units; (e) reduction or release of the standard easement reservations from Units; (f) variations in requirements for driveways, elevations and exterior appearance; and (g) other modifications which are appropriate to permit construction of multiple smaller dwellings of similar or identical design and appearance in certain areas. In the event that Patio Homes or Townhomes are constructed, the Declarant may elect to sell only the Patio Home or Townhome as a Unit and dedicate the land surrounding the same as a Limited Common Element, the expense of maintenance and upkeep of which shall be allocated to those specific Unit. Declarant may also elect to make the roofs, exteriors and certain other structural members of Patio Homes or Townhomes Limited Common Elements to be maintained by the Association at the cost of the those specific Unit Owners. An amendment to the

Declaration adding Patio Homes or Townhomes will specify all of the foregoing and such other matters as may be appropriate. The terms "Patio-Home" and "Townhome" are defined in the Declaration.

- 6.8 The BCS and BCG also significantly affect the residue of each Unit and limit the trees and foliage which may be cut or removed from any Unit. The requirements vary from Phase to Phase and Section to Section but are generally intended to preserve the wooded character of the Subdivision. You should pay careful attention to these provisions of the Declaration, BCS, BCG and Rules and Regulations of the Association.

## **VII RIGHTS OF OTHERS TO UTILIZE YOUR LAND:**

- 7.0 Various easements, rights-of-way and other rights are excepted and reserved in the Declaration and may have an impact on your building plans or the use of your Unit. Easements have been expressly reserved to the Declarant, the Association, governmental authorities and public utility providers in, on, over, and under each Unit for various purposes. Each Unit is encumbered by the Declarant's and Association's rights to enter the Unit for any purpose authorized by the Declaration including the right to undertake the erection, installation, construction and maintenance of wires, lines and conduits, and the necessary or proper attachments in connection with the transmission of electricity, telephone, community television cables and other utilities and similar facilities. The Association and the Declarant also have the right to install various drainways and drainage systems. In the event that any such right is exercised, the Association and the Declarant have no liability for damage to or removal of any foliage or improvement in a right-of-way or easement area. Association and Declarant do, however, have an obligation to assure that any disturbed area is reasonably restored to grade and covered with grass seed. To the extent that any additional easements affect specific Units in the Development they are set forth in the Declaration or shown on the Map or Plat of the Development mentioned hereinabove or may be reserved in individual deeds for the Unit. Specific rights to utilize easements within the Subdivision pre-date ownership of the project by Declarant or may have been modified and amended by Declarant. Only a full title examination of the property from the sovereign to the present owner can disclose all such issue, however, those known to the Declarant at the execution hereof are attached as **Exhibit F**.

- 7.1 The Association and Declarant have the specific right to restrict construction of improvements and planting of foliage for the purpose of maintaining views from the Units. Such rights may not prevent construction and improvement of a Unit but may restrict the size, type, location, variety, height, appearance and style of improvements and foliage. There is no specific view easement guideline and the Association will exercise its best judgment in balancing the interests of all Unit

Owners when undertaking view easement decisions.

- 7.2 All improvements must conform to the general residential character of the development, paying particular attention to the design of your home (including approval of building materials and paint colors used), sidewalks and driveways. Because it is possible that your interpretation of the Declaration BCS and BCG may differ from the Declarant's intentions and the BCC's policy for enforcing the BCS and BCG, it is strongly recommended that you obtain a preliminary approval of your house plans prior to purchasing a Unit. **If your intended dwelling is not what the BCC and Declarant consider "traditional residential" style, color and appearance, you may not be able to obtain approval to construct the same.** Declarant offers examples of house plans which are pre-approved and are demonstrative of the type of dwelling which is of "traditional residential" style, color and appearance. **You are advised to obtain approval for any dwelling to be constructed prior to purchasing the Unit on which it is to be constructed.**

## **VIII DECLARANT'S DEVELOPMENT RIGHTS**

- 8.0 The Declarant has reserved numerous rights which may impact your ownership and use of your Unit. The Declarant has reserved various rights which are specifically defined in the Declaration and include, but are not limited to, the right to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right, as defined in the Declaration; (iii) maintain sales offices, management offices, and signs advertising the Common Interest Community and models; (iv) use easements through the Common Areas for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision; (v) merge or consolidate the Subdivision with another Common Interest Community of the same form of ownership; (vi) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant control; and (vii) to enlarge the Subdivision by adding additional real estate. Other Declarant's rights of potential impact are: (i) the right to utilize the roadways, easements and utility systems in the Subdivision for the benefit of other properties and the right to grant such uses to others; (ii) the right to develop other contiguous properties other than as part of the Subdivision; (iii) the right to determine the size, shape and selling prices of future Units; (iv) the right to approve your builder and to control the BCC for a period of time; and (v) the right to change the intended improvement plan for the Common Elements. It must also be noted that Declarant has no duty with regard to any future Phase of the Subdivision which has not been dedicated, any Phase, Section or Unit which may be withdrawn, or any improvement which is labeled "Need Not Be Built". These rights are set forth in specific detail in the Declaration, provided that the Declaration does not limit the rights afforded Declarant by law.

8.1 Any and all Units created will ultimately be restricted exclusively to residential use. However, the Declarant has reserved the right to store materials and construction equipment and maintain a sales office, construction office and models in and on Units and Common Elements throughout the development process. Residential use does not mean that the occupant of the Unit is the owner of the Unit. Rather, residential use means that the primary use of the Unit is as a domicile for persons rather than for a commercial purpose such as operation of a business.

Residential use limitations do not prohibit or exclude leasing of Units by the owners thereof.

