

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

**FOR**

**Falling Water**

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

THIS SECOND AMENDMENT DECLARATION OF COMMON INTEREST COMMUNITY FOR FALLING WATER, effective the 30th day of August, 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 fro 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, and First Amendment thereto to be recorded immediately preceding this instrument ("Declaration").

Whereas, it was ascertained that certain references Article X Construction Standards, of the Declaration provided for limitations applicable to Sections 1A and 1B but omitted references to Section 1C or 1D, or in the alternative, Units in Sections 1C and 1D are specifically identified as situate in Section 1A, and Declarant desires to correct said reference issues by this instrument.

**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 X of the Declaration to provide for Sections 1C and 1D as follows with the specific modifications shown in italics and bold type:

**X**      **CONSTRUCTION STANDARDS (Building Control Standards or "BCS"):**

8.      No out-building, detached structure or detached garage in Phase 1 shall be constructed to a height greater than set forth on the following table. For the purpose of this document, the ground level of any detached structure or detached garage shall be the level of the lowest entrance or doorway to the Main Floor of the structure. The BCC is vested with absolute and unilateral discretion to make final determinations as to what shall constitute the Main Floor of each structure or garage.

PHASE	STRUCTURE	MAXIMUM HEIGHT
Phase 1, Sections <i>A, C and D</i>	Detached garage	2 stories but not higher than the highest point of the dwelling on the Unit.
Phase 1, Section <i>s A, C and D</i>	Any detached structure other than a garage.	1 story not to exceed 18 feet.

Phase 1, Section B	All structures other than dwellings	Not higher than the highest point of the dwelling on the Unit
--------------------	-------------------------------------	---

9. No dwelling in Phase 1 shall contain less than the minimum square feet, of total finished living area as set forth in the following table. For the purpose of calculating “finished living area” walk-out basements which are finished with dry-wall may be included in area calculations but non-walk-out basements, porches, decks and finished garages may not be included in such calculations.

PHASE	TYPE OF DWELLING	MINIMUM AREA
Phase 1, Sections A, <i>C and D</i>	Ranch or Single Story Dwelling	2000
Phase 1, Sections A, <i>C and D</i>	Multi-Story Dwelling	2400
Phase 1, Section B	Ranch or Single Story Dwelling	2800
Phase 1, Section B	Multi-Story Dwelling	3500
Future Phases	Townhomes	1800
Future Phases	Patio Homes	1800

10. No out-building, detached structure or detached garage in Phase 1 shall contain more than the maximum square feet of total above-ground enclosed area and of total structure foot print, than as set forth in the following table.

PHASE	DETACHED STRUCTURE	MAXIMUM FOOTPRINT	MAXIMUM TOTAL AREA (ABOVE GROUND)
Phase 1, Sections A, <i>C and D</i>	Garage	576	1152
Phase 1, Sections A, <i>C and D</i>	All other structures.	100	100
Phase 1, Section B	Garage	900	1800
Phase 1, Section B	All other structures.	400	800

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.

Trees	Phase 1 Sections <i>A, C and D</i>
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.

45. Declarant and BCC each reserve the right to designate the position and facing of any dwelling constructed on any Unit. With regard to any Unit which is contiguous to more than one street in the Subdivision, BCC and Declarant may designate which street the dwelling faces and which street the driveway servicing the dwelling intersects. The following table sets forth the “front” of the following Units:

Phase	Unit	Designated “Front” of Unit
1B	10,18, 19, 27	Special
1B	11-17 and 19-26	Regular
1A, <i>C and D</i>	1-4, 28-33, 41, 44-49	Regular
1A, <i>C and D</i>	5, 9, 34, 43	Special
1A, <i>C and D</i>	35-40, 42	Cul-De-Sac
1A	7-8	Cul-De-Sac

Special facings are Units in which the Declarant or Association shall specify the direction that the dwelling faces for the purpose of maintaining the overall appearance of the Subdivision.

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 30th 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 \_\_\_\_\_, in his capacity as manager of Backwater Properties, LLC, a West Virginia limited liability company.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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