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1347-169**DECLARATION OF COMMON INTEREST COMMUNITY****FOR****Falling Water****a residential Planned Community in  
Monongalia County, West Virginia**

THIS DECLARATION OF COMMON INTEREST COMMUNITY FOR FALLING WATER, effective the 22nd day of July, 2007, by Backwater Properties, LLC, a West Virginia limited liability company, (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements for itself and its grantees and assigns, hereby make the following declaration:

**I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP:**

Declarant does hereby submit as a Planned Community the real estate dedicated hereby, together with all roadways, improvements and other permanent fixtures now and later situated thereon and thereof and all rights and privileges pertaining thereto (hereinafter referred to as "Subdivision") to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act" or "36B"). Notwithstanding the fact that Phase I of the Subdivision is hereby dedicated as a Planned Community form of CIC, Declarant expressly reserves the right to create and dedicate one or more future Phases of the Subdivision as, or to merge the Subdivision with, a Condominium form of CIC (in the event that Townhomes or Patio homes are dedicated or developed as a future Phase of the CIC or as a contiguous independent CIC).

**II. SUBDIVISION NAME AND LOCATION:**

The name by which this Subdivision is to be identified is Falling Water. The property comprising the Subdivision is located in Union Tax District, Monongalia County, West Virginia.

**III. THE LAND:**

The Subdivision is being developed in multi-lot Phases and only one such Phase, namely Phase 1 is dedicated to the Subdivision hereby. Additional real estate comprised of Units, Phases, Common Elements and Limited Common Elements may be added to the Subdivision as additional Phases by subsequent dedication and the recordation in the Monongalia County Clerk's Office of amendments to this instrument and additional Maps and Plats as exhibits to such amendments.

There are 79 Units in Phase 1, which are dedicated as follows:

- Phase 1, Section A, 9 Units (Units 1-9)
- Phase 1, Section B, 18 Units (Units 10-27) (Also known as the "Estates")
- Phase 1, Section C, 16 Units (Units 28-43)
- Phase 1, Section D, 36 Units (Units 44-79)

All Units in Phase 1 do not include dwellings. Units in future Phases may be improved by either attached Townhouse or Patio Home dwellings or detached dwellings. All Units in all Phases are limited exclusively to single family residential uses as set forth below.

Phase 1, of the Subdivision is hereby dedicated as depicted and shown on that certain Map or Plat 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** through **229A**, inclusive, which said map or plat is incorporated herein by reference for descriptive and all other pertinent purposes ("Plat"). For the purposes of amendments to this instrument the term "Plat" shall include not only the original drawings as aforesaid but also any amendments or modifications thereto by the Declarant or its agents. ✍

<b>Total acreage of parent tracts</b>	<b>194.45</b>
<b>Total acreage dedicated as Phase 1 Section A (Lots 1-9)</b>	<b>15.3144</b>
<b>Total acreage dedicated as Phase 1 Section B (Lots 10-28)</b>	<b>49.6682</b>
<b>Total acreage dedicated as Phase 1 Section C (Lots 29-49)</b>	<b>26.5538</b>

<b>Total acreage dedicated as Phase 1 Section D (Lots 50-79)</b>	<b>33.3463</b>
<b>Total acreage of dedicated Common Elements in Phase 1</b>	<b>9.6294</b>
<b>Remaining parent tracts acreage not dedicated as Falling Water Subdivision but which may be dedicated as future Phases, Common Elements or Units</b>	<b>59.9379</b>

Phase 1 is depicted on the Plat which is incorporated as **Exhibit A** and recorded as aforesaid and is comprised of part of the real property owned by Declarant and described on **Exhibit B**. Declarant reserves the right to develop some or all of the real estate described and identified on **Exhibit B**, and also all adjoining tracts of real estate described on **Exhibit C**, as additional Phases of the Subdivision, and to create additional Units, Common Elements and Limited Common Elements thereon from time to time by recording amendments to this Declaration and recording additional maps or plats. The Declarant reserves the privilege but has no duty to exercise such rights and such future Phases, Units, Common Elements and Limited Common Elements, if dedicated to the Subdivision, shall be subject to the covenants, restrictions, limitations and conditions set forth in the amendments creating each Phase. Declarant reserves the right to impose additional restrictions on such future Phases, or to impose appropriate covenants different from those set forth herein, with regard to Units, Common Elements and Limited Common Elements as may be reasonable or beneficial to Declarant as more particularly set forth herein below. Specifically, the topography, characteristics, nature, features of the land, and the type and nature of Units permitted in future Phases, may result in significant differences between covenants applicable to Phase 1 and covenants applicable to future Phases, however, all future Phases shall be limited exclusively to residential use.

Any portion of the real estate described in **Exhibits B and C** which is not dedicated as a Phase 1 in the Subdivision is not subject to this Declaration except to the extent that the declarant has: (1) reserved the right to add such real estate to the Subdivision at a later date; (2) Declarant has reserved rights, rights-of-way and easements in this Declaration for the benefit of said real estate.

#### **IV. DEFINITIONS:**

Definitions of some common terms further defined and used herein and referred to in other related documents are as follows, unless, as used elsewhere, the text or context in which such terms as used indicates another contrary or more specific definition:

1. **ABCC:** One of two Building Control Committees of the Association. The ABCC is appointed by the Association for the purpose of administering aspects of this Declaration

with regard to Units to which initial improvements have been completed and which are suitable for occupancy.

2. Association: Falling Water Property Owners Association, Inc., a non-profit corporation, its successors and assigns, which Association of Unit Owners is organized as and shall be the governing body for the maintenance, repair, replacement, administration and operation of the Subdivision.
3. Board: The Board of Directors of the Association herein designated to act on behalf of the Association as the directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither of which Articles or By-Laws may be inconsistent with this Declaration and this Declaration shall govern in the event of any dispute or conflict between such documents.
4. Builder: Any entity which purchases one or more Units for the purpose of constructing improvements for resale to consumers in the ordinary course of its business, or which purchases one or more parcels of land for further subdivision, development and/or resale in the ordinary course of its business. Declarant reserves the right to determine when and whether a purchaser qualifies as a Builder.
5. Building Control Committee and BCC: Two committees of the Association collectively appointed to set and maintain construction standards in the Subdivision (including Construction Standards as defined herein and such Construction Guidelines as may be from time to time established by the Declarant or Association) and to approve or disapprove construction plans and specifications for all buildings, structures, driveways, walls, fences, dwellings, drainage systems, utility systems, walkways and all other improvements of all sorts, including trees and foliage, which may be erected, placed or cultivated on any Unit. One BCC is a committee appointed by the Declarant ("DBCC") and the second is a committee appointed by the Association ("ABCC"). Declarant's right to appoint all members of the DBCC is generally described as "BCC Rights" (hereinafter defined). The DBCC is vested with authority, generally, over the initial construction of dwellings and initial completion of Unit improvements sufficient for occupancy. When the initial construction of the dwelling and appurtenant improvements to a Unit is completed, and the Unit is suitable for occupancy, approval authority with regard to the Unit automatically transfers from DBCC to ABCC with regard to all subsequent matters pertaining to the Unit. To the extent that authority with regard to any Unit at any given time may be vested in either DBCC or ABCC, both BCCs are sometimes hereinafter collectively referred to herein as "BCC" with determinations as to actual authority over a given Unit at a given time to be subjectively determined based on the completion status of the Unit.
6. BCC Rights: The Declarant's right to appoint all members of the DBCC so long as

Declarant owns at least one Unit in the Subdivision. Because BCC Rights may be voluntarily surrendered by Declarant at any time and are independent rights reserved to the Declarant in order to protect Declarant's business interests and investments in the Subdivision. BCC Rights are independent and separate from Declarant's initial control of the Association, which said control must terminate at an earlier date as set forth hereinbelow, and may continue after termination of Declarant's control of the Association.

7. By-Laws: The By-Laws of the Association as the same may be amended from time to time and which govern the daily operation of the Association to the extent not specified in the Declaration and Articles of Incorporation. To the extent that there is any dispute or conflict between the provisions of the By-Laws and the Articles of Incorporation, the Articles of Incorporation shall govern.
8. Common Elements: All dedicated portions of the Subdivision other than the Units, including, without limitation, all roadways, all easements dedicated or reserved to the Association, and all the improvements and appurtenances thereto, central utilities and services, and areas of common use. References to "Common Elements" on the Plat are solely for general information, and do not define or limit the Common Elements contrary to this document. Rather, depictions on the plat are physical representations of the actual metes and bounds of the Common Elements dedicated hereby. Limited Common Elements, as hereinafter defined, are a subvariety of Common Elements.
9. Common Expense(s): Expenditures made by, or financial liabilities of, the Association, including but not limited to costs incurred by the Association in the management, operation, maintenance and upkeep of the Common Elements and Limited Common Elements. Common Expenses also include the cost of insurance, administrative fees, taxes and all other costs reasonably incurred by the Association in fulfillment of its obligations hereunder. Limited Common Expenses, as hereinafter defined, are a subcategory of Common Expenses.
10. Common Expense Liability: The liability apportioned to each Unit by this Declaration for the Common Expenses of the Association.
11. Common Interest Community: A Common Interest Community is a group of Units, for which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvements of real estate described in this Declaration other than a Unit. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options. The Common Interest Community is only those Units, Common Elements and Limited Common Elements which have been dedicated to the common interest community form of ownership by recordation of this Declaration, or amendment to this Declaration

(including appurtenant maps or plats). Land which may be dedicated in the future is not part of the Common Interest Community.

12. Construction Guidelines: Rules and Regulations of the Association pertaining to changes, modifications or improvements made to the exterior of a Unit or dwelling. Construction Guidelines differ from Construction Standards set forth herein to the extent that Construction Guidelines will be implemented from time to time by the Association or Declarant after the recordation of this document.
13. Construction Standards: Protective and restrictive covenants governing, limiting and setting the criteria for any change, modification or improvement made to the exterior of a Unit or dwelling. Construction Standards are set forth in Article X hereinbelow.
14. DBCC: One of two Building Control Committees of the Association. The DBCC is appointed by the Declarant for the purpose of administering aspects of this Declaration with regard to initial improvements to Units, initial construction of dwellings and improvements, required to make any Unit suitable for occupancy. The DBCC will continue so long as Declarant owns at least one Unit in the Subdivision, or until terminated by Declarant, at which time there will be only one BCC which is appointed entirely by the Association.
15. Declarant: Backwater Properties, LLC, and its successors and assigns, excluding as successors and assigns all purchasers and lien holders of any Unit and their successors and assigns.
16. Declaration: This Document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC and portions thereof which may be added from time to time.
17. Dedicate, Dedication, Dedicated: Recordation in the office of the Clerk of the County Commission of Monongalia County, West Virginia, of this Declaration or any amendment hereto whereby Declarant makes real property part of one or more Phases of the Subdivision and by operation of said Declaration or amendment, the real property must be owned, held, transferred, sold, granted, conveyed, leased, and occupied subject to the conditions, covenants, restrictions, exceptions, reservations, easements, rights of way, and limitations set forth and contained in this Declaration or any amendments hereto.
18. Development Rights: Any rights or combination of rights reserved by Declarant in the Declaration to (1) add real estate to a Subdivision; (2) create Units and Common

Elements within the Subdivision; (3) subdivide Units or convert Units into Common Elements; (4) add real estate to, or withdraw real estate from, the Subdivision, or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units.

19. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.
20. Dwelling: A residential structure suitable for use and occupancy as the principal residence of one or more individuals. Detached Dwellings permitted in the Subdivision are houses. Attached dwellings which may be permitted in one or more Phases are Townhomes and possibly Patio Homes. Detached Patio Homes are houses. The term Dwelling specifically excludes garages and all other out buildings or structures even if the same are habitable.
21. Estates and Falling Water Estates: Those Units Numbered 10-28, inclusive, in Phase 1, Section B of the Subdivision, including the Limited Common Elements and gate and other improvements situate in Phase 1, Section B.
22. Kelly Covenants: Those covenants, restrictions and agreements applicable to lands dedicated as, or which may be dedicated as part of, the Subdivision, as set forth in two deeds from Stephen L. Kelly *et al.* to KMD Corporation and Declarant which are both dated March 27, 2006, and which are recorded in Deed Book 1315 at Page Nos. 305 and 315.
23. Kelly Easements: Those rights-of-way and easements benefitting, encumbering and generally affecting lands dedicated as, or which may be dedicated as part of, the Subdivision, as set forth in two deeds from Stephen L. Kelly *et al.* to KMD Corporation and Declarant which are both dated March 27, 2006, and which are recorded in Deed Book 1315 at Page Nos. 305 and 315. To the extent that easements exclusively benefitting KMD's property are extinguished hereafter by KMD, the same shall automatically merge and terminate to the extent reserved from Units in this Declaration.
24. Governing Documents: Collectively and individually, this Declaration (including the Construction Standards set forth herein) and all Exhibits and amendments hereto, the By-Laws, Articles of Incorporation, Construction Guidelines hereafter specified by the Association or Declarant, and Rules and Regulations of the Association.
25. Limited Common Elements: Those Common Elements which are expressly or impliedly dedicated for use by and benefit of less than all Units.
26. Limited Common Expense: Those Common Expenses which are attributable exclusively

to Limited Common Elements. Limited Common Expenses are payable by only those Units which are allocated use, enjoyment and benefit of Limited Common Elements.