8.2 Declarant may add improvements which are not shown on the plans and Declarant may withdraw improvements shown on the plans. As a result:

(1) No assurances, other than those found in the Public Offering Statement and Declaration, are made as to the locations of any building or other improvement that may be made within any part of the Subdivision pursuant to the development rights reserved by the Declarant.

(2) No assurances, other than those found in the Public Offering Statement and Declaration are made as to the type or size of any limited common element created pursuant to any development right reserved by the Declarant.

(3) No assurances are made as to the proportion of Common Elements or Limited Common Elements to Units created pursuant to the development rights of the Declarant.

(4) Any assurance made pursuant to this section relating to the development rights of the Declarant will not apply if that particular development right is not exercised by the Declarant.

8.3 You should review the Declaration in detail as to those rights which the Declarant has reserved, those duties which the Declarant does and does not have to perform, and the time periods in which Declarant may do so.

## **IX IMPROVEMENTS TO BE COMPLETED BY DECLARANT**

9.0 The plat depicting the Subdivision and the land which may be added to the Subdivision entitled Falling Water Subdivision, Phase I, Sections A, B, C, D, prepared by David L. Graham, LS 2117, of Stantec Consulting, Inc., dated June 2007, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet 3, Envelopes 226A, 226B, 227A, 227B, 228A, 228B and 229A, which said maps or plats are incorporated herein by reference for



descriptive and all other pertinent purposes (hereinafter the "Property"). The recorded maps or plats of the Subdivision are attached as **Exhibits to the Declaration**. The Subdivision may be developed in Phases with the Plat of each Phase recorded prior to the sale of the first Unit therein. Except for Declarant's development purposes and the easements reserved for the benefit of other land, all dedicated Phases will be limited to use for single family residential purposes.

- 9.1 This jurisdiction has no regulatory review as a prerequisite to the recording of plats, except for street name approval by Monongalia Emergency Centralized Communications Agency ("MECCA") which is the governmental agency vested with authority to approve all road names and assigns all street addresses. MECCA has approved the Plat of Phase I and assigned mailing addresses and street names for the Units and Common Elements in Phase I. Certain review and approval criteria may be implemented prior to completion of the Subdivision and comprehensive governmental zoning and planning of the Cheat Lake Area are underway but not fully implemented at the execution hereof.
- 9.2 THE RECORDING OF THIS PLAT DOES NOT MEAN THAT THE SUBDIVISION HAS BEEN APPROVED BY ANY REGULATORY AGENCY. Provided, however, that the names of the Streets in the Subdivision have been approved by the Monongalia County Emergency Medical providers as required by law.
- 9.3 The Declarant must complete any improvements shown on the Maps or Plats unless the Declarant expressly reserved the right to void such improvement either by: (a) expressly labeling the same as "Need Not Be Built" on the Maps or Plats; or (b) expressly stating such right in the Declaration, this Public Offering Statement, the deeds of conveyance, purchase contracts or otherwise in writing.
- 9.4 The Declarant intends to provide the following improvements:
  - A. Underground distribution systems for the transportation of public: (i) natural gas, (ii) electricity, (iii) water, (iv) telephone service, (v) sewer; and (v) cable television service.  
Provisions of such amenities is contingent on availability of same from public utility providers.
  - B. Central storm water collection, transportation and disposal system to address water which leaves the Units.
  - C. Paved roadways. Paved Roadways means

*roads paved to a general width of not less than sixteen (16) feet and completed pavement shall consist of a total average compacted*

*thickness of approximately two (2") inches of road base (type II aggregate asphalt) with a total average thickness of one (1") inch wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways standards and Declarant need not complete the roadways until six (6) months after the sale of Declarant's final Unit in the Subdivision. Prior to the paving of any segment of roadway, Declarant shall maintain high quality gravel roads. High quality gravel roads are stone, gravel or slag roadways, compacted and graded to facilitate vehicular travel. It is the Declarant's intent to establish the gravel roadways over time as part of the base for future paving. Because the Association is liable for maintenance and upkeep of all roadways, when completed, Declarant intends to provide gravel roads during early stages of development. Certain "side" roads which service a limited number of Units may be paved to lesser width, thickness and standards than the primary roads and may not comply with the above requirements.*

- D. Street signs and traffic regulations.
- E. A landscaped entryway with lighting and subdivision signage.
- F. Fire Hydrants supported by a six (6) inch waterline. At the execution hereof, the water supply is sufficient to support fire hydrants, public utility providers shall be responsible for maintaining said supply in the future. Water is an inconsistent product sufficient that supply, quantity, and volume of the supply vary from time to time. These matters are not within the control of Declarant and are exclusively within the control of the public utility provider.
- G. A gate at the intersection of Mystic Drive and Falling Water Lane, which gate will be a Limited Common Element allocated exclusively to the Units in the Estates. Mystic Drive will also be a Limited Common Element allocated excessively to the estates and the owners of Units in other Sections and Phases will be not entitled to utilize the same but will also not be obligated to contribute to the cost of same.

9.5 The Declarant does not intend to provide the following improvements:

- A. Utility meters, Unit utility taps, on-Unit distribution lines servicing each Unit, or on Unit storm water collection and disposal systems. The Unit purchaser is obligated to obtain and pay for the same. Control of surface or storm water within any Unit is the obligation of the Unit Owner. To the extent that Declarant does provide Utility meters or Utility taps, the cost of same will be reimbursed to Declarant by the Unit Purchaser at the time the Unit is conveyed by

Declarant. Units are sold as offered and the purchaser is obligated to complete the improvements to the Unit.

- B. Sidewalks.
- C. Street Lights (other than at the entryway lighting). Declarant may elect to, but has no obligation to, construct lighting at various locations throughout the Common Elements.
- D. Mailboxes. The Association has established certain standards for Mailboxes and Mailbox mounting, each Unit Owner must comply with said standards at the Unit Owner's cost. Each mailbox mounting shall, as set forth in the Declaration and otherwise from time to time by the BCC, include standard or pre-approved dusk to dawn lighting. Provided, however, that if the USPS requires cluster mail boxes in any location or locations, these requirements may vary.
- E. Any improvements to a Unit which has already been sold (Declarant however reserves the right to do so in the manner it may deem reasonable).
- F. Any other improvement that is not part of Declarant's development scheme regardless of whether the same may have been promised or represented by any realtor, real estate broker or individual or entity other than the Declarant. If this Public Offering Statement (and Exhibits) do not specifically state that an improvement will be completed or any improvement is identified as "Need Not Be Built" there is no assurance that Declarant will do so.
- G. Boat launching or docking facilities. Lake Lynn, also known as Cheat Lake, is owned by Allegheny Power Company and regulated by the Federal Regulatory Commission. To the extent that boat launching or docking privileges may be available, the same are generally leased on an annual or periodic basis with no assurance of availability or approval of such leases at any time in the future. To the extent that such amenities may from time to time be available, there is no assurance as to future availability or that all Units will be benefited by or entitled to utilize same. You may not in purchasing a Unit rely on any actual or apparent representation as to the availability of boat launching or docking privileges or facilities within or contiguous to the Subdivision or any Unit or Common Element therein. The Declarant has, and the Declarant can give you, no right to utilize Lake Lynn. Lake Lynn is owned by third parties and you may only acquire the right to utilize same on such terms as the third party may offer.

9.6 At the time of this writing Declarant intends to complete multiple Phases which will not

contain a total of more than 800 Units. Only Phase I has been dedicated and is in existence. Phase I contains 79 total Units and dwellings have been, or currently are being constructed on, 0 Units in Phase I. The improvements made by Declarant to subsequent Phases may not be consistent with improvements to Phase I or any other Phase in existence when Purchaser receives this document.

## **X** **LAND PURCHASE AND USE ISSUES**

- 10.0 **Zoning** Because the Subdivision is located outside of municipal limits of the City of Morgantown there are no zoning ordinances in effect which regulate the use of the Units in the Subdivision. Therefore the Declaration imposes use and occupancy restriction similar to zoning. No approvals of any zoning authorities are necessary for you to use your Unit, however, you must obtain all necessary use and occupancy approvals from the Association. In the event that comprehensive planning or zoning is subsequently enacted, you will be required to comply with same. The Monongalia County Commission is attempting to implement planning which will affect the Subdivision when enacted.
- 10.1 **Surveying** Each Unit has been properly marked with permanent markers so that you can identify the boundaries of your Unit. You may wish, or your attorney or title insurance company may require you, to obtain a survey of your individual Unit at the time of the sale. Any such survey must be obtained at your expense. The estimated 2007 cost of a boundary survey of a Unit is generally between \$400.00 and \$600.00 depending on the surveyor and the Unit. If the boundary markers are moved, removed, damaged, vandalized or destroyed, your deed will convey your Unit as shown on the Map or Plat rather than your Unit as marked on the land. It is common for boundary markers to be adjusted, moved, removed or destroyed by third parties without the knowledge of the Declarant. Therefore, Declarant advises you to obtain a survey prior to purchase and that you may not rely on any representation or warranty by a broker, realtor or other party as to the precise boundaries of your Unit. The BCC may require that you obtain, at your cost, an "as built" foundation survey of your Unit during construction to establish that the improvements do not violate the covenants or BCG.
- 10.2 **Permits** Prior to building a structure, making any improvement, or implementing any landscaping on your Unit, you must obtain a building permit from the BCC of the Association. Building permits will be based on plans submitted by you. You will have to pay all costs of preparing the plans and you may have to pay a fee for BCC review of your plans. BCC will establish a standard review fee for plans and the standard fee may vary from time to time based on the actual cost and expense and time requirements of the Association. Costs may also be subjective depending on the nature, character, complexity and sufficiency of the plans submitted.

- 10.3 **Flood Plain District** Certain Units in the Subdivision may be located within a Flood Plain District as designated by the National Flood Insurance Program. The owner of any Unit located within a flood plain must comply with the requirements of the Monongalia County Flood Plain Management Ordinance and Federal Emergency Management Administration prior to any construction on, or development of, an affected Unit.
- 10.4 **Environment** No environmental impact study has been prepared for the development. No determination has been made as to the possible adverse effects that the subdivision may have upon the environment and surrounding area.
- 10.5 **Title** Land title issues are addressed above. You should hire an attorney to address these issues for you.
- 10.6 **Radon Gas** Any completed Unit may contain radon gas. The EPA action level for radon gas concentrations is 4.0 pica curies per liter of enclosed air space. If you purchase a dwelling, you should consider having the same tested for radon gas levels.
- 10.7 **Pest/Termite** If you purchase a Unit which does not contain a dwelling you should have the soil treated prior to or during construction. If you purchase a Unit which contains a dwelling you should have the dwelling tested for the presence of wood eating and wood destroying insects such as termites and carpenter bees.
- 10.8 **Soil Disturbance** The Environmental Protection Agency has enacted certain rules and regulations which pertain to the disturbance of land and require aggressive control of surface water and sediment resulting from construction and excavation. In some cases, a permit may be required. These rules and regulations are implemented in West Virginia by the West Virginia Department of Natural Resources.
- 10.9 **Wet Lands:** Certain portions of the Subdivision contain valuable natural resources such as wetlands and streams ("regulated areas") which contribute to the character and quality of both the land and quality of life in the Subdivision. All streams and the majority of designated wetlands areas are situate on Common Elements owned by the Association but a small portion of the designated wetlands are situate on individual Units.