27. Limited Common Expense Liability The liability apportioned by this Declaration to Units entitled to use of Limited Common Elements for the cost of the Limited Common Expenses.
28. Member: Any and every person or entity which is a Unit Owner as hereinafter defined.
29. Patio Homes: A Unit which contains one (1) dwelling and which dwelling may or may not be attached to one (1) or more other Units. Patio Homes may be smaller than the standard detached Units permitted in the Subdivision and may be subject to different standards with regard to matters including, but not limited to, dwelling size, appearance, color, materials, design, Unit size, set-backs, and all other matters which Declarant may decide in its exclusive discretion.
30. Phase: A physically designated boundary within the Subdivision which contains at least one (1) Unit and possibly Common Elements and/or Limited Common Elements and which was created by this Declaration or an amendment hereto. The term "Phase" is utilized for various purposes including intra-Phase covenant variations, allocations of interests, and applicability of Development Rights and Special Declarant Rights.
31. Plats: Those plats of survey and plans of the Subdivision heretofore described and recorded in the aforesaid Clerk's Office, together with those plats of the Subdivision hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.
32. Pond: Any surface water, storm water or sediment retention or detention facility constructed or installed in or on any Common Element or Common Elements by Declarant.
33. Section: A physically designated boundary within a Phase of the Subdivision which contains at least one (1) Unit and possibly Common Elements and/or Limited Common Elements and which was created by this Declaration or an amendment hereto. The term "Section" is utilized for various purposes including intra-Phase covenant variations and applicability of Development Rights and Special Declarant Rights. For the purpose of applicability of the Act, all "Sections" are also "Phases".
34. Special Declarant's Rights: Rights expressly reserved for the benefit of a Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and signs advertising the Subdivision and model Units and model homes; (iv) use easements



through the Common Elements 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 Subdivision 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's control; and (vii) to maintain and exercise BCC Rights subject to other provisions hereof.

35. Storm Water Facility : The Subdivision contains a comprehensive storm water and sediment control facility and appurtenant improvements designed by Volmer Associates, LLP, which are situate on Units, Common Elements and Limited Common Elements. The Storm Water Facility includes by various drains, pipes, ditches, catch basins, ditches, swales and other mechanisms. Any portion of the Storm Water Facility installed by the Declarant is a Common Element allocated to all Units, and owned and maintained by the Association for the benefit of all Units. To the extent that all, or any portion of the Storm Water Facility, or any component thereof, is subject to any governmental regulation, permit or bond, Declarant reserves the right to at anytime during development, unilaterally assign the same to Association, at which time, Association shall be liable for compliance with further all governmental regulations and requirements.
36. Townhome: A Unit which contains one dwelling and which dwelling may be attached to one or more contiguous dwellings inside a building which spans multiple Units.
37. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described. Except in the case of Townhomes or Patio Homes where the dwelling may be a Unit, a Unit shall be one lot. EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON ELEMENTS, AND A FRACTIONAL LIABILITY FOR COMMON EXPENSES AS DETERMINED BY ARTICLE VIII.
38. Unit Owner: Any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding an interest merely as security for performance of an obligation, and including, in respect to all unsold Units, as a Unit Owner the Declarant.
39. Wetlands: Certain portions of the Subdivision as depicted and shown on the Plats which are designated by governmental authorities as protected and regulated "wetlands" areas, including streams. All Wetlands, whether Common Elements, Limited Common Elements or Units, are subject to specific permits and/or bonds which Declarant may at any time unilaterally assigned to the Association and must thereafter be maintained by the Association in compliance with all governmental requirements. No Unit Owner may utilize or impact any Wetlands area in violation of any applicable law, regulation, permit,

bond, governmental requirement, or provisions hereof.

**V. THE DECLARANT AND DEVELOPMENT OF THE SUBDIVISION:**

1. Declarant is the owner of all land dedicated as Phase 1 in the Subdivision and some of the land which may be dedicated as one or more future Phases of the Subdivision. The Subdivision is comprised of Units or lots which will eventually be owned by individuals and Common Elements such as roadways, drainage system and easements which will benefit all Units and will be owned by the Association. Declarant will complete paving to the roadways, all improvements to the Common Elements, and installation of underground utilities to each unit as set forth below. With the exception of those services to be provided by Declarant, the Unit Owners are responsible for all maintenance, improvement and upkeep of the Units and the Association is responsible for all maintenance, improvement and upkeep of the Common Elements. Phase 1 is also comprised of four (4) Sections, identified as Section 1A, 1B, 1C and 1D as shown on the Plat.
2. Any land dedicated as a Common Element will be deeded either in fee or as an easement by Declarant to the Association prior to completion of the Subdivision and it is not necessary that Declarant complete all improvements to Common Elements prior to delivery of such deed.
3. Declarant Rights: Declarant excepts and reserves from the land dedicated to the Subdivision, the following perpetual rights both appurtenant to its ownership of Units in the Subdivision and also as appurtenant to its vested interest as Declarant and owner of land which may be, but has not yet been, dedicated for development of the Subdivision:
  - A. To complete improvements including, but not limited to those improvements indicated on plats and plans filed with the Declaration;
  - B. To maintain sales offices, management offices, and signs advertising the Subdivision, Units and models;
  - C. To use easements through the Common Elements, Limited Common Elements and Units for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision and to grant others the right to do so;
  - D. To merge or consolidate a Subdivision with another Subdivision of the same form of ownership;
  - E. To appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant's control;

- F. To appoint or remove all members of the DBCC during any period that Declarant owns at least one (1) Unit in the Subdivision (the DBCC will terminate and all BCC rights vested thereto will pass to the ABCC not later than when Declarant no longer owns any Unit in the Subdivision);
- G. To appoint and remove a majority of members of either BCC during any period that Declarant controls the Association. Also the right to at any time assign all BCC Rights, in whole or in part to the ABCC;
- H. To approve all revisions and modifications to the Construction Guidelines and Rules and Regulations during any period that Declarant owns at least one (1) Unit in the Subdivision;
- I. To add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised with regard to any tract or parcel of real estate described herein or otherwise identified on **Exhibits B and C**;
- J. To create Units, Common Elements and Limited Common Elements;
- K. To subdivide Units, combine Units, adjust boundaries between Units or convert Units into Common Elements or Limited Common Elements;
- L. To withdraw Common Elements or Limited Common Elements, or any part thereof, and develop the same into Units or add the same to Units;
- M. To store construction equipment and materials on Common Elements, Limited Common Elements, or Units so long as Declarant owns at least one (1) Unit, notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from the same;
- N. To maintain construction signage, contractor signage, broker signage, material supplier signage, financier signage, or other advertisements on Units, Common Elements and Limited Common Elements, so long as Declarant owns at least one (1) Unit, notwithstanding any prohibition herein preventing a non-Declarant Unit Owner from the same;
- O. The right to enter into and onto any Common Element, Limited Common Element or Unit and fix, modify and change the grades and elevations of easements and rights-of-way and all streets within the Subdivision;
- P. To exercise a first right of refusal with regard to any top or other soil removed from any Unit within the Subdivision so long as Declarant owns at least one (1)

Unit,. In the event that Declarant shall exercise such right, the soil shall be deposited by the Unit Owner in such area of said Subdivision as may be determined by Declarant. In the event that Declarant does not desire said soil, it may then be deposited or disposed of by the Unit Owner elsewhere; and

- Q. To deed and otherwise transfer ownership of Units, Common Elements and Limited Common Elements to the Association.
- R. To, for a period of twenty (20) years from the date of this Declaration, grant easements and licenses permitting any individual or entity to utilize utilities and utility systems, stormwater management systems, and infrastructure servicing and benefitting the Subdivision in connection with the development, use, and enjoyment thereof.
- S. To construct and maintain signage, traffic controls and other necessary improvements within the set backs and easements reserved herein, which such improvements specifically include, but are not limited to, stop signs, speed limit signs and signage advertising the Subdivision and Units therein.
- T. To unilaterally assign permits and regulatory agreements pertaining to the Common Elements, Limited Common Elements or improvements thereto, to the Association.

Any and all Development Rights and Special Declarant Rights are and shall, except as set forth to the contrary, be perpetual in duration, non-exclusive, alienable and voluntarily terminable by the Declarant, all in whole or in part. Provided, however, the foregoing Paragraphs I, J and K will expire on the 20<sup>th</sup> Anniversary of this Instrument.

4 Any or all of Declarant's rights and obligations set forth in this Declaration or the Governing Documents may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary. To the extent that any Development Right or Special Declarant Right is assigned or transferred by the Declarant, the transferee is solely liable for any liabilities arising from the exercise of such rights and Declarant shall not be liable for any injury, damage or harm caused by such post-transfer exercise.

**VI EASEMENTS AND RIGHTS-OF-WAY:**

Declarant excepts and reserves the following easements, rights-of-way and other rights:

1. Roadway and Common Element Use Easements: Declarant reserves unto itself its licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights as follows:

- A. To make vehicular and pedestrian use of all roads in the Subdivision;
- B. To utilize all cables, conduits, pipes, gas lines, sewers, water mains and other improvements for the conveyance, transportation, distribution and use of electricity, telephone equipment, gas, sewer, water, drainage, and other public or private conveniences or utilities within the right of way of the roads and Common Elements of the Subdivision. Declarant reserves the aforesaid easement and rights-of-use for the benefit of Declarant and for any real property contiguous to the Subdivision and all real property which Declarant owns or may hereafter acquire. For the purpose of this document, land is contiguous to the Subdivision and may be added to or dedicated as future Phases of the Subdivision notwithstanding the fact that the land is physically separated from the Subdivision by a State or County Road. Therefore, Declarant expressly reserves the right to add to the Subdivision non-contiguous tracts which are located adjacent to the Subdivision, within 5000 feet of the subdivision or on the south side of Sunset Beach Road.

2. Boundary Perimeter Easements: Declarant reserves unto Association, Declarant and all public utility providers servicing the Subdivision, any portion thereof or any lands contiguous thereto, and their respective licensees, successors and assigns, perpetual, alienable and releasable non-exclusive easements and rights of way across all portions of all Common Elements and ten (10) feet wide along: (a) each side of all road rights-of-way; (b) along each boundary of any non-Townhome Unit; (c) along the front and rear boundaries of all Townhome Units; and (d) as otherwise shown on any Plat recorded by Declarant imposing any easement over or across land owned by it. Such reserved easements are for the purpose of:

- A. installation, construction, laying, extension, maintenance, operation, inspection, repair, replacement, alteration, addition, removal, reconstruction and monitoring of:
  - 1. utility lines, conduits, pipes, wires, mains and other reasonable and necessary means of transmitting and transporting general utilities, including, but not limited to, gas, water, electric, telephone, television, sewer, and other common utilities; and

2. lines, mains, drainways, ditches, pipes, culverts and other reasonable means of transporting, collecting and disbursing surface water, storm water and drainage within the Subdivision, including the Stormwater Treatment facility and appurtenances thereunto belonging; and
  3. traffic and directional signage and signs advertising Units and the Subdivision and its various Phases, Common Elements, Limited Common Elements, appurtenances and improvements.
- B. cutting and installing the Storm Water Facility and other mechanisms for surface water collection, control and transportation, whenever and wherever such action may appear to Declarant or the Association to be necessary in order to maintain reasonable standards of property value, health, safety and appearance.
  - C. installing, constructing and completing the infrastructure and improvements to serve the Subdivision, including, but not limited to, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, storm water drainage systems, irrigation systems, sanitary sewer systems, street lights and signage;
  - D. inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements to the Subdivision.
  - E. exercising any and all powers, rights, and authority reserved to Declarant and/or to the Association herein.
3. Exercise of Easement Rights: Each easement, right-of-way and right reserved to Declarant, Association and public utility providers, as aforesaid expressly includes the right to cut any trees, tree roots, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations, surface water control and to maintain reasonable standards of health, safety and appearance. The right to cut and remove foliage as aforesaid expressly includes the right, without liability, to cut, remove and dispose of any tree, branch, root, bush, shrubs or other foliage notwithstanding the fact that less than the entire tree, bush, shrub, branch, root or foliage is situate within the easement and some portion of same is situate outside of the easement. Such right may be exercised by any licensee of Declarant or Association but this reservation shall not be considered an obligation of Declarant to provide or maintain any such drain system, utility or service. All drainage systems installed by Declarant are owned and maintained by the Association. All drainage systems installed by any Unit Owner are owned and maintained by the Unit Owner. There is further reserved the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to remove any improvement located therein or thereon whenever and wherever such action may appear to Declarant and/or Association to be necessary. Neither Declarant nor

Association shall be liable to any Unit Owner for damage by reason of the exercise of these easement rights, including the cutting of any trees, tree roots, bushes, foliage, brush or shrubbery, gradings of the soil, or other similar action. To the extent that any trees, tree roots, bushes, foliage, brush, shrubbery, soil or improvement which is damaged or removed is located partially within the aforesaid easement, the same shall be deemed to be entirely within said easement for the purposes of this paragraph. Declarant and/or Association may exercise any right, power or authority with regard to same, without liability to the Unit Owner by reason of trespass, conversion or any other tort notwithstanding the fact that said tree, foliage, brush and/or improvement is not entirely located within the aforesaid easement. All Unit Owners by acceptance of a deed for a Unit, expressly waive all claims and causes of action against Declarant or Association resulting from or as a result of the exercise of the foregoing rights by the Declarant or Association. Said easements and rights-of-way are reserved to Declarant and Association for the benefit of Declarant and Association in their exercise of the powers and authorities set forth herein below.

4. Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Element or Limited Common Element and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Unit Owner claiming the benefit of such easement. Declarant may not grant such easements pursuant to this Paragraph as: (A) would render a Unit unsuitable for construction of a dwelling; or (B) would lie within any existing dwelling.

5. Right to Grant Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements in, over and across Units, Common Elements and Limited Common Elements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property which is within the Subdivision, or any property which Declarant has reserved the right to incorporate into the Subdivision as future Phases thereof. Declarant may exercise such right and power for the benefit of such additional property regardless of whether such additional property is dedicated as future Phases of the Subdivision. In the event that such easement is over or through a Unit, the Owner of the Unit to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Unit Owner of the burdened Unit, which approval shall not unreasonably be withheld, delayed or conditioned.

6. Minimal Interference. All work associated with the exercise of the easements described in subsections 1, 2, 3, and 5, shall be performed in such a manner as to reasonably minimize

interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Unit Owner or occupant.

7. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Elements and Limited Common Elements for the purposes of enjoyment, use, access, and development of the Subdivision and all real property which Declarant has reserved the right to incorporate into the Subdivision, whether or not such property is made subject to this Declaration. The lands to which Declarant reserves such easement are described on **Exhibits B and C**. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements and Limited Common Elements for construction of roads and for connecting, laying, building, using, maintaining, and installing any and all utilities on such property and that Declarant shall cause same to be reasonably restored. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Elements and Limited Common Elements as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property or any portion thereof benefitting from such easement which is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along roadway providing access to such property.

8. Easements for Maintenance, Emergency and Enforcement. An easement is reserved to the Association whereby the Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Unit Owner.

9. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the property within the Subdivision, including Units, and a perpetual, nonexclusive easement of access throughout the Subdivision to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.



10. Transfer of Easement Rights: Any or all of the above easement rights reserved to Declarant may be transferred in whole or in part to other entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and such transferee. Provided, however, that Declarant may permit individuals or entities to exercise, on a limited basis, any right reserved to the declarant in this Declaration where Declarant does not intend to transfer such right in its entirety and in such case no written assignment shall be necessary.

11. Miscellaneous Easements: To the extent that any drainway, access way, road, utility or other right-of-way or easement is shown on any Map or Plat, and also to the extent that any utility system, drainage system or component thereof is shown on any Map or Plat, express, alienable, transferrable and non-exclusive rights-of-way and easement are reserved to Declarant and Association for same.

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

13. Kelly Easements and KMD Easements: certain prior rights-of-way and easements were granted to Kellys and KMD by instruments of record and are reserved as encumbering Units and Common Elements subject to the terms and conditions of the instruments creating same. All of such easements are also reserved to Declarant and Association. Provided, that to the extent certain easements burdening Unit and benefitting KMD shall hereafter terminate, the same are released by Declarant and Association simultaneous with such termination by KMD.

#### **VIII COMMON ELEMENTS/EXPENSE ALLOCATIONS:**

Common Elements are all land, and improvements thereon, owned by the Association. Common Elements are dedicated for use by all Unit Owners and, when completed by the Declarant shall be owned by and under the control and supervision of the Association. The use of all Common Elements is subject to the Governing Instruments including, but not limited to, such Rules and Regulations as may be, from time to time, promulgated by the Association.

Each Unit is apportioned fractional equitable ownership of the Common Elements and fractional liability for the costs of ownership, maintenance, upkeep and operation of Common Elements. This liability is part of the Common Expense of the Association. The precise formula for calculating the Common Expense Liability and Limited Common Expense Liability allocated to a Unit is set forth herein below.

Limited Common Elements are a variety of Common Elements and are owned by the Association. Limited Common Elements, are restricted to use by less than all Units and equitable ownership and Common Expense Liability for the Limited Common Elements apportioned only among those Units entitled to use of same. The term "Common Elements" as used herein includes Limited common Elements in the absence of specific contextual language to the contrary.

Neither the Building Control Committee nor the Association are vested with any plan, construction or other approval rights with regard to the completion and improvement of the Common Elements and Limited Common Elements by the Declarant or with regard to exercise of any Development Rights or Special Declarant's Right.

Mystic Drive is a Limited Common Element right-of-way allocated exclusively to all Units in the Estates, Phase 1, Section B. The gate which is situate, or may be constructed, within said right-of-way near the intersection of Mystic Drive and Falling Waters Lane is a Limited Common Element allocated exclusively to the Estates Units. All matters pertaining to the use, maintenance, operation, upkeep, improvement, repair and management of the Estates Limited Common Elements are subject to determination and approval by the Estates Unit Owners by a simple majority present at any meeting of the Estates Unit Owners duly noticed by at least 20% of said Owners with not less than twenty (20) days notice. Provided, however, that all such matters are also subject to the BCC approval requirements and BCG requirements as set forth hereinbelow. The Estates Unit Owners are granted broad discretion with regard to such matters and the BCC and Association are vested with authority only as to technical compliance with the Governing Instruments.

The Subdivision contains or may contain various Common Elements which are generally described as follows:

- 1 Streets. The streets and roadways are Common Elements allocated to all Unit Owners and which must be completed by Declarant. Declarant covenants that the entrance way and streets as designated on the plats of the Subdivision shall be paved and completed not later than six (6) months after the sale by Declarant of its final Unit in the Subdivision. Prior to the completion of all Units in the Subdivision, Declarant shall maintain high quality gravel roads and/or base-coat (type II aggregate asphalt) in the Subdivision. The completed streets shall be paved to a general width of not less than sixteen (16) feet and completed pavement shall consist of a total average compacted thickness of two (2") inches of road base (type II aggregate asphalt) and a one (1") inch average thickness wearing course (type I aggregate asphalt). Roadways will not be paved to Department of Highways standards. Declarant may complete paving of the streets or roadways in sections and at differing times. The Association shall be liable for all future paving and maintenance of any section of street or roadway beginning at the time that the "wearing" course of type I aggregate asphalt is applied to same.

- 2 Storm Water Facility: The Storm Water Facility in all Phases is a Common Element, dedicated to all Units and may not be modified, impacted, or changed in any manner by any Unit Owner without the prior written consent of the Association, and if applicable, then only as may be supported by sufficient engineering data and an Engineer certification as to the sufficiency of same.
- 3 Townhouse and Patio Home Limited Common Elements: If dedicated in future Phases, certain portions of the Townhouse Units and Patio Home Units may be either express or implied Limited Common Elements. Express Limited Common Elements are those areas specifically so designated by this instrument, and amendment hereto, or as shown on a plat and are allocated to certain Units. Implied Limited Common Elements are certain fixtures, amenities and improvements which are either located partially within one (1) Townhouse Unit or Patio Home Unit and partially outside the Unit; partially within multiple Townhome or Patio Home Units or else are outside the Townhouse Unit or Patio Home Unit but dedicated exclusively for the benefit of the Unit.
- 4 Wetlands: Certain portions of Common Elements and/or Limited Common Elements are Wetlands as designated by state and federal agencies and subject to regulation by various governmental entities. The Wetlands are an asset to the Subdivision and enhance the character and quality of life in the community. The Association is charged with maintaining all Common Element Wetlands and all Wetlands governmental permits as required by law. No Unit Owner may utilize any Wetlands area in violation of any applicable law, requirement or permit, nor allow any third party present within the Subdivision at the Unit Owners' request, direction or invitation to do so.
- 5 Joint Driveways: Units 29 through 32 and 40 through 42 in Phase 1, Section C, are benefitted by Limited Common Element joint use rights-of-way or easements for construction of a common driveway benefitting Units 29 through 32, and a common driveway benefitting Units 40 through 42. These Common Elements shall be constructed by Declarant and maintained by Association, provided that the cost of same is allocated exclusively to the benefitted Units.

Allocated Interest, Use and Enjoyment of Common Elements and Limited Common Elements:

1 Each Unit is allocated as appurtenant thereto an undivided ownership and use interest in the Common Elements and a share of the undivided obligation of the Common Expenses of the Association. Common Expenses are the Association's operating costs and include the cost of maintaining the Common Elements. Limited Common Elements are the portions of the Common Elements which may only be used by certain Units or which benefit less than all Units as set forth below. The expense of Limited Common Elements is a Limited Common Expense which is allocated only to those Units entitled to utilize or benefitted by the Limited Common Element.

2 Each Unit's allocated share of the Common Expenses of the Association will depend on the total number of Units in the Subdivision and will vary as Units are created, subdivided and/or withdrawn from the Subdivision.

3 With regard to Units entitled to utilize Limited Common Elements, each Unit's allocated share of the Limited Common Expense attributable to the Limited Common Element will depend on the total number of Units benefitted by or entitled to utilize the Limited Common Element and may vary as Units are created, subdivided and/or withdrawn from the Subdivision.

4 Declarant reserves the right to create not more than 800 total Units in all phases of the Subdivision. The final Common Expense liability and Limited Common Expense liability for each Unit will depend on the total number of Units created by Declarant and the extent to which Limited Common Elements are dedicated. Final Common Expense Liability and Limited Common Expense Liability will not be determined until all Units in all Phases, present and future, are dedicated. Because there are 68 Units in Phase 1, the total Common Expense Liability of Units in Phase 1 shall not be less than 1/68th of the total Common Expense of the Association.

5 Unit Owners can determine their allocated Common Expense interest by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of Units in the Subdivision. Likewise, any Limited Common Expense liability is allocated by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of Units benefitted by or entitled to utilize the Limited Common Element (total Units to which the Limited Common Element is allocated, expressly or impliedly).

**EXAMPLE A:**

*If there are 79 Units in the Subdivision then each Unit shall be allocated a one-seventy-ninth (1/79th) interest in the Common Elements and a 1/79th share of the Common Expenses.*

**EXAMPLE B:**

*If there is a Limited Common Element such as Majestic Drive dedicated to the 19 Estates Units in Phase 1, Section B, then each such Unit shall be allocated a one-nineteenth (1/19th) interest in the Limited Common Element and a one-nineteenth (1/19th) share of the Limited Common Expense attributable thereto.*

**EXAMPLE C:**

*There are Limited Common Element easements dedicated for construction of joint driveways by the owners of Units 29-32, inclusive, and 40-42, inclusive, in Phase 1, Section C. The duty to construct, maintain and administer these easements is allocated to the benefitted Units with the cost of same allocated to the benefitted Units on an equal basis: e.g. for the easement benefitting Units 29, 30, 31, and 32, one-fourth (1/4th) to each such Unit; and for the easement benefitting Units 40, 41 and 42, one-third (1/3) to each such Unit. As noted below, these joint driveway easements are to be improved, completed and maintained by the Owners of the benefitted Units but are subject to regulation by Association and Declarant in such actions.*

**EXAMPLE - COMMON ELEMENT AND LIMITED COMMON ELEMENT ALLOCATION TABLE:**

UNIT	Common Elements	Limited Common Elements in Phase 1B	Limited Common Element Joint Use Driveway benefitting Units 29-32	Limited Common Element Joint Use Driveway benefitting Units 40-41
1-9	1/79th each	0	0	0
10-28	1/79th each	1/18 each	0	0
29-32	1/79th each	0	1/4 each	0
33-39	1/79th each	0	0	0
40-41	1/79th each	0	0	1/3 each
42-79	1/79th each	0	0	0
Total Benefitted Units	79	18	4	3

**IX CONSTRUCTION APPROVAL AND BUILDING CONTROL COMMITTEE:**

The following are covenants running with the land for the benefit of the Declarant, the Association and all Unit Owners:

1. So long as Declarant owns at least one (1) Unit in any Phase of the Subdivision, the DBCC is vested with the exclusive right to approve the initial construction of all dwellings and Unit appurtenances in the Subdivision and Declarant may appoint all members of the DBCC. Beginning at the time each dwelling and initial improvements appurtenant thereto are completed and the Unit is suitable for occupancy, authority to grant such approvals automatically transfers from DBCC to ABCC with regard to all subsequent matters. ABCC is thereafter charged with monitoring, reviewing, approving and overseeing all construction in the Subdivision, on-going maintenance of improvements and compliance with the Building Control Standards ("BCS"), Building Control Guidelines ("BCG") and maintenance of the character, harmony, esthetics and appearance of the Subdivision. Neither BCC is vested with construction approval or oversight authority with regard to completion or repair of Units to be offered for sale, Common Elements, Limited Common Elements, drainage or utility systems or any other project or improvement by Declarant or exercise of any easement right, Development Right or Special Declarant's Right. Declarant may elect to assign or transfer its BCC Rights, in whole or in part, to the Association at any time but not later than when the Declarant no longer owns any Unit in the Subdivision. Each BCC shall be composed of at least three (3) members. All members of the DBCC will be appointed by the Declarant, and during Declarant control of the Association all members of the ABCC shall be appointed by Declarant. After termination of Declarant control of the Association, all members of the ABCC shall be appointed by the Association; and after sale of Declarant's final Unit in the Subdivision or Declarant surrender of its BCC Rights, the DBCC and ABCC will merge with all members of the surviving ABCC appointed by the Association. The ABCC shall at all times have not less than three (3) members and may have as many more members as the Association may deem prudent. All BCC members appointed by the Association shall be appointed by the Board of Directors of the Association. With regard to the ABCC, in the event of any tie vote between the members (due to absence, vacancy or abstention) of the ABCC: (1) if during a period of Declarant Control of the Association, Declarant reserves the right to cast a deciding vote on that issue; and (2) if subsequent to termination of Declarant Control of the Association, the Board of Directors shall cast a deciding vote on that issue. Declarant reserves the right to decide any matter subject to a tie vote by members of the DBCC.

All covenants set forth in Article IX and X are reserved to the Declarant and the Association with enforcement authority vested in the Association, subject to the limitations set forth herein. Declarant may unilaterally make multiple full or partial assignments of its BCC rights to the Association at any time during development, and with regard to different portions of the Subdivision, but not later than the sale of Declarant's final Unit in the Subdivision. No member of the ABCC shall participate in any decision or determination in which there is an actual or apparent personal or professional conflict, as determined by the Association's Board.

**To the extent that there will be concurrent BCCs (one appointed by the Association and one appointed by the Declarant) during development of the Subdivision, and to the extent that approval and enforcement authority with regard to each Unit will be vested at any**

**time in either one BCC or the other as determined by the subjective to the status of the Unit, the term BCC is used in this instrument to refer to which ever BCC has authority as to the Unit at any applicable time.**

2. After the initial completion of each Unit by Declarant, no improvement, dwelling, structure, fence, pool, or wall may be constructed, placed or maintained upon any Unit, and no material modification or alteration to any improvement, including landscaping, may be undertaken, commenced, caused or permitted by any Unit Owner until plans and specifications for the improvement or modification have been approved in writing by the BCC. Provided, however, that no such approval is required with regard to any improvement to the interior of any dwelling or structure if such improvement is not visible from the exterior of the dwelling or structure. Matters for which BCC approval is required include, but are not limited to, cutting of trees, structural improvements, modification, removal or creation of any drainage system or component thereof, excavation, grading or fill, and movement, placement or removal of dirt. **All prospective Unit Owners are advised to obtain written preliminary construction plan approval from BCC prior to purchasing a Unit in the Subdivision. It is further recommended that if the prospective purchaser has any doubt as to whether the proposed plans will be approved, the purchaser's contract be made contingent upon such preliminary approval.** All approvals granted by DBCC are binding on the ABCC as its successor.