Both streams and wetlands are regulated by Sections 401 and 404 of the Federal Clean Water Act and those portions of the Subdivision are subject to Federal and State permits which essentially provide that no aspect of development of the Subdivision will degrade or otherwise violate water quality standards imposed on the regulated areas. Declarant has taken significant steps to preserve the regulated

areas and to compensate for and mitigate any potential adverse impact to natural and other aquatic resources as a result of its development of the Subdivision and has only caused certain minimized and authorized impacts to the regulated areas.

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 regulated areas 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 regulated area 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 regulated areas, 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 the 401 and 404 permits 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 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.

Declarant shall, when appropriate, and to the extent permitted by law, unilaterally transfer and assign all 401, 404 and other applicable permits to Association with regard all wetlands, streams, waterways, and surface water or sediment retention or detention facilities. No Unit Owner shall cause, allow or permit any violation of any such permit and all Unit Owners shall, in addition to personal civil or criminal penalties for such violations, be liable to the Association and/or Declarant, for any fine, penalty, charge or expense incurred by the Declarant or Association as a result of the Unit Owner's misconduct.

## **XI CHARACTERISTICS OF THE COMMUNITY:**

- 11.0 The Subdivision is located in Union District of Monongalia County, West Virginia. It is not within municipal limits of any city or town. The land being developed was, when purchased by Declarant not developed and the only structures present prior to development by Declarant were the remnants of several ancient structures. It is the Declarant's belief that the land has never been utilized except for residential, agricultural, hunting, fishing and timbering purposes. Properties contiguous to the Subdivision are, at the execution hereof, utilized for single family residential purposes,

agricultural purposes or are undeveloped. There are no gas wells located in the Subdivision. Declarant does not own all mineral interests and mineral production rights with regard to the Subdivision. Declarant will not, however, utilize the surface of any Unit for the purpose of exploration or realization of oil, gas or other minerals.

11.1 **Access to the Subdivision** Phase I of the Subdivision includes a non-exclusive right-of-way for a private road known as Kelly Loop Road or Morgan Hill Road which connects to WV Route 88/2, a public road maintained by the State of West Virginia. The Roads are partially paved. You will not be assessed by the Association for the maintenance cost of the public roads but you will be assessed the cost of maintaining the roads in the Subdivision and all Common Element roads which are rights-of-way within the Subdivision. Mystic Drive is a Limited Common Element and the cost of same will be assessed only the Estates Units. If subsequent Phases of the Subdivision are developed, or if Declarant so elects, a right-of-way may be dedicated as a Common Element, connecting the roads in the Subdivision to other public roads maintained by the State of West Virginia.

11.2 **Access within the Subdivision** Access within the Subdivision is provided by private roads to be constructed by the Declarant. Declarant intends to dedicate the private roads as Common Elements and convey same to the Association. Declarant is responsible for construction of these roads and there is no construction cost to the purchaser. You will have to pay a proportionate share of all road maintenance and improvement costs for roads you are entitled to utilize. If, during construction, your builder's vehicles or other delivery vehicles fail to utilize the construction entrance and cause damage to the main entrance or paved roads, you may be charged for the cost of repairing the same.

11.3 **Nearby Communities** The following table identifies the distance (in miles) from the Subdivision to nearby communities.

Nearby Community	Approximate Population per 2005 Census	Distance Over Paved Roads	Distance Over Unpaved Roads	Total Distance
Morgantown, WV	28,292	13.46	0	13.46
Fairmont, WV	19,049	21.69	0	21.69
Grafton, WV	5,524	11.97	0	11.97
Clarksburg,	16,439	40.98	0	40.98

<b>WV</b>				
<b>Pittsburgh, PA</b>	<b>316,718</b>	<b>87.63</b>	<b>0</b>	<b>87.63</b>

**XII UTILITIES**

12.0 The Subdivision is serviced by public utility providers which are regulated by the West Virginia Public Service Commission. Each utility service is addressed below with specificity. With regard to each public utility provided, the Declarant has caused a distribution line to be extended to each Unit. The Unit Owner will be responsible for causing, and paying the costs of: (a) installing a meter; (b) connecting the Unit to the distribution line; and (c) extending a service line to the dwelling and improvements constructed on the Unit. The cost of the foregoing will vary from time to time and may be obtained from the public utility providers.

12.1 **Water** The subdivision is served by a central public water system and water service is available from:

Morgantown Utility Board  
703 Greenbag Road  
Morgantown, WV 26508  
Telephone: (304) 292-3088

12.2 **Sewage** The subdivision is served by a central public sewage system and sewage service is available from:

Morgantown Utility Board  
703 Greenbag Road  
Morgantown, WV 26508  
Telephone: (304) 292-3088

Due to the topography of certain Units, the location and design of the improvements and dwelling you may construct, the location of the lines and services provided by Morgantown Utility Board, and other relevant factors, individual Units and improvements may require on-site lift stations, grinder pumps or other mechanisms for transporting sewage to a line at a higher elevation. You will be required to pay the cost of such systems and should determine whether those costs are applicable to your Unit prior to the time you purchase same. Even if those costs are not applicable to your Unit prior to your purchase of the same, those costs may be necessary as a result of the improvements you elect to construct or the location you chose for those improvements.



12.3 Although Phase I is not served by a public sewage system, subsequent phases may be serviced by a Subdivision central sewage treatment system. In such case, the Declarant shall cause the treatment system to be constructed on land dedicated as a Common Element and the entire system shall be owned by the Association.

12.4 **Electricity** Primary underground electrical service lines will be installed to each Unit. Allegheny Power Company has agreed to supply electrical service to the subdivision and is responsible for installation of service lines.

Allegheny Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15606-0001  
Telephone: (800) 255-3443

12.5 **Telephone** Verizon Telephone Company will supply underground telephone service to the Subdivision.

Verizon Telephone Company  
P.O. Box 17577  
Baltimore, MD 21297  
Telephone: (800) 562-2355  
Website: Verizon.com/storefront

12.6 **Television** Comcast Communications, an FCC regulated service provider will supply underground cable television and other services to the Subdivision.

Comcast Communications  
15 Summer School Road  
Morgantown, WV 26508  
(304) 292-6561

12.7 **Natural Gas** Mountaineer Gas Company has agreed to supply natural gas service to the Subdivision. In order to reduce the cost of installing natural gas distribution lines in the Subdivision, each Unit must contain one major natural gas appliance such as a furnace or heating system, stove or range, hot water heater or clothes dryer.

Mountaineer Gas Company  
P.O. Box 1392  
Fairmont, WV 26554  
Telephone: (800) 834-2070

### **XIII LOCAL SERVICES**

The governmental and other local services available to the Subdivision:

13.0 **Fire Protection** Primary fire protection is available on a year-round basis from the Cheat Lake Volunteer Fire Department, telephone number (304) 594-1221 or (304) 594-1223. The station is located approximately six from the subdivision. Also in proximity is Brookhaven Volunteer Fire Department which is approximately three (3) miles from the subdivision, and its telephone number is (304) 296-0911. Additional fire protection is available from other county fire departments on a year-round basis.

13.1 **Police Protection** Police protection is available on a year-round basis from the Monongalia County Sheriff's Department and the West Virginia State Police, both of which agencies have offices in Morgantown.

13.2 **Schools** Children residing in the Subdivision may attend the following public schools:

SCHOOL	OPERATING BODY	DISTANCE FROM SUBDIVISION	ENROLLMENT GRADES
Cheat Lake Elementary	Monongalia County		K-5
South Junior High School	Monongalia County		6-8
University High School	Monongalia County		9-12

There are multiple parochial and private schools in Monongalia County.

13.3 **Hospitals** The Monongalia General Hospital and West Virginia University Hospitals are located in Morgantown, West Virginia, approximately 9 miles from the subdivision. Ambulance service also is available.

13.4 **Physicians and Dentists** There are a significant number of physicians and dentists located within the Fairmont and Morgantown, West Virginia areas.

13.5 **Shopping Facilities** A wide variety of shopping facilities are located in Monongalia and Marion Counties.

13.6 **Public Transportation** There is no public transportation available in the subdivision. Chartered and public air service is available from the Morgantown Municipal Airport, located approximately 4 miles from the Subdivision. Commercial air service is available from that airport to various locations including Washington, DC, and Pittsburgh, PA.

## **XIV SUBDIVISION CHARACTERISTICS AND CLIMATE**

- 14.0 **Terrain Issues** The general terrain of the subdivision, the climate and any nuisances or hazards affecting the enjoyment or use of the area in which the Subdivision is located should be considered by all Unit Purchasers.
- 14.1 **General Topography** The subdivision lies in Monongalia County, West Virginia, located in the Appalachian Plateau Region of West Virginia at the foot of the Allegheny Mountains. This topography is varied and quite steep in places and is covered with varying degrees of vegetation consisting primarily of pines, maples, oaks and other deciduous types of trees and considerable underbrush. Certain Units are the site of significant rock formations which could be impediments to construction but add aesthetic quality and character to the Subdivision.
- 14.2 **Slope Concerns** Some Units in the Subdivision may have slopes greater than twenty (20%) percent. This may affect the type and cost of construction and will require adequate engineering and professional architectural attention prior to any building or site work.
- 14.3 **Drainage and Fill** Some of the Units may have been filled or drained and some Units may require draining or fill. Some Units are the site of significant rock or stone formations. Soil conditions and subsurface geological conditions will vary throughout the subdivision. Prior to purchase, you should obtain a subsurface geological inspection to determine the impact that stone or rock formations may have upon your landscaping, excavation and construction plans and costs. Significant subsurface conditions may limit the type of home you can build and/or dramatically increase the cost of construction.
- 14.4 **Flood Plain** Certain portions of the Subdivisions are within the flood plain. Should an improvement touch the flood plain, flood insurance would be required and is available through the Natural Flood Insurance Program as established by the National Flood Disaster Protection Act. The cost of Flood Insurance may be obtained from the provider. The cost of flood insurance will vary from time to time and purchasers are advised to obtain an estimate from a flood insurance provider prior to executing a contract to purchase a Unit in the Subdivision.
- 14.5 **Flooding and Soil Erosion** The Declarant has retained an engineering firm to provide a comprehensive drainage system within the watershed of the development. The program includes mulching and seeding of exposed areas, sodding and seeding in areas of heavy grading and construction of diversion channels, drainage swales, outlet channels, underground piping, basins, and other similar methods of water

conveyance and distribution. You must comply with the storm water plan in the development of your Unit and no drainage improvement installed by Declarant may be modified or removed without the prior written consent of the Association. You are also required to comply with State and Federal soil control requirements as noted above.

14.6 **Drainage Standards** The draining system is designed as follows:

- A Culverts will pass a 20-year storm.
- B. Storm sewers will pass a 20-year storm without backing water through inlets.
- C. Ditches and swales will contain a 20-year storm within its banks and are treated for a two-year storm water velocity.

14.7 **Purchaser Drainage Due Diligence Issues** Prospective buyers are hereby notified that the surface water conditions on individual Units within the Subdivision vary during certain seasons of the year and existing surface water conditions may not be apparent at all times. Further, surface water conditions on individual Units will be materially affected by the development and construction of homes on both the Unit to be purchased and other Units in the Subdivision situated at elevations above the Unit to be purchased. Therefore, prospective purchasers are advised to consult an engineer for the purpose of: (a) ascertaining pre-purchase, pre-development and post-development surface water conditions on any given Unit; and (b) advising the purchaser and the purchaser's builder, contractor and landscaper with regard to construction on, and development of, the Unit.