3. BCC shall review such plans and specifications with regard to issues which include, but are not limited to: (1) exterior color; (2) exterior construction materials; (3) structural design; (4) plot plan/site-layout location on the Unit; (5) utility entrances; (6) driveway entrances; (7) walls, (8) exterior elevations, topography, finished grades; (9) landscaping and location of structures, improvements, walkways and driveways, (10) impact on existing vegetation; (11) surface water and drainage control measures and concerns including sedimentation control; (12) parking; (13) grading and elevations; (14) traffic visibility; (15) with regard to Estates Units only, view easements benefitting Common Elements and other Units; (16) impact and effect on other Units; (17) dimensions; (18) exterior lighting; (19) general appearance and traditional residential character; and (20) any matter addressed by the BCG or BCS. The BCC may also include with regard to any application any factors which it deems relevant including, without limitation, harmony of exterior design and color with surrounding structures and environment. With regard to color: (a) BCC expressly reserves the right to require color variation within the Subdivision to prevent color redundancy in certain areas; and (b) to limit primary finish colors of structures to those commonly identified as earth tones and certain other usual and customary traditional house colors.

4. BCC may require Unit owners to submit such additional detail and supporting data, studies, samples, architect's renderings, and reports as may be reasonably necessary for BCC to adequately review the proposed plans and specifications. BCC may reasonably require the Unit Owner to furnish survey maps or plats prepared by licensed engineers, land surveyors and other professionals with regard to any pertinent issue including, but not limited to, surface water and

drainage impact of the improvements. The BCC shall retain a qualified engineering firm to review all major construction plans with regard to matters requiring professional expertise and training. The BCC may retain such other professionals as may be necessary for the execution and administration of its duties. The cost of such professional services shall be a charge to the Unit Owner requesting review or plan approval.

5. BCC shall approve, disapprove, or grant partial approval and comment as to additional requirements, plans and specifications within thirty (30) days from the time that all materials required by BCC have been submitted. The BCC shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest, welfare of the Subdivision, any Unit Owner, Association or Declarant. All decisions of BCC shall be subject to appeal or review by the Board of Directors of said Association.

6. A pre-condition to plan approval and authorization by the BCC or Declarant for any Unit Owner to commence construction is that the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Owner has or may have against Declarant, BCC or Association for any and all damages sustained as the result of future damage to, or removal of, any appurtenance or improvement which when constructed encroaches upon or into any easement.

7. Once the plans of a residential dwelling have been approved by the BCC, as hereinafter set forth in detail, and construction of the residential dwelling is commenced on any Unit, the improvements must be substantially completed, including the exterior work and grading and landscaping, in accordance with the plans and specifications as approved, within eight (8) months, subject to weather conditions only.

8. The Declarant, Association and BCC shall not under any circumstances be liable to any Unit Owner for damage or injury resulting from the grant or denial of approval of construction plans whether said plans be for the injured party's Unit or another Unit in the Subdivision. All Unit Owners by acceptance of a deed subject to the Governing Instruments release Declarant, BCC and Association from liability for injury and damage directly or indirectly resulting from such plan approval. Each Unit Owner in improving his/her own Unit bears all liability for injury to person or property resulting from such improvement and shall indemnify, defend and hold harmless Declarant, Association and BCC from all claims, causes of action and liabilities resulting from said improvement. All Unit Owners are charged with developing and improving their property in a reasonable and prudent manner so as to avoid injury or damage to person, property, other Units, Common Elements or Limited Common Elements.

9. All Unit Owners and prospective Unit purchasers are advised that the BCC standards and aesthetics standards may change during development of the Subdivision or otherwise in the future



and that construction of dwellings and improvements on other Units will limit the style, color and placement of homes on nearby Units. No preliminary approval shall be deemed to constitute a waiver of the BCC's or Declarant's right to withhold approval of final plans when submitted. Approval of any appurtenance, color, material or improvement on any Unit does not establish a standard that similar appurtenances, color, materials or improvements will be approved on other Units. All approvals are subjective and specific to the request submitted and shall not be deemed to apply to any substantive modification to such plans or and subsequent request.

10. The standards established for plan approval are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Subdivision and do not create any duty to any present or future Unit Owner. Review and approval of any application by the BCC or Declarant is made on the basis of aesthetic considerations only and BCC, Declarant and Association shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor of the impact of such improvements, including drainage systems and excavations on other Units.

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

The following Construction Standards ("BCS") are restrictive covenants, limitations, regulations and agreements imposed upon all Units for the benefit of Declarant, the Association, and the owners of other Units. The BCS are restrictive covenants and shall be binding upon all purchasers of Units and/or any and all other parties having any interest therein, and are covenants running with the land. The Construction Standards do not apply to improvement and construction of Common Elements, Limited Common Elements, Units, drainage or utility systems by the Declarant or exercise of any easement right, Development Right or Special Declarant's Right by Declarant. The BCS may change from time to time either by amendment to this document or to other Governing Documents, which said documents may or may not be of public record. All purchasers of Units are on notice that changes to the Governing Documents may have been adopted by the Association and each purchaser or grantee should obtain copies of the current Governing Documents from the Association prior to transfer of any ownership interest in any Unit. To the extent that the provisions of this Article X require approvals by BCC, said approval rights are vested in Declarant, rather than BCC, if the approval is appurtenant to the initial construction of a dwelling on a Unit.

1. All dedicated Phases are restricted to single family residential use. No Unit situate in Phase 1 may contain more than one (1) dwelling and all dwellings in Phase 1 shall be single family and detached. Attached Units are permitted in future Phases which are dedicated for Townhomes or Patio Homes. For the purpose of this provision, detached garages situate on an Estates Unit and which contain a second floor and/or a basement apartment do not constitute a detached dwellings but are subject to additional restrictions as set forth below.

2. No apartment or condominium may be constructed or operated on any Unit in any portion of Phase 1. This provision expressly prohibits subdivision of any Unit in Phase 1 wherein there are horizontal delineations of ownership such as multistory dwellings with separate ownership of the floors or situations where a floor or ceiling forms the boundary between dwellings. Townhomes may be constructed in future Phases and at Declarant's election dedicated as one or more condominiums.
3. All dwellings, buildings and structures, including Townhouses or Patio Homes in future Phases, shall be of traditional residential character and the BCC is vested with exclusive authority to determine what constitutes traditional residential character. BCC shall consider in making such determinations the character and aesthetics of the Subdivision and the impact of the proposed dwellings on the neighborhood, community and other Units. The following are not of traditional residential character and may not be constructed in the Subdivision: (a) barn homes; (b) dome or geodesic structures; (c) foam houses; (d) log homes; (e) art-deco houses; (f) any dwelling with a commercial appearance; and (g) other non-traditional houses which are not common in residential Planned Communities in Monongalia County, West Virginia. Flat and non-peaked roofs are not permitted. Vertical siding is only permitted for trim purposes and vertical siding may not be used as a cover or facade for more than five (5%) per cent of any side of any dwelling.
4. No Unit nor residence or structure thereon shall be occupied until the same has been substantially completed.
5. The exterior of all structures and improvements constructed or placed on any Unit shall have the appearance of new material.
6. No mobile or modular homes commonly known as "double wides" are permitted within the Subdivision. Panelized construction, pre-engineered homes and modular construction are permitted in Phase 1, Sections A, C and D. All dwellings, detached garages and other structures in Phase 1, Section B, shall be "stick built". BCC retains exclusive authority to determine whether any structure is permitted or excluded by the provisions of this paragraph.
7. No dwelling in Phase 1, Sections A, C or D, may be constructed more than two (2) stories above the Main Floor. No dwelling in Phase 1, Section B may be constructed more than three (3) stories above the Main Floor. For the purpose of this document, the Main Floor is the lowest story of the dwelling which contains the main or primary entrance from the street. For the purpose of this provision, a "story" is the space between the floor below, and the floor above, and if there is no floor above then the distance between the floor below and the ceiling above. The BCC is vested with absolute and unilateral discretion

to make final determinations as to which floor or story of a dwelling is Main Floor. BCC may grant certain reasonable exceptions to this provisions to permit cupolas and other extensions beyond the foregoing limitations so long as the extension does not exceed 48 square feet in total area with regard to Units in Phase 1, Sections A, C and D. With regard to Units in the Estates, Phase 1, Section B, BCC may grant certain reasonable exceptions to this provisions to permit cupolas and other extensions beyond the foregoing limitations so long as the extension does not exceed 96 square feet in total area.

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, Section A	Detached garage	2 stories but not higher than the highest point of the dwelling on the Unit.
Phase 1, Section A	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, Section A	Ranch or Single Story Dwelling	2000
Phase 1, Section A	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, Section A	Garage	576	1152
Phase 1, Section A	All other structures.	100	100
Phase 1, Section B	Garage	900	1800
Phase 1, Section B	All other structures.	400	800

11. No dwelling or building shall be located nearer to the perimeter of the Unit than the established set-back lines set forth below. Provided, however, that due to the topography of the Units, and utility and septic concerns, Wetlands issues, the minimum set-back lines for certain Units may be reduced as designated or shown on the plats of the Subdivision or as otherwise set forth below. Declarant and the Association are each vested with authority to grant reasonable variances to the established set-back lines to prevent undue hardship and accommodate unforeseen and unknown circumstances. Provided, however, that all Unit Owners, by acceptance of such a variance, waive and release any and all claims, rights and causes of action which the Unit Owner may have against the Association or Declarant with regard to any and all damages that might arise with respect to such variance. For the purpose of this requirement, the "front" of each Unit shall, unless otherwise designated by Declarant or BCC, be the boundary or boundaries of the Unit contiguous to a road in the Subdivision and the "rear" of the Unit shall be the opposite boundary or boundaries of the Unit. Declarant and BCC expressly reserve the right to make alternative designations to the extent necessary to assure maximum usability of Units and to compensate for issues arising with regard to topography and Units contiguous

to multiple streets, roads or common elements. No improvement, dwelling or building may be constructed within any Wetlands area except as permitted by law.

12. The construction set-backs are the following number of lineal feet from as follows:

	Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side boundary(s)	Minimum distance from any Unit boundary which is also the perimeter of the Subdivision	Minimum distance from any Unit boundary abutting a Road or Common Element
Phase 1, Section A, C and D	25 feet	20 feet	15 feet	20 feet	20 feet
Phase 1, Section B Units 10 to 16	200 feet	45 feet	50 feet	45 feet	200 feet
Phase 1, Section B Units 20 to 26	45 feet	50 feet	50 feet	50 feet	50 feet
Phase 1, Section B Units 17 to 19	30 feet*	40 feet*	40 feet*	40 feet*	30 feet*
Phase 1, Section C, Units 29-31 and 40-42	20 feet**	20 feet	15 feet	20 feet	15 feet**
Future Phases	To be determined	To be determined	To be determined	To be determined	To be determined

\* = Reasonable variance due to the shape and topography of these Units are anticipated by Declarant and may be reasonably granted.

\*\*= These Units are benefitted by a joint driveway Limited Common Element and

reasonable variances may be required because the joint driveway lies on the Units.

13. To the extent that Association and Declarant are each vested with the right to grant reasonable variances, as aforesaid, all Unit purchasers, by acceptance of a Deed for any Unit in the Subdivision, whether from Declarant or a third party, acknowledge and agree that any variance reducing the lineal distance of a set-back by not more than fifty (50%) per cent is reasonable, and that variances for improvements extending more than fifty (50%) per cent of the distance of the set-back may be reasonable depending on the circumstances and potential hardship resulting from failure to grant such variance. Variances are encouraged to prevent hardship in circumstances where there was not intentional violation by the present Unit Owner and where strict compliance with these covenants would result in an injury to the present Unit Owner which is not justified by the benefit to the Association and Subdivision, as a whole, of such strict enforcement.
14. Except for Units 10 through 19, inclusive, in Phase 1, Section B: (a) no detached garage in Phase 1 shall be constructed nearer to the front of the Unit than the dwelling situate on the Unit; and (b) no out-building or other detached structure in Phase 1 shall be constructed nearer to the front of the Unit than the rear of the dwelling situate on the Unit. All set-back limitations apply to detached garages, out-buildings or other detached structures. Driveways may be constructed within side set-backs, however, no driveway may extend more than 10 feet into any Phase 1, Section A, C or D, side set-back, nor more than 15 feet into any Phase 1, Section B set-back absent prior written consent of the BCC. Reasonable variances will be permitted for driveways which connect to a road abutting a side of the Unit rather than the front or rear of the Unit.
15. No dwelling may be constructed on any Unit in Phase 1 which is of substantially identical exterior appearance and exterior architectural design to any dwelling approved for construction on any adjoining Unit in Phase 1. No dwelling may be constructed in Phase 1, Section B, which is of substantially identical exterior architectural design or appearance to any dwelling approved for construction on any other Unit in Phase 1, Section B.
16. The exterior wall surfaces of all buildings shall be of either masonry construction, wood, or attractive synthetic siding such as Hardy Plank. Vinyl and Aluminum siding, stucco and drivet are not permitted. Not less than ten (10%) per cent of the front facing of each dwelling shall be of "Masonry Construction" and all foundations shall be finished with masonry to not less than twelve (12") inches below grade. Specific and appropriate variances to this requirement may be granted on a Unit basis under special circumstances, depending on the style, location, size, character and over-all post construction esthetics of the dwelling and Unit at issue. "Masonry Construction" shall be limited to that of brick or natural or cultured stone. No building or other improvement shall have concrete or cinder blocks or concrete masonry exposed in any manner. For the purpose of this provision, the term "foundation" shall mean, all portions of the dwelling situate below the

Main Floor, as defined above.

17. No outside toilet or individual water well shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected to the Public Sewage System.
18. All driveways and sidewalks are to be constructed of concrete, or paved with asphalt, brick, stone or pavers. Non-fitted stone or gravel driveways are not permitted. Weather permitting, driveways and sidewalks shall be completed within eight (8) months of commencement of construction. Common, joint or shared driveways ("Joint Driveways") servicing multiple Units are not permitted in Phase 1, Section B, but may be permitted in Phase 1, Section A and future Phases if approved by the Declarant or BCC. All owners of all Units benefitted by Joint Driveways are jointly and severally liable for the maintenance, construction and upkeep of same in compliance with this Declaration. The Declarant and BCC shall require, as a condition precedent to approval of any Joint Driveway, an record indemnity, insurance and hold-harmless agreement between the owners of the Units benefitted by the Joint Driveway. With the exception of approved joint driveways, no driveway in Phase 1 Sections A, C or D may be constructed nearer than 10 feet from any side property boundary line except with prior consent of the BCC. No driveway in Phase 1 Section B may be constructed nearer than thirty-five (35) feet from any side property boundary line except with prior consent of the BCC. The driveway limitation imposed by this section is intended for the purpose of maintaining green space, trees and foliage between Units.
19. Units 29, 30, 31 and 32 in Phase 1, Section C are benefitted by a non-exclusive private and joint or shared right-of-way for a driveway shown and identified on the Plat as "Variable Width Private Access Easements Limited Common Element Esmt Allocated to Lots 29-32" on the plat. Units 40, 41 and 42, are likewise benefitted by a non-exclusive private and joint or shared right-of-way for a driveway shown and identified on the Plat as "Variable Width Private Access Easements Limited Common Element Esmt Allocated to Lots 40-42" on the plat. Said driveways or easements are Limited Common Elements allocated exclusively to said Lots or Units. The Declarant shall cause initial paving of the Limited Common Element and the Association shall maintain the same with all maintenance and upkeep costs allocated for each such easement equally to all benefitted Units. Association maintenance of the easements shall be commensurate with the traffic and use of same and as a result snow removal shall be a lower priority than the remaining high traffic areas of the Subdivision.
20. Each Unit Owner shall be responsible for placing metal culverts, as designated by the West Virginia Department of Highways, Declarant, Building Control Committee or any Political Subdivision of the State of West Virginia, under sidewalks and/or driveways at or near the intersection of same with any road in the Subdivision in order to facilitate the proper drainage of storm water from the streets of the Subdivision. All such culverts shall

be no less than fifteen (15) inches in diameter and in compliance with the drainage plan for the Subdivision. Each Unit Owner shall continuously maintain all culverts, ditches and drainage lines and drainways on his or her property, whether installed by the Developer, the Association or the Unit Owner, so as to prevent the restriction of water flow through the same. Culverts, ditches, drainage lines and drainways may not be modified without written approval of the Association and a recommendation as to the suitability and appropriateness of the modifications from a licensed and insured Engineer approved by the Association's Board of Directors. Such written recommendation shall be addressed to assure the Association that the modifications are to be completed in compliance with the Subdivision drainage plan and it shall specify the design, materials and manner of construction. Written request of changes to drainage systems must be made to the Association by the Unit Owner at least thirty (30) days in advance of the next Board meeting.

21. To the extent that the driveway for any Unit slopes down hill from a road to the dwelling constructed on the Unit, all Unit Owners are required to construct a catch-basin or trench-drain in at or near the intersection of the driveway and the road, and/or at each door or garage door which is situated below the elevation of the road. All Unit Owners are further advised that road paving, road modifications and improvement of Units and Common Elements may result in changes to surface water over time which may result in increased surface water flow or redirected surface water flow sufficient that surface water conditions present at the time a dwelling is constructed on a Unit may not remain constant. Each Unit owner responsible for, and assumes all risk inherent in, collection and control of surface water conditions which are both present at the time of construction or reasonably foreseeable as a result of passage of time, due to development of other Units and Common Elements specifically including changes in road surfaces or elevations resulting from additional paving. Unit Owners constructing a driveway which has a slope of more than seven (7%) per cent and which discharges downhill into a road or roadway are required to construct a catch-basin or trench-drain in at or near the intersection of the driveway and the road to prevent water from the driveway from being discharged, en mass, into the road, and potentially causing damage to the roads, other Units or Common Elements.
22. Prior to construction of a driveway or walkway, each Unit Owner shall cause a four (4") inch schedule 40 P.V.C. electrical conduit with caps on each end to be buried under the portion of driveway which runs over top all the utility rights-of-way, and the exact depth and location as to be designated by the BCC and/or Declarant, and or utility provider benefitted by the easement, and their successors or assigns. Such conduit shall be suitable in all manners for future installation of utility distribution and transmission services and Declarant expressly reserves, for and in behalf of itself, its successors and/or assigns the right to utilize, and to permit others to utilize, such electrical conduit for such purposes.



23. All Units Owners are required to construct at the Unit Owner's cost, and subject to BCC approval, a decorative mounting structure ("pedestal") containing and decorative light and to be located not more than eight (8) feet from each entrance to any driveway from street or road. The exterior appearance of all pedestals shall be masonry and match the primary masonry utilized on the exterior of the dwelling. Driveways in Phase 1, Section B, shall have two pedestals with one on each side of each driveway. All lights mounted in or on a pedestal shall be decorative and of the natural gas or dusk-to-dawn photo-sensitive electric variety. The Association is vested with exclusive authority to determine the size, height, color, style, design, bulb style, overall appearance and wattage of all such lights. The decorative lights must be maintained in working order by the Unit Owner and all lights must be approved by the Association. Neither the pedestal nor the decorative lights may be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. All such lights shall be maintained operational by the Unit Owner at all times to assure safety and visibility in the Subdivision. The Declarant reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of replacing light bulbs or repairing the decorative lights which such right may be exercised by the Association, at the cost of the Unit Owner, upon not less than five (5) days written notice. Declarant may, at Declarant's option, install Common Element lighting in Townhome Units or Patio Home Units if future Phases are dedicated for same in lieu of a requirement that such Units maintain mailbox or pedestal lighting as aforesaid or in the event that cluster mailboxes are required at such locations by the United States Postal Service.
24. For any Phase and Section which the United States Postal Service provides curb side delivery, BCC shall establish standards for the size, color, style and appearance of all mailboxes. All mailboxes and delivery boxes shall be installed within at least one pedestals appurtenant to each driveway. Mailboxes may not be removed, relocated, painted or otherwise modified without the prior written consent of the Building Control Committee. Provided, however, that no authorization is required for replacement of a damaged or deteriorated mail box with one of identical appearance and size. All mailboxes shall be maintained in good condition by the Unit Owner at all times and Developer reserves from each Unit an easement for the Association and/or its agents or employees to enter onto each Unit for the purpose of repairing and/or replacing mailboxes and the structure on which same are mounted. In the event Declarant shall establish a uniform mailbox all Unit Owners shall purchase and install same and no non-conforming mailbox or mounting system shall be permitted. In the event that Townhome Units or Patio Home Units are dedicated as part of one or more future Phases, the mail boxes for the same may be Limited Common Elements of the Association.
25. Units in Phase 1, Section B, may be serviced by electronic, motorized and automated security gates. Gates are not permitted on any Unit in any other Phase. All gates shall be:  
(a) constructed between two (2) pedestals, (b) situate entirely on the Unit and not on any

Common Element or Limited Common Element; (c) controlled by an electronic access box situate on the Unit and on the road side of the gate; (d) be constructed to open into the Unit rather than onto any Common Element or Limited Common Element; and (E) be subject to reasonable regulation by the BCC with regard to all matters including, location, height, appearance, materials, size, quality and character. Mechanical non-automated gates are not permitted.

26. Each Unit shall have sufficient off-street parking to service the dwelling. There shall be no parking in or along streets in the Subdivision, on lawns or sidewalks. Declarant may designate certain parking areas as Limited Common Elements allocated to one or more specific Units or groups of Units.
27. Each Unit Owner shall either keep receptacles for garbage and recycling bins inside the Unit or provide receptacles for garbage and recycling bins in a screened area, not visible from the road or neighboring Units, in accordance with Monongalia County Health Department suggestions or reasonable standards as established by the Declarant or Building Control Committee.
28. All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. Weather permitting, the Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.
29. Declarant shall provide public natural gas service to each Unit. No Unit may be serviced by any fuel tank or similar fuel storage receptacle absent prior written consent of the BCC. In the event that such fuel tank or similar fuel storage receptacle is approved by the BCC, the same may not be exposed to public view and must either be located under ground or completely shielded from view by "year round" foliage or attractive screening. The fuel used in the dwelling or other structures shall be of the smokeless-type; however, so-called fireplaces and/or wood stoves, in which wood is used as a fuel shall be excepted from this provision if located on the interior of the Unit and not utilized as the primary fuel source for the dwelling. No coal, oil or other combustible which results in high affluent discharge or unreasonable odor may be burned as a fuel source for any dwelling.
30. Exterior wood stoves, fire-places, fire-pits, barbecue pits and wood burning appliances and/or devices are permitted on Estates Units if situate on the rear of the Unit and not within any set-back adjoining another Unit. Exterior wood stoves, fire-places, fire pits, barbecue pits and wood burning appliances and/or devices are not permitted on the exterior of any non-Estates Unit absent prior written consent of the BCC. All such exterior devices are subject to reasonable regulation by the Association so as to prevent creation of an unreasonable nuisance.

31. Above ground swimming pools are not permitted in the Subdivision. In ground swimming pools are permitted to the extent approved by the BCC, and then only if the same are: (a) located no nearer to any road than the dwelling situate on the Unit; (b) adequately screened and fenced in accordance with the requirements of the BCC; and (c) the Unit Owner releases the Association of any liability for same and provides a binding hold-harmless agreement benefitting the Association and which runs with the land. Children's temporary play pools are permitted on Units subject to reasonable regulation by the BCC.
  
32. All construction sites on Units must at the conclusion of construction each day be kept neat, clean and free of any scattered debris or trash. No trash or scrap piles are permitted to be in front of or along the side of any Unit and must, to the extent reasonable be stored where not visible from any street within the development. However, such accumulations may be kept towards the rear of any Unit or in a location upon the Unit as designated by the Developer or the BCC. All construction materials shall, to the extent reasonably possible, be stored in a reasonably neat manner and kept under tarps or covers. Developer may store any quantity of construction materials on any Common Element, Limited Common Element or portion of one Unit in each Phase owned by the Developer at any given time and Declarant may always store construction materials on any Unit where Declarant is completing any improvement. The Developer shall have the exclusive right to determine which Unit shall be used for material storage.
  
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 Section A
Trees within any approved surface structure	May be removed.
Trees within 15 feet of a dwelling or building	May be removed.
Trees within 5 feet of a driveway, pool, deck, patio, or sidewalk but no nearer than within 10 feet of the side or rear property line	May be removed.

Trees within side or rear set back and within 10 feet of a side or rear property line	May only be removed if less than 10" in circumference at base
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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.

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

36. Declarant has retained the services of professional engineers for the purpose of designing and installing a comprehensive Storm Water Facility within the Subdivision. Storm water from each Unit shall be, to the extent reasonably possible, retained and distributed on each individual Unit, with any excess storm water discharged into the comprehensive Storm Water Facility system to be installed by the Declarant. No Unit Owner may: (a) discharge or release any substance other than unadulterated surface water into the Storm Water Facility or any Wetlands; (b) discharge storm water in the Storm Water Facility in excess of its capacity or in excess of the capacity allocated to the Unit; (c) make or cause any modification to the Storm Water Facility without prior written consent of the Association; or (c) discharge water in concentrated flows into the streets, Common Elements, Wetlands or other Units except in compliance with the design specifications of the Storm Water Facility.
37. No Unit Owner, other than Developer exercising its Special Developer's Rights, may subdivide a Unit or combine two or more Units without the written consent of the BCC. Boundary adjustments are permitted pursuant to the provisions of WV Code Section 36B. In the event that two or more contiguous Units are consolidated as a single Unit, all set-back lines and easements along the contiguous sides of the consolidated Units shall be null and void so as to permit single family residential dwelling and attached appurtenances to be constructed across a Unit boundary line. Provided, however, all exterior set back lines and easements, shall remain in full effect and be fully enforced. Further, the allocated undivided interest in the Common Elements and Limited Common Elements, and the Common Expense Liability apportioned to said Unit as consolidated shall be on a Unit basis with the consolidated Units being one single Unit. Boundary lines may only be adjusted between Units by mutual agreement of the affected Unit Owners and with prior written consent and approval of the Association. Any subdivision of Units or combination of Units, or any adjustment of boundaries between Units shall be made by deed, accompanied by a plat of survey, which said deed shall be executed by all affected Unit Owners and the Association and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.
38. Declarant may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or additions in the covenants and restrictions would be consistent with the tenor and integrity of those hereinbefore and hereinafter set forth, and in no event shall modifications be made that would alter the residential character of the Subdivision. Declarant specifically reserves the right to make reasonable modifications to the restrictive covenants set forth herein to the extent necessary to facilitate construction of Townhomes, Patio Homes and/or other varieties of attached or detached single family dwellings in various future Phases.
39. During construction, all Unit lines must be aggressively protected by ditching, bales of

straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining Units, Common Elements or Wetlands and/or the Storm Water Facility. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.