14.8 **Limitations on Use of Drainage System** Although Unit Owners are required to discharge surface water into the comprehensive storm water management system, the BCC may reasonably restrict the location and rate of such discharge. On-site storm water retention systems may be required on individual Units. No Unit owner may make any material modification to the storm water system, restrict the flow of the system, redirect the system or fill in any portion of the system without prior written consent of the BCC. The BCC may reasonably require an engineer's certification of the appropriateness and adequacy of such changes and that the same be made at Unit Owner's expense. Ditches and culverts are present throughout the Subdivision and along various roads. Those ditches and culverts constructed by the Declarant belong to and are maintained by the Association. You may not make any material modification to same without prior approval as set forth in the Declaration and specifically cannot close a ditch or replace a ditch with a culvert without prior consent of the Association. To the extent that such culvert are necessary for driveway access to your Units, there are strict limitations on the type, size, location and length of such

culverts.

- 14.10 **Unit Owner Drainage Duties** Each Unit owner is charged with the duty of maintaining and monitoring all storm water systems located on his/her Unit. Each Unit Owner, as a member of the Association, has an affirmative duty to promptly notify the Association of any failure or deterioration or inadequacy of the system.
- 14.11 **Nuisances** To the knowledge of the Declarant, there are no nuisances which affect the Subdivision. The real estate abutting the Subdivision located on its northern boundary is utilized for agricultural purposes which include maintaining livestock and periodic use of natural and artificial fertilizers which may from time to time be considered a nuisance by some individuals. Those uses of adjoining land, however, were in existence prior to Declarant's acquisition of the land on which the Subdivision is being developed and those uses are not regulated or governed by the Declaration.
- 14.12 **Hazards** To the knowledge of the Declarant, there are no existing hazards which affect the subdivision.
- 14.13 **Climate** The average temperature ranges for the subdivision area are shown below:

MONTH	AVERAGE HIGH TEMPERATURE	AVERAGE LOW TEMPERATURE	MEAN TEMPERATURE
January	38.0 F	21.4 F	29.7F
July	82.6F	62.6 F	73.1 F

Monongalia County has an average annual precipitation of approximately 40.59 inches and an average snowfall of 32.1 inches. Precipitation, however, varies annually and all Unit purchasers are advised to implement drainage controls sufficient to handle the most severe precipitation which may occur.

## **XV PROPERTY OWNERS ASSOCIATION**

- 15.0 Membership in the Association is mandatory for each Unit owner, entitling that Unit owner to one vote per Unit on all Association business.
- 15.1 The Association is the entity empowered to enforce the Declaration and all documents referenced therein for the purpose of protecting and ensuring the

character, value, aesthetics and appearance of the Subdivision. The Association also owns and maintains the Common Elements and manages the financial affairs of the Subdivision. The Association has the option but not the duty to undertake any specific enforcement action.

- 15.2 During the initial year of operation, Declarant shall provide all snow removal, roadway repairs, mowing and trimming of the Common Elements, and the cost of all utilities consumed in maintaining the Common Elements. Declarant shall also pay the cost of all property taxes on the Common Elements and all Association expenses for insurance, taxes and governmental filing fees. A copy of the declarations page for the Association's insurance coverage provided for the benefit of Unit owners is attached as **Exhibit G**.
- 15.3 Each year the Association shall adopt an annual budget which shall provide for all known and anticipated expenses of the Association. The costs of the Association will vary from time to time and those costs will to some extent depend on what expenses the Association elects to incur.
- 15.4 Because the Declarant has elected to bear all costs during the initial year of Subdivision development, no actual Association budget is available. A proposed balance sheet and a projected budget for the Association is attached as **Exhibits H and I**. The budget is an estimate prepared by the Declarant under the Assumption that: (a) Declarant shall pay all costs during 2007; and (b) Declarant's belief that there will be no completed and occupied dwellings during said year. The balance sheet and budget are estimates.

*The budget must include, without limitation:*

*(i) A statement of the amount or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;*

*(ii) A statement of any other reserves;*

*(iii) The projected common expense assessment by category of expenditures for the association; and*

*(iv) The projected monthly common expense assessment for each type of unit;*

## **XVI ASSOCIATION ASSESSMENTS:**

The Association must finance its operations by assessing its costs to the Units. If

Assessments are not paid when due, the Association has the power and authority to impair the marketability and title of the Unit by perfecting a lien to secure payment of such costs..

16.0 There are several types of Assessments:

(a) **Annual Assessments** for the common benefit of all members of the Association and intended to finance the annual operations of the Association. During the initial year of the Subdivision there will be no Annual Assessments and Declarant will bear the cost of all Association expenses. Annual Assessments will begin during the year after the first of the following to occur: (i) when Declarant relinquishes control of the Association; or (ii) when Declarant advises the Association it will no longer bear the Association's expenses. **The minimum Annual Assessment is set at \$600.00 for non-Estates Units in Phase 1, and \$900.00 for Estates Units in Phase I.** The minimum annual assessment for Units in future Phases may be more or less than these figures depending on the character of the Phases and the Units therein.

(b) **Special Assessments** which are from time to time necessary to finance the costs of matters either not accounted for in, or which exceed the amount budgeted in, the Annual Assessment.

(c) **Initial Membership Deposit**, which are paid by all Unit purchasers at the time they acquire the Unit. **During 2007, the Initial Membership Deposit is \$600.00 but the Association may increase this fee in the future.**

(d) **Fines and Penalties** which are assessed against fewer than all Unit Owners as the result of a violation of a restriction, rule or regulation of the Association; and

(e) **Construction Bonds** which are paid to assure compliance with the Association's requirements during development or improvement of a Unit.