40. If approved by the BCC, Fences are permitted in the Subdivision subject to the following limitations:
- a Stone fences, wood fences and synthetic fences which have the appearance of wood or stone are permitted. Metal wrought iron fences are permitted but hurricane, chicken-wire, hardware cloth and other metal fences are not permitted;
  - b No portion of any fence may be constructed more than six (6) feet in height from grade, except for fences situate on Units 12 to 18 in Phase 1, Section B and within forty-five (45) feet of the rear of such Units, in which case such fences shall be not more than three (3) feet in height from grade and designed to have a minimal impact on views from Estate Lots;
  - c Fences must be located on the rear or side of the dwelling and no fence may be located nearer to the front of the Unit than the center of the dwelling thereon;
  - d No fence more than three (3) feet in height may be located within any set-back without prior written consent of the owner of the Unit which abuts said set-back;
  - e No fence may deny the Association or Declarant or any other beneficiary of an easement access to the easements and rights-of-way reserved to the Association and/or Declarant and neither Declarant nor Association shall be liable for any damage, cost or injury incurred in the removal of all or any portion of an approved or unapproved fence in the event that the same is located on, over or across any right-of-way or easement reserved to Association or Declarant herein.
  - f The owner of the Unit on which the fence is constructed shall be liable for the proper maintenance, upkeep, construction and placement of the fence at all times.
  - g All fences situate on Units 10 to 19 in Phase 1, Section B and within forty (40) feet of the rear of such Units shall be constructed so as to not unreasonably limit or restrict visibility of Lake Lynn/Cheat Lake. No such fence may exceed twenty-four (24") inches in height if the fence facing is closed to as to restrict visibility. Typical wrought iron fences or split rail fences which are open and have a minimal impact of visibility may be constructed to not more than thirty-six (36") inches in height.

41. During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining Units, Common Elements or Wetlands and/or the Storm Water Facility. Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion of the soil.
  
42. No deck shall be constructed on the front of any dwelling and no deck may be constructed more than two (2) stories above ground. Decks may only be constructed two (2) stories above ground if: (a) the deck does not exceed a total area of 96 square feet; (b) there is a larger approved deck constructed one (1) story above ground; (c) the second story deck is constructed entirely within the perimeter of the approved first story deck; (d) there is at least one (1) story of the dwelling above said deck; and (e) the floor of the deck is not more than 18 feet above ground at any point.
  
43. Balconies are exterior horizontal surfaces which are: (a) not serviced by any entrance other than from the interior of a dwelling; (b) entirely covered by the roof of a dwelling; (c) partially enclosed on two sides, and totally enclosed on a third side by the dwelling; (d) are engineered as part of the integral design of the dwelling rather than attached to the exterior of the dwelling as in the case of decks; and (e) appear to be part of the exterior facade of the dwelling. One balcony not more than six (6) feet deep is permitted on the front of each dwelling. Balconies constructed on the side of dwellings may not be constructed greater than six (6) feet in depth, and balconies constructed on the rear of dwellings may not be more than eight (8) feet deep.
  
44. Beginning at the time the entryway is paved, all construction vehicles, construction material delivery vehicles, cranes, dump trucks, triaxle vehicles and construction equipment must utilize the construction entrance to the Subdivision unless written permission to the contrary is given by the BCC. Each Unit Owner is charged with the affirmative duty to cause all contractors, invitees, licensees, agents, employees, subcontractors and material suppliers to comply with this provision. In the event of repeated violations of this provision by vehicles traveling to or from any certain and identifiable Unit, the Association may, after reasonable notice to the Unit Owner, assess reasonable fines or penalties to the Unit Owner for each violation hereof.
  
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	1-4, 28-33, 41, 44-49	Regular
1A	5, 9, 34, 43	Special
1A	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.

46. All exterior hot-tubs shall be subject to the same Unit location requirements as detached buildings but shall, in addition, be reasonably screened from view pursuant to the directives of the BCC.
47. All gardens shall: (a) be subject to the same Unit location requirements as detached buildings; (b) not exceed 240 square feet in total area if situate in Phase 1 Section B, nor 120 square feet if situate in Phase 1 Section Ar ; (c) not be situate within any set back not nearer to any road than the rear of the dwelling situate on the same Unit; and (d) be subject to such further subject to BCC regulation of as to fencing, the variety of produce/vegetation which may be grown in the garden, and such other matters as may be reasonable. No produce or flora cultivated in, nor any fixture or improvement to, any garden shall at any time exceed four (4) feet in total height.
48. Trampolines are not permitted in the Subdivision. Playground equipment, tree houses, sliding boards, swing sets, play houses and all similar improvements may not be: (a) situated within set backs without prior consent of the BCC; (b) may be located no nearer to any street than the front of the dwelling situate on the Unit; and (c) may be reasonably regulated by the BCC as to all matters including, but not limited to, location, color, size, height, appearance, density and materials. BCC may, in granting such approvals, reasonably limit the number and size of such improvements on any Unit and the proximity and density of such improvements over multiple Units.
49. Decorative and aesthetic ponds shall, if constructed on Units, be maintained with a filtration and/or recirculation system to prevent stagnant water and mosquitos, and otherwise be reasonably regulated by the BCC with regard to depths, size and location.
50. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees,



yard waste and all other materials is prohibited in the Subdivision absent prior written consent by the Association. Provided, however, that the Association may designate and utilize a portion of the Common Elements for disposal and controlled incineration of wood and debris and promulgate reasonable rules and regulations pertaining to same. Said exception for controlled incineration is intended to benefit the Association in management of the Common Elements and shall not be deemed to permit use of such designated areas by individual Unit Owners except as may be authorized by the Association.

51. No dwelling may be constructed which contains less than two (2) roof peak lines or has a roof with a pitch of less than 10-12. No ranch style dwelling may be constructed with a roof pitch of less than 12-12.
52. Green houses, whether detached or incorporated into a dwelling, are not permitted. So called "sun rooms" which are part of a dwelling and have a primarily transparent exterior are not permitted on the front of any dwelling. Sun rooms are discouraged on the side of dwellings and in determining whether to grant approval for a sun room, BCC shall consider the appearance of the same from neighboring Units, Common Elements and roads.
53. Car ports are permitted if: (a) attached to a dwelling or detached garage and not free standing; (b) the exterior appearance of the same is natural and non-metallic; (c) the roof surface is covered with the same shingle or roof material used in the dwelling situate on the Unit; and (d) the same comply with the maximum area and height requirements for detached structures. No car port may be utilized for the storage of any item, appliance, equipment, boat, jet-ski, trailer, camper or any other personal property other than passenger motor cars or trucks.
54. Each Unit in Phase 1 shall include at least a two (2) stall garage area, whether attached, detached or a combination of both. No dwelling or structure may have more than three (3) stalls of garage doors on the same face of the dwelling or structure.

## **XI VARIANCES FROM THE BUILDING CONSTRUCTION STANDARDS ("BCS")**

Either the Declarant and the Association may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein. It is expressly intended that the BCS be administered to foster construction of dwellings on all Units and prevent hardship resulting from issues such as topography, and geological and soil conditions not foreseen by Declarant at the execution hereof. Provided, however, that such in granting such variances, conformity with the interest and purposes of the Declarant's general development scheme shall be a paramount consideration of the BCC. Provided also that in every instance such variance or adjustment will not be substantively, materially and unreasonably detrimental or injurious to other Units,

property or improvements in the Subdivision. The BCC shall have specific authority to grant variances, in appropriate circumstances. Any Unit Owner, by acceptance of any variance, waives and releases for and in behalf of his successors and assigns, any and all claims, rights and causes of action which the Unit Owner may have against the Association or Declarant or either BCC with regard to any and all damages that might arise with respect to such variance. The Unit Owner further agrees to bear the entire risk associated with the removal of the appurtenance or improvement (including, but not limited to, trees, shrubs and landscaping) in the event Declarant, Association or any utility provider must enter a set-back or easement for any permitted purpose. The Declarant, Association and public utility providers shall have no duty to repair, replace or otherwise compensate the Unit Owner for any damage caused to any part of any appurtenance or improvement located within an easement resulting from the exercise of any reserved easement right. The provisions of this paragraph apply equally to appurtenances and improvements, including trees and foliage, regardless of whether same are located entirely within the easement or partially in the easement and partially outside the easement.

As noted previously, variances are encouraged to prevent hardship in circumstances where there was not intentional violation by the present Unit Owner and where strict compliance with these covenants would result in an injury to the present Unit Owner which is not justified by the benefit to the Association and Subdivision, as a whole, of such strict enforcement.

## **XII UNIT AND COMMON ELEMENT USE AND OCCUPANCY RESTRICTIONS:**

The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon all Units and Common Elements for the benefit of Declarant, Association and all Unit Owners. Said restrictions shall be binding upon all purchasers or any and all other parties having any interest therein but shall not be binding on Declarant or any Unit owned by Declarant and held for sale or development purposes. These restrictions are also applicable to all tenants, guests, invitees, family and other non-Unit Owners present within the Subdivision at the invitation of, or with the express or implied permission of, any Unit Owner, in which case the Unit Owner is charged with assuring the compliance by such persons. These restrictions are covenants running with the land and may change from time to time either by amendment to this document or to other Governing Documents, which said documents may or may not be of public record. All purchasers of Units are on notice that changes to the Governing Documents may have been adopted by the Association and each purchaser or grantee should obtain copies of the most recent and then current Governing Documents from the Association prior to transfer of any ownership interest in any Unit.

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

office uses are permitted provided that: such use does not entail the travel of clients, invitees, delivery persons or any other individual or entity to the Unit for any business purposes other than normal deliveries by such service providers, such as UPS and Federal Express, who customarily make residential deliveries in the Subdivision. The term "single family" shall, for the purpose of this restriction, mean that there shall be no more than one resident of any Unit who is unrelated by marriage or blood to at least one other resident of the Unit. Any habitable and fully finished space in a detached garage or other out building may be utilized as a principal residence for any member of the Unit Owner's immediate family (e.g. parents, children, brother, sister or grandchildren and spouses of same), provided that: (a) no rental is charged for the use of such space; (b) such uses complies with all aspects of this Declaration; and (c) not more than two (2) persons occupy such space at any time; and (d) the occupiable apartment space is ancillary to the structure and not the principal purpose for which the structure was designed, approved and constructed.

2. All Units, including all landscaping and improvements in or on Units, shall at all times be aggressively maintained in an attractive manner consistent with the Governing Documents. Each Unit Owner shall also be responsible for maintaining the landscaping with that portion of any adjacent Common Element located between the Unit and improvement to a contiguous Common Element. This obligation of maintenance includes the duty to monitor and maintain drainways, ditches and drainage systems and to report any deficiencies or defects in same to the Association. No Unit Owner shall, however, have the right to remove any landscaping, trees, shrubs or vegetation caused to be located in such area by the Association or the Declarant without prior written permission from the Association. Responsibility of the Unit Owner for maintenance of landscaping includes, but is not limited to, mowing, trimming and watering of lawns as reasonable or necessary to maintain the same in a healthy condition, reasonable trimming of shrubs and trees, and removal and replacement of dead and diseased trees.
3. Except as may be necessary for delivery and construction purposes, there shall be no commercial vehicles, recreational vehicles, trailers, snowmobiles, jet skis, campers, motor homes, boats or boat trailers parked in any driveway or the yard of any Unit nor on any Common Element; all of same must be parked in garages. For the purpose of this restriction, commercial vehicles shall be: (a) any vehicle which is not manufactured and marketed for consumer use in the transportation of less than 7 passengers; or (b) any vehicle which is owned by any entity other than the Unit Owner and utilized for any purpose other than transportation of the Unit Owner and the Unit Owner's family.
4. No dwelling or apartment shall be occupied until the same has been substantially completed.
5. No Unit may be utilized for any activity which: (a) tends to cause an unclean, unhealthy

or unsafe condition to exist outside of the enclosed structure of the Unit; (b) emits a foul or obnoxious odor or any fumes, dust, smoke, or pollution; or (c) which creates any noise, unreasonable risk of fire or explosion, or other conditions such as music or noise which are a public or private nuisance.

6. Except for burning of wood in approved fireplaces, burning of trash, debris, rubbish, trees, yard waste and all other materials is prohibited in the Subdivision absent prior written consent by the Association. Provided, however, that the Association may designate and utilize a portion of the Common Elements for disposal and controlled incineration of wood and debris and promulgate reasonable rules and regulations pertaining to same. Said exception for controlled incineration is intended to benefit the Association in management of the Common Elements and shall not be deemed to permit use of such designated areas by individual Unit Owners except as may be authorized by the Association. This paragraph shall not be deemed to be a prohibition against approved wood burning fireplaces which are otherwise permitted if the same comply with the remainder of this document.
7. No Unit may be utilized for any activity which violates any local, state or federal law or regulation.
8. Burning of trash, leaves and debris or other materials is prohibited without prior written consent of the Association and then only on such terms as the Association may dictate.
9. No outdoor storage of goods, construction materials, or equipment is permitted except during construction on the Unit on which such materials are being stored.
10. Neither the Units nor the Common Elements shall be used for, nor the location of: (a) any use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of any Units, except for home and vehicle alarm devices used exclusively for security purposes; (b) use and discharge of firecrackers or fireworks or firearms of any variety; or (c) hunting, trapping or the cleaning and preparation of game or fowl.
11. No Unit Owner shall cause, permit or allow, the dumping or placement of grass clippings, leaves or other debris, petroleum products, fertilizers, herbicides, pesticides, or other potentially hazardous or toxic substances in any Common Element, Wetlands, or portion of the Storm Water Facility.
12. Use of non-biodegradable lawn and yard herbicides and pesticides are required and use of minimal environmental impact and natural fertilizers is encouraged. To the extent that any lawn or yard herbicide, pesticide, or fertilizer is permitted or required, the same shall be in strict compliance with the manufacturer's recommendation as to volume and

application so as to minimize down stream impacts on the water table and wetlands

13. The Association and all Unit Owners, whether acting individually as a Unit Owner, or in concert as the membership of the Association, are charged with affirmative duties to all at times: (a) aggressively protect all Wetlands situate within the subdivision whether the same are located on a Common Element or Unit; (b) to not directly or indirectly make any material modification to any Wetlands of a Unit or Common Element except as permitted by law; (c) to not allow, permit or cause any substance or material including, but not limited to, herbicides, fertilizers, pesticides and other migratory substances detrimental to the Wetlands, to be discharged or released directly or indirectly into the water table or water systems which contribute to the regulated areas. Each Unit Owner by acceptance of a deed further covenants and agrees, for and in behalf of the Unit Owner and his successors and assigns, that the Unit Owner shall: (a) at all times comply with the foregoing requirements, including any and all governmental permits pertaining to the same and all applicable provisions of state and federal law; (b) cause all occupants, residents, tenants and invitees of the Unit, including their family and guests, to be fully apprised of, and to fully comply with, the foregoing Wetlands restrictions and limitations, and to at all times comply with the same; and (c) not at any time utilize, develop or improve any portion of the Unit in any manner inconsistent with the foregoing.
14. No animals or livestock of any description, except the usual household pets, shall be kept on any Unit. Large snakes, alligators, crocodiles, and aggressive canines commonly known as Rotwilers and Pit Bull terriers are prohibited. All pets that are kept upon any Unit shall not be permitted to run at large or cause damage or injury to Common Elements, Wetlands, other Units, other Unit Owners or their property. Dog houses are permitted on Estates Units and otherwise as permitted by the Association. Provided, that: (a) Dog houses shall be fenced and screened to limit visibility of same from all other Units; (b) Dog houses and appurtenant fencing shall not be situate within any setback; (c) Dog houses shall qualify as detached structure with regard to limitations imposed by these Covenants with regard to detached structures; (d) no more than one (1) Dog house structure is permitted per Unit; and (e) no Dog house or the fencing appurtenant thereto, may be nearer to any road than the dwelling constructed on the same Unit. Except as otherwise permitted by the Association, animals must be kept on the interior of dwellings, on leashes while accompanied by their owners, or contained on the Unit on an intermittent basis by fence or electronic means. No animal may be tied, chained or otherwise restrained on the exterior of a Unit by any means other than by fence or electronic means No more than 4 animals may be kept on any Unit at any time. The Association may require the removal of any animal which creates a materially unreasonable nuisance by sound, provided, however, that the removal of such animal must first be approved by a majority of all Units in the same section as the Unit at issue.
15. No commercial animal breeding activity is allowed upon any Unit.

16. No Unit nor any building (or portion thereof) erected thereon shall be used for, or allowed to be the site of, any noxious, offensive or illegal activities, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision or neighborhood.
17. No commercial signs, including "For Rent", "For Sale", "Garage Sale", or other similar signs shall be erected, placed or maintained on any Unit or on any Common Element, except with the written permission of the Association or except as may be required by legal proceedings. Not more than one political sign or sign advertising or advocating any candidate for public office or political issue may be displayed on, or be visible from, any Unit at any time ("Political Signs"). No Political Signs be displayed for a period of more than ten (10) days during any calendar month nor more than ten (10) days before or two (2) days after the election or vote subject of such sign and all of such signs shall be less than six (6) square feet in total placard area . No signs of any type may be placed or displayed at or near the entrance of the Subdivision. Provided however, that Special Advertisements and other signs may be erected, placed or maintained by Declarant pursuant to their Special Declarant's Rights, and/or the Exclusive Broker of the Subdivision selected which shall be appointed by the Declarant. This includes "For Sale" or "For Rent" whether by a Unit Owner or by a Real Estate Agent. Builders, contractors and material suppliers are permitted to display signage on any Unit at such times as they are actively providing services and materials to the Unit pursuant to any construction or project approved by the Association. The Association may impose reasonable restrictions as to the size, substance and location of such signage.
18. All Units, whether occupied or unoccupied, and any improvements thereon, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.
19. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring his Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to at least ninety per cent (90%) of the purchase price of the lot and improvements. In the case of fire, casualty or other disaster, each owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to return the Unit to grade. If the Unit Owner chooses to reconstruct, the Owner shall restore all buildings and landscaping to substantially the same condition in which they existed prior to the fire, casualty or other disaster. Each Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.
20. All lawns must be well maintained (mowed and trimmed) in an attractive condition commensurate with the BCC standards at all times. Special attention must be given to all those areas of vegetation which are visible from roadways. Any portion of the Common

Elements situate between a road and a Unit must be at all times maintained and mowed by the owner of the Unit. Unless the Association expressly agrees in writing to maintain any easement, each Unit Owner is obligated to maintain the surface of all easements located on the owner's Unit and the improvements, including drainage controls, situate therein.

21. No clothes lines of any type may be erected or placed upon any lot which is visible from the exterior which includes the streets, neighboring Units or neighboring lands.
22. Except during construction of an individual unit, no loud power tool may be operated on the exterior of any Unit between 9:00 p.m. and 9:00 a.m. Loud power tools include, but are not limited to, the following: lawn mowers, trimmers, shredders, chain saws, jack hammers, snow blowers, circular and other electric or gas powered saws, etc. Provided, however, that snow blowers and snow removal equipment shall be an exception to this requirement when utilized to remove snow from the driveway and sidewalk of a Unit.
23. There is a posted speed limit of 15 M.P.H. throughout the development and all vehicles, motorized or other shall at all times adhere to all roadway and traffic regulations promulgated by the Association.
24. No vehicle may be parked in any street or on any Common Element except for such in such locations as may be specified by the Association or Declarant. Not more than four (4) vehicles may be parked in the driveway of the Unit provided that the driveway is of sufficient size to accommodate same. The Association may from time to time grant reasonable exceptions permitting additional vehicles to be parked on a Unit or if reasonably necessary, restrict the number of vehicles which may be parked on a Unit. The Association may periodically grant any Unit Owner additional parking privileges, including parking on the streets for special occasions and events. This provision shall be specifically inapplicable to parking for meetings of the Association, and its committees, BCC and Board of Directors. Each dwelling must include a two (2) car garage and at least one (1) stall of such garages must be utilized for storage of vehicles.
25. No vehicle or vehicle with a motor or engine shall, except during permitted construction, be operated on any non-roadway Common Element, Wetlands, path, walkway or trails at any time other than during construction. No vehicle which is not licensed by the West Virginia Department of Motor Vehicles, including, but not limited to, golf carts, go carts, dirt bikes, and all terrain vehicles, may be operated on any roadway or Common Element. None of the foregoing vehicles may be operated on any Unit if: (a) the vehicle lacks a sufficient muffler and results in any noise which is a nuisance to the occupants of any Unit or Common Element; or (b) such operation violates and other provision of any Governing Instrument including any requirement hereafter imposed by the Association as to: (i) time of use; (ii) age of the operator; (iii) insurance requirements; (iv) safety requirements; or

(v) such other matters which may reasonably be regulated by the Association.

26. All Unit Owners shall be subject to fine or penalty as a result of violation of any of these restrictions by the Unit Owner, the Unit Owner's family, friends, guests and invitees, or any other occupancy of the Unit or any Common Element as a result of ownership of the Unit by the Unit Owner. In the event of such an uncured violation the Association may deny the violator non-Unit Owner the right of entry onto and use of the Common Elements of the Subdivision including but not limited to the roadways. In such circumstance, the Association may, after proper warning to the Unit Owner, have the non-Unit Owner violator prosecuted or otherwise pursue civil remedies against the violator for trespass on the Association's property. To the extent that the West Virginia Common Interest Ownership Act and this Declaration require notice of violation prior to assessment of a fine or penalty for parking or motor vehicle violations, a single notice shall by the Association shall be sufficient for the purposes of subsequent violations by any Unit Owner or Unit Owners.
  
27. No Unit owner shall interfere with any retention or detention pond, Wetlands or Stormwater Facility in the Subdivision ("hazards"). By acceptance of a deed from the Declarant, each Unit Owner covenants and agrees, for and on behalf of himself, his successors and or assigns, to exercise extraordinary care to protect all family, residents, visitors, guests, tenants, invitees, and licensees of the Unit Owner from such hazards including injury to person or property resulting from the hazards. Children are not permitted in the vicinity of the hazards unless accompanied and at all times supervised by an adult. Each Unit Owner, by acceptance of a deed covenants and agrees to: (i) defend, hold harmless and indemnify the Association and Declarant from any injury to the Unit Owner or the Unit Owner's family, children, guests, invitees and licensees, or their property, as the result of the hazards; (ii) to include in any lease or document granting occupancy or tenancy of any Unit an express provision that all tenants of the Unit Owner shall defend, hold harmless and indemnify the Association and Declarant from any injury to the tenant or the tenant's family, children, guests, invitees and licensees, or their property, as the result of the hazards and that Tenant will at all times exercise extraordinary care to protect tenant, and all family, residents, visitors, guests, tenants, invitees, and licensees of the tenant from the hazards.

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

1. Purpose: The Association has been established for the purpose of administering the Subdivision in accordance with the Governing Documents. The Association is charged with maintaining the collective interests of the majority of Units owners rather than the individual



interests of any one or more owners to the extent same are contrary to the community's collective interests. The responsibilities of the Association include, but are not limited to:

- A. maintenance, upkeep and administration of the Common Elements and Limited Common Elements including, but not limited to the Stormwater Treatment System;
- B. interpretation and enforcement of the Governing Documents;
- C. upholding the community standards within the Subdivision; and
- D. administration of the ABCC.
- E. maintenance and management of Association funds; and
- F. all other purposes for which Unit Owner Associations are formed.

2. Membership: Every person or entity who is an owner of a full or fractional interest in any Unit, shall, by reason of ownership, automatically be a Member of the Association, and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Articles of Incorporation of the Association, the By-Laws of the Association, and further subject to all rules and regulations promulgated or adopted by the Association in accordance with this Declaration. Ownership of a Unit is the sole qualification for membership in the Association. Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation. Following a termination of the Subdivision, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder as provided by the West Virginia Uniform Common Interest Ownership Act.

3. Specific Powers of the Association: The Association has the power to:

- A. Adopt and amend By-Laws and Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expense from Unit Owners;
- C. Hire and discharge managing agents and other employees, agents and independent contractors;
- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Subdivision;

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- E. Make contracts and incur liabilities;
  - F. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
  - G. Cause additional improvements to be made as a part of the Common Elements;
  - H. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the Subdivision may be conveyed or subjected to a security interest only pursuant to the provisions of this Declaration;
  - I. Grant easements, leases, licenses and concessions through or over the Common Elements;
  - J. Impose and receive any payments, fees or charges for the use, rentals or operation of the Common Elements and for services provided to Unit Owners;
  - K. Cause to be placed or kept in effect liability insurance on Common Elements;
  - L. Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Association;
  - M. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration or statements of unpaid Assessments;
  - N. Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance as desirable;
  - O. Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent this Declaration expressly so provides;
  - P. Exercise any other powers conferred by the Governing Documents executed and delivered by the Declarant;
  - Q. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;
  - R. Exercise any other powers necessary and proper for the governance and operation of the Association and the Common Elements, and;

S. Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.

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

5. Discretionary Powers of Association: The BCC and Association have the power, but not the duty, to enforce the Governing Documents. In the event of unforeseen circumstances, violations of the Governing Documents may occur which are of minor impact to the community or which would result in an unreasonable hardship in the event that strict adherence to the Governing Instruments is pursued. In determining whether any action shall be taken to enforce the Governing Instruments, the respective party with enforcement port is authorized to take into consideration such factors as individual hardship to the violating party and a cost benefit analysis of the reasonable return to result from enforcement and expenditure of Association funds in furtherance of enforcement. Thus the Association and BCC have the right, but not the obligation to enforce any part of the Governing Documents. The Association and BCC are expressly authorized to avoid participation in disputes between individual homeowners or disputes which are appropriately addressed by legal authorities. In the event that Association or BCC should elect not to pursue any action they reasonably believe is not in the best interest of the majority of Unit Owners to do so, Unit Owners may individually or collectively bring suit to enforce the Governing Documents against other Unit Owners, provided however, that such litigation shall be for the purpose of compelling compliance by a Unit Owner and not: (a) to compel any action by the Association; or (b) for damages resulting from any action or inaction by Association or BCC. By acceptance of a deed subject to the Governing Documents, all Unit Owners release the Declarant, BCC and Association from any and all liability resulting from a good faith Declarant, BCC or Association decision not to take any enforcement action which the Declarant, BCC or Association's Board deem in good faith to not be in the best financial or other collective interest of the Subdivision or the majority of the Unit Owners.

6. Association Right to Perform Maintenance: In the event any owner of any Unit shall fail to

maintain the Unit premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, notice shall be provided by the Board, in writing, to the owner to correct the condition and if after thirty (30) days the condition has not been corrected, the Association shall have the right, through its agents and employees to enter upon said Unit and repair, maintain and restore the Unit and the exterior of the buildings and any other improvements erected thereon to the extent authorized by law. Such right shall not be exercised unless two-thirds (2/3) of such Board of Directors and fifty-one (51%) percent of the Unit Owners of the Section in which the Unit at issue is situate, shall have voted in favor of its being exercised and such vote may be made by ballot or proxy. The cost of such exterior maintenance and maintenance of the Unit performed by the Association shall be added to and become part of the annual charge to which such Unit is subject and until paid shall be a lien on said Unit and improvements thereon. All Unit Owners by acceptance of a deed subject to the Governing Documents covenant and agree that such entry and maintenance shall not constitute an actionable trespass or breach of the peace.

7. Board of Directors: The initial Board of Directors (hereinafter "Board") shall be appointed by the Declarant. As certain increments of Units are conveyed by Declarant, a percentage of Board Members will be elected by the Membership of the Association. After termination of Declarant Control all Board Members will be elected by Unit Owners.

8. Board Powers: The Board is generally empowered as follows:

- A. Except as otherwise provided in this Declaration or the By-Laws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the members of the Board are required to exercise care to the following standards: (i) if appointed by the Declarant, the care required as fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care.
- B. The Board may not act on behalf of the Association to amend the Declaration, to terminate the Subdivision or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.
- C. The Board shall annually adopt a proposed budget for the succeeding fiscal Association year.
- D. Subject to subsection (5), there shall be an initial period of Declarant's control of the Association during which Declarant or persons or entities designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant's control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent (75%) of the Units that may be conveyed to Unit Owners other than Declarant; (ii) Two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) Two years after any right to add new

Units was last exercised. Declarant may voluntarily surrender the right Declarant control at any time, and may also surrender its right to appoint and remove members of the Board before termination of that period, but in such event, Declarant may require for the duration of the period of Declarant's control certain specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, to be approved by the Declarant before it becomes effective. For the purpose of determining the percentage of Unit which may be conveyed, percentage shall be based on the total number of Units in all existing and future Phases of the Subdivision.