16.1 At the time of this Declaration, there are no current or expected fees or charges to be paid by Unit Owners for the use of the Common Elements and other facilities related to the Subdivision. The Association may elect to impose such fees at a later date.

16.2 Assessments are made for the purpose of paying the Association's actual and anticipated expenses. The Association's expenses are budgeted annually and include, but are not limited to management fees and administrative costs of operation and maintenance of the Common Elements and Association such as, ad valorem taxes, insurance premiums, business registrations, capital expense reserves, snow removal, roadway repairs, mowing, signage, lighting and other similar expenses. Assessments may be increased annually as deemed necessary at the discretion of the Association for the purpose of defraying in whole or in part any appropriate

expenses or capital costs of the Association, including without limitation, the costs of any construction, reconstruction, or unexpected repair of streets or parking areas or for necessary fixtures and personal property related thereto.

- 16.3 Annual Assessments shall be allocated equally to all owners of all Units regardless of location, use or size. The allocation schedule for Annual Assessments is set forth in the Declaration. The cost of Common Elements which benefit all Units is assessed equally to all Units. The cost of Limited Common Elements which may be utilized by less than all Units are assessed to those Units entitled to utilize the Limited Common Elements. With regard to Patio-Homes, the cost of structures which benefit more than one Patio-Home are the Limited Common Expense of the benefited Patio-Homes.
- 16.4 The Annual Assessment for each Unit shall be set by the Association Board no later than December 31 of the year before the Assessment is due. The Annual or Common Assessment shall at the Association's option be payable either: (a) in quarterly installments; or (b) in full on or before the 31<sup>st</sup> day of January of each year., The rate of said Annual Assessment shall be established, and may be modified, each year by the Association's Board.
- 16.5 All money collected from Initial Assessments during the period of Declarant's control, and before the first Annual Assessment will be placed in an interest bearing account of the Association and used for future road repair when the Declarant turns the community over to the property owners.
- 16.6 A copy of the Association's initial insurance declarations page is attached as **Exhibit G**.

## **XVII RESALE REQUIREMENTS / EXCHANGE PROGRAM**

- 17.0 The Declarant has no program to assist you in the resale of your Unit. Also, we have made no provisions for exchanging your Unit. To the extent that the Declarant is marketing its Units for sale, such marketing may be in direct competition with the resale of your Unit.
- 17.1 When you sell your Unit, it is your obligation pursuant to the Declaration and the West Virginia Common Interest Ownership Act, West Virginia Code Chapter 36B, Article 4, Section 109, to provide your grantees, assignees and successors in interest with certain documentation. **By West Virginia law no contract for the resale of any Unit in a Common Interest Community such as the Subdivision is binding as to any purchaser until three (3) days after the seller provides the following information:**



- (A) *this Public Offering Statement;*
- (B) *the Declaration of Protective and Restrictive Covenants;*
- (C) *the By-Laws of the Association;*
- (D) *the Rules and Regulations of the Association;*
- (E) *The most recent regularly prepared balance sheet and income and expense statements, if any, of the Association;*
- (F) *The current operating budget of the Association; and*
- (G) *The following information from the Association:*
  - (i) *A description of the type and amount of insurance maintained by the Association for the benefit of the Association's members and Unit owners; and*
  - (ii) *A statement that the Association's Executive Board has no knowledge that any alterations or improvements to the Unit or to the Limited Common Elements assigned to said Unit violate any provision of the Declaration; and*
  - (iii) *A statement that the Association's Executive Board has no knowledge of any violations of applicable health or building codes with respect to the Unit; the Limited Common Elements assigned to said Unit; or any other portion of the Common Interest Community; and*
  - (iv) *A statement that there are no leasehold estates affecting the Unit;*
  - (v) *A statement of any capital expenditures anticipated by the Association for the current and two next succeeding fiscal years; and*
  - (vi) *A statement of the amount of any reserves for capital expenditures and any portions of those reserves designated by the association for any specified projects.*
- (H) *A written Statement that to the best of the Association's knowledge:*
  - (i) *There are no rights of first refusal or restraints of the free alienability of*

*the Unit to be sold which have an effect on the proposed disposition of the Unit; and*

- (ii) The current monthly or annual common expense assessment for the Unit and the amount of unpaid common and/or special assessments currently due and payable; and*
- (iii) All other fees are currently payable by the Unit owner; and*
- (iv) There are no unsatisfied judgments against the Association and there are no pending suits in which the Association is a Defendant; and*
- (v) There are no leasehold estates affecting the Unit or the common areas of which a beneficial ownership and/or use interest is attributable to the Unit; and*
- (vi) There are no restrictions in the Declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty or loss to the Unit. The attached declaration contains certain provisions pertaining to limitations affecting the amount that may be received by the Unit owner as the result of condemnation, casualty or loss of the common elements of the Common Interest Community or the termination of the Common Interest Community.*

We prepared forms attached hereto as **Exhibit M** which may be of assistance in complying with the Declaration and the Common Interest Community Ownership Act.

**XVIII WARRANTIES AND LIMITATIONS:** The Subdivision is governed by certain warranties of quality which are set forth in West Virginia Code Section 36B *et seq.* The Declarant makes the offer of all initial sales of all Units contingent upon all purchasers from the Declarant executing a document waiving the limitations period for actions on warranties to two (2) years. Each contract shall contain a waiver provision and a written waiver will be produced to all purchasers at closing. No deed shall be delivered by Declarant absent the voluntary execution of such waiver by the purchaser. A copy of the Waiver is attached hereto as **Exhibit L** and each deed from the Declarant shall contain language restating the waiver to be incorporated as part of the public land records after recording.