- E. The initial number of Board members shall be two (2). Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be conveyed to Unit Owners other than Declarant, the number of Board Members shall be increased to three (3) and at least one of the members of the Board must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units which may be conveyed to Unit Owners other than Declarant, the number of Board Members shall be four (4) and not less than two (2) of the members of the Board must be elected by Unit Owners other than the Declarant. Declarant reserves the right to appoint at least one (1) member of the Board during the period after Declarant relinquishes control of the Association with such right terminating when Declarant no longer owns at least one (1) Unit in the Subdivision. For the purpose of this Paragraph, calculations of percentages of Units which may be conveyed to Unit Owners other than Declarant shall be based on the total number of Units in existing Phases and also the total number of Units Declarant may create in future Phases.
- F. The Board shall elect all officers of the Association who shall conduct the daily business and affairs of the Association. Officers may be Board members. The Board members shall take office upon election.
- G. Notwithstanding any provision of this Declaration or By-Laws to the contrary, the Unit Owners, by majority vote of all Units may remove any member of the Board with or without cause, other than a member appointed by the Declarant.
- H. If entered into before the Board elected by the Unit Owners takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners takes office. Provided, however, that such termination may not be made by less than ninety (90) days' notice to the other party. This subsection does not apply to: (i) the termination of any lease which would terminate the Subdivision or reduce its size;

or (ii) a proprietary lease.

- I. The Association Board is expressly authorized and empowered to accept assignment of BCC Rights from the Declarant and the Association Board may not refuse assignment of any BCC right, in whole or in part.
- J. The Association Board is expressly authorized and empowered to accept assignment of any permit or regulatory agreement pertaining to any Common Element or Limited Common Element or improvement thereto, including, but not limited to Wetlands, ponds and drainage systems, and the Association Board may not refuse assignment of any BCC right, in whole or in part.

9. Board Meetings / Quorum: A quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty percent (50%) of the votes on that Board are: physically present at the beginning of the meeting; present by electronic means such as telephone or video conference; or represented by proxy.

10. By-Laws: The By-Laws of the Association, and all amendments thereof, in addition to other matters, provide and shall provide:

- A. Election and appointment of Directors as set forth above.
- B. Election by the Board of a president, treasurer, secretary and other officers of the Association;
- C. The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies;
- D. The delegation by the Board or officers of duties to other persons or to a managing agent;
- E. Which of its officers may prepare, execute, certify and record Amendments to this Declaration on behalf of the Association; and,
- F. A method for amending the By-Laws.

11. Association Meetings: A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the president; a majority of the Board; or by Unit Owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the By-Laws shall cause notice to be hand-delivered, delivered electronically, or sent postage prepaid by United

States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. Provided, that if the official representative of the Board charged with serving notice of the meeting shall fail to do so within thirty (30) days, such notice may be dispatched by the members calling the meeting. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes and any proposal to remove an officer or member of the Board.

12. Section Meetings: A meeting of the Unit Owners of the Estates and any other Section vested with the power to implement Rules and Regulations applicable to any Limited Common Element allocated to the Section. Section Meetings may be called by the president of the Association; a majority of the Board; or by Unit Owners of said Section having ten percent (10%) of the votes in the Section. Section Meetings may be called not less than ten (10) nor more than sixty (60) days in advance of any meeting, the party(s) calling the meeting shall cause notice to be hand-delivered, delivered electronically, or sent postage prepaid by United States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda. A quorum is present at any Section Meeting if persons entitled to cast twenty (20%) of all votes allocated in the Section are present. Voting in the Section Meeting shall be by simple majority of the quorum unless a higher percentage is required by this instrument or applicable law.

#### **XIV ASSOCIATION MEETINGS AND VOTING:**

1. Association Meeting, Quorum and Voting: Unless the By-Laws or Declaration provide otherwise, a quorum is present throughout any meeting of the Association if persons entitled to cast thirty percent (30%) of the total votes of the Association are present in person, via electronic means including, but not limited to telephone, or by proxy at the beginning of the meeting. Voting at a meeting where a quorum is present shall be cast as follows:

- A. Members of the Association shall be entitled to one vote for each Unit in which they hold the interest required for membership. Allocation of votes is generally formulated on the principle of "one vote for one Unit" with all owners of a Unit collectively entitled to cast one vote.
- B. If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to that Unit. If more than one of the Owners are present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the

Unit.

- C. All voting shall, unless a higher percentage is required by other provisions of this instrument or applicable law, be by simple majority of a quorum present at the any meeting.
- D. The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly-executed proxy. A Unit Owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after that date, unless it specifies a shorter term.
- D. Units owned by the Association are not entitled to vote. Voting rights of Members as set forth in the By-Laws may not be inconsistent with the provisions of this Article.
- E. Only Members in good standing shall be entitled to vote. A Member shall lose his good standing status should any Association assessments or fines remain delinquent for a period of sixty (60) days past the date the same were due and payable. The Association is not obligated to notify a Unit Owner that the Unit is no longer in good standing. Any Unit Owner may participate in a meeting by first satisfying such delinquency, even if paid during the meeting.
- F. Voting shall be by simple majority of the quorum present for the meeting unless a higher percentage is required by this instrument or applicable law due to the subject matter of the business to be conducted.

2. Association Voting by Ballot in lieu of Meeting: Business of the Association, including elections but excluding approval of the budget, may, at the Board's option, be conducted by ballot and submission of ballots or proxies in lieu of a meeting. In the event that business is conducted by ballot, the Board shall distribute to all members an agenda of the business to be addressed by ballot including a detailed narrative explanation of the issues. Each Unit shall also receive a ballot which clearly states that it shall not be counted unless returned to the Association by a specified date. In the event that an issue is to be addressed by ballot and less than a quorum of ballots are returned to the Association by the ballot cut-off date, the Board may either resubmit all unanswered ballots or circulate a petition and obtain such additional votes by petition as are necessary to constitute a quorum for the purposes of the business to be addressed.

In the event that any Member reasonably believes that the Board is on any specific matter or matters not acting in accordance with the interests or desires of the Members holding a majority of



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votes in the Association, such Member may circulate a petition setting forth such concerns in specific detail. If the petition is signed in behalf of lots to which forty (40%) per cent of votes are allocated (and by at least one owner of each such lot), the Board shall within forty-five (45) days conduct an official membership vote on the matter or matters by Special Meeting of the membership, ballot and or proxy, which ever mechanism or mechanisms are most reasonably calculated to achieve the most comprehensive response in behalf of the greatest number of Units.

## **XV ASSOCIATION FINANCIAL MATTERS, BUDGET AND RECORDS:**

1. Annual Budget: The Board shall annually adopt a proposed budget for the succeeding fiscal year and within thirty (30) days after adoption of any proposed budget for the Subdivision, the Board shall provide a summary of the budget to all the Unit Owners. Unless a majority of all Unit Owners reject the budget, the budget is ratified. In the event the proposed budget is rejected by a majority of the Unit Owners, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. Provided, however, that said prior budget shall be increased proportionate to any increase which may have occurred in the Consumer Price Index from the date of the adoption of the preceding budget and the date of the proposed budget. The Consumer Price Index shall be set by the U. S. Department of Labor, Bureau of Labor Statistics or any successor thereof. The initial budget for the Association was adopted by the Declarant for the year 2006.

2. Financial Needs/Basis for Budget: The Annual Budget shall be based on the actual anticipated financial needs of the Association. Matters which may be included in the Association's annual budget include, but are not limited to the costs of: (1) property taxes for the Common Elements; (2) Association business licensing and registration fees and the cost of other governmental filings; (3) insurance; (4) snow removal; (5) preventative maintenance, repair and upkeep of the roadways, drainage systems and Common Elements; (6) legal fees, accounting fees and auditor fees; (7) improvements to Common Elements; (8) operational expenses such as mailings, notices, record keeping and maintenance of accounts; (9) periodic inspection of drainage systems and utility systems by qualified professionals; (10) mowing and trimming of vegetation in and on the Common Elements; and (11) budget preparation expenses.

3. Association Accounts: The Association shall maintain the following bank or investment accounts which said accounts shall not be co-mingled and all such accounts shall require signatures of not less than two Officers or Directors for any disbursement or withdrawal:

A. Operating Account: The operating account is the fiscal account from which the Association shall pay its daily expenses. The Operating Account is funded with revenue including Annual Assessments and interest accrued thereon, and receipts from fines and penalties. Any excess funds remaining in the Operating Account at the end of a fiscal year shall be transferred, within four (4) months after the end of the operating year to the Capital

Account. The four (4) month delay is intended to permit the Operating Account to be funded by payment of subsequent year's Annual Assessments.

B. Capital Account: The capital account is a the fiscal account from which the Association shall accumulate funds for, and when appropriate pay for, long term capital expenses such as future paving, drainage system repairs and other reasonably certain significant expenses such as replacement of improvements to the Common Elements and Limited Common Elements (e.g. future replacement of the Sewage Treatment Facility). All monies held in the Capital Account are held on account of individual Units as a credit for future reasonably certain expenses. Funds held in the Capital Account may be transferred to the Operating Account as a credit to the individual Units and in lieu of a Special Assessment in the event of unforeseen operating expenses which exceed the sums budgeted by Association during any fiscal year. The Capital Account is funded with: (1) excess sums remaining in the Operating Account at the end of any fiscal year; (2) Special Assessments for capital expenses; (3) Annual Assessments for capital expenses; (4) Initial Membership Deposits; and (5) Voluntary Capital Contributions by Declarant. Nothing herein shall be deemed to limit or prohibit investment of the Association's capital funds in reliable sources which are reasonably certain to generate revenue greater than interest paid on bank accounts.

C. Road Fund Account: All road fund deposits required by the BCC and posted by Unit Owners to secure compliance with the Governing Documents during construction and intended to prevent roadway damage during construction shall be held in an independent Association bank or investment account which shall if possible be interest bearing and shall not be commingled with other Association funds.

4 Initial Account Funding: Declarant shall fund each of the above three Association accounts with \$300.00 and said sums shall at Declarant's option, be credited against future Declarant obligations for Assessments and/or Voluntary Capital Contributions by Declarant.

5 Association Records: The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing Subdivision assets and to permit the Association to provide, upon request, for a fee relative to each Unit, a Unit Resale Summary setting forth information required to be submitted to a Purchaser by a Unit Owner to lawfully convey his Unit pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended. The fee for copying and provision of documents and for provision of Unit Resale Certificates shall not exceed ten (10%) percent of the most recent Annual Common Expense Assessment.

## **XVI ASSOCIATION - ASSESSMENTS, FINES, AND FEES:**

The Association is vested with authority to levy Annual Assessments, Special Assessments,

finer, fees, penalties, Initial Membership Assessments and to require the posting of Road Fund Bonds or Road Fund deposits pursuant to the Governing Documents. All levies made by Association, whether Annual, Special or fines, fees and penalties, shall run with the land and ownership of the Unit. Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from assessment liability. All Units are subject to Assessment. Common Elements, Limited Common Elements and land which may be dedicated as future phases of the Subdivision, but which has not been dedicated, are not subject to Assessment. Assessments apply to only those Units which were dedicated and in existence at the time of levy. Any Expense Assessment or installment thereof bears interest from the date the same is due at the rate to be established by the Association which rate shall not exceed twelve percent (12%) per year

1. Annual Assessment for Common Expenses:

- A. Declarant Obligation: Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses. After an Assessment has been made by the Association, Assessments must be made at least annually based on a budget adopted at least annually by the Association.
- B. Common Expenses to be levied pursuant to Common Expense Liability: All Common Assessments and Special Assessments levied as a result of Common Expenses must be levied against all Units proportionate to the Units' respective Common Expense Liability as allocated herein below.
- C. Units Not Subject to Assessment: Provided, however, that Assessments may only be levied against those Units which are in existence on the date of Assessment. Units which are created during a fiscal year are not subject to Assessment until the succeeding fiscal year.
- D. Limited Common Expense Assessment: To the extent reasonably determinable, any Common Expense or portion thereof exclusively benefitting fewer than all of the Units must be assessed exclusively against the Units benefitted. Limited Common Expenses must be assessed exclusively against those Units entitled to utilize, and benefitted by, the Limited Common Element subject thereof.
- E. Judgment Assessments: Assessments to pay a judgment against the Association may be made only against the Units in the Subdivision at the time the judgment was entered, and in proportion to their Common Expense Liability.
- F. Common Expense Attributable to Unit: If any Common Expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against such Unit Owner's Unit.

- G. Minimum Annual Assessment : The minimum Annual Assessment for Common Expenses is, at the execution hereof, (notwithstanding the fact that no Annual Assessment will be made during 2007) is **Six Hundred Dollars (\$600.00)** and the minimum Annual Assessment shall never be less than the original amount. Unless specifically increased during any given year by the Association Board of Directors, the minimum Annual Assessment shall increase each year by a percentage equal to the increase in the average variation in the Consumer Price Index for All Items in the Pittsburgh, Pennsylvania, region as computed and reported by the U.S. Department of Labor or its successor, but under no circumstance shall the annual increase be less than two and one-half (2.5%) percent. During the period of Declarant Control, the Annual Assessment for Common Expenses may not exceed **Six Hundred Dollars (\$600.00) per year** absent Declarant's prior written consent. Declarant may set higher minimum annual assessments for Limited Common Elements allocated to Townhouse and Patio Home Units. Because the cost of Limited Common Elements in Phase 1, Section B is allocated only to the Estates Units, is exceed **Nine Hundred Dollars (\$900.00) per year** and may not exceed **Nine Hundred Dollars (\$900.00) per year** absent Declarant's prior written consent
- H. Initial Membership Deposit : The Board shall have authority, on behalf of the Association, to establish and collect an Initial Membership