**XIX STATUTORY DISCLOSURE:** At the time of this Public Offering Statement, the Declarant has no knowledge of any unsatisfied judgments or pending suits against the Association or any litigation material to the Subdivision.

**XX UNIT TAXES/EXPLANATION:**

- 20.0 In West Virginia, standard real estate closing practice is for real estate taxes to be apportioned at closing by a mechanism contrary to statute. Specifically, although taxes are assessed based on a year beginning July 1 and ending June 30, taxes are published on a calendar year basis and the tax lien attaches on a calendar year basis. Therefore, all contracts for Units in The Subdivision provide that taxes will be apportioned on a calendar year basis.
- 20.1 Upon closing of your purchase of a Unit, you will be obligated to pay Monongalia County real estate taxes for the year in which you purchase the Unit. Taxes will be pro-rated between you and the Declarant as of the day of closing. Thereafter, you will be required to pay all taxes assessed against the property. Taxes are payable to the Sheriff of Monongalia County. The annual taxes on an unimproved Unit after the sale to a purchaser will vary from Unit to Unit depending on the assessed value of the property and you should expect your real estate taxes to increase during the 18 months after you purchase your Unit.
- 20.2 In the event that you purchase a Unit which is at the time of conveyance assessed as part of the parent tract rather than as a separate Unit, or in the event that a tax ticket is issued after closing which assesses your Unit as part of a larger tract owned by Declarant, Declarant will be responsible for payment of the ticket and you will be responsible for reimbursing the Declarant for your share of those taxes. You will be obligated to reimburse such costs to the Declarant within fifteen (15) days after Declarant provides you with a copy of a full year or partial year paid tax receipt.
- 20.3 Real Property taxes for each year are assessed based on: (A) the ownership classification and use; and (B) the value of the real estate; on July 1 of the preceding year. There are two tax classifications which apply to properties in The Subdivision. Real estate which is the primary residence of its owner on the assessment date is Class 2. Real Estate which is not the principal residence of its owner on the assessment date is Class 3. Class 3 properties are taxed at the standard levy rate and Class 2 properties are taxed at one-half ( $\frac{1}{2}$ ) of the standard levy rate.
- 20.4 All properties owned by the Declarant are Class 3 and will be assessed as Class 3 during the year they are conveyed from the Declarant. If a Unit is conveyed and the deed is recorded prior to July 1 of a given year the subsequent year's taxes will be issued in the name of the purchaser and the tax classification may change based on the new owner. If a Unit is conveyed and the deed is recorded subsequent to June 30 of a given year the taxes for the subsequent year will be issued in the name of the Declarant and the property will be assessed as Class 3.

20.5 It is your obligation to contact the Sheriff and Assessor of Monongalia County, West Virginia, to confirm that any Unit you purchase from the Declarant is correctly assessed for years subsequent to conveyance. You should notify the Sheriff as soon as you move into your home so that the Sheriff may make any appropriate tax classification changes.

20.6 Example taxation calendar:

- A. Taxes for 2007 are based on the classification and value of the land on July 1, 2006.
- B. During April of 2007, the County Commission sets the levy rate which when multiplied by the value and the classification factor results in the amount of the taxes.
- C. 2007 Taxes are published and become payable during July of 2007.
- D. The first half (January to the end of June) 2007 taxes are due by September 1, 2007, and delinquent if not paid by October 1, 2007.
- E. The second half 2007 (July to the end of December) taxes are due by March 1, 2008, and delinquent if not paid by April 1, 2008.
- F. Both halves may be paid at any time after July 1, 2007, and there is a pre-payment discount if assessments are paid early.
- G. If the 2007 taxes are not paid prior to November 2008, the land will be sold for back taxes.

20.7 If you construct improvements on a Unit in The Subdivision, please bear in mind that each year's taxes are based on the state of the property on July 1 of the preceding year. Hence, new construction may not be taxed at its post-completion state for as much as two years after closing. If the construction was completed on July 1 of the preceding year but the dwelling was not the principal residence of its owner on that date then taxes for the upcoming year would be issued based on full completed value and at the highest possible levy rate.

20.8 Example of tax calculation:

$(\text{Appraised value on June 30 of preceding year}) * 0.60 =$
--

Assessed Value
Assessed Value * Levy Rate = Tax
If the Unit was the principal residence of its owner on the Assessment date, the tax is reduced by 50%.

If a Unit with dwelling is worth \$300,000 and is the principal residence of its owner of the assessment date, it would be taxed as Class 2 and based on the 2006 Union Tax District levy rate of .021312 the tax would be calculated as follows:

$$\$300,000 * 0.60 * .021312 = \$3,836.16 \times .5 = \$1,918.08 \text{ per year}$$

If a Unit with dwelling is worth \$300,000 and it is NOT the principal residence of its owner on the assessment date it would be taxed as Class 3 and based on the 2006 Union Tax District levy rate of .021312 the tax would be calculated as follows:

$$\$300,000 * 0.60 * .021312 = \$3,836.16 \text{ per year}$$

Therefore, you should notify the Assessor's office at (304) 291-7279 as soon as you purchase real estate and as soon as you make the real estate your principal residence. Failure to contact the Assessor in a timely manner may result in your taxes being assessed at twice the appropriate rate for subsequent years.

- 20.8 Individuals with certain disabilities and individuals over the age of 65 are eligible for a Homestead exemption on Class 2 properties. This exemption causes the assessed value to be reduced from 60% of the appraised value to 40% of the appraised value. You must contact the Assessors' Office on the second floor of the Courthouse and personally apply for the Homestead Exemption.
- 20.9 In the event that you have any questions with regard to taxation, you may contact the Sheriff's Tax Office at (304) 291-7244.

This Public Offering Statement and the Exhibits hereto, submitted August, 2007, by:

Backwater Properties, LLC,  
A West Virginia limited liability company,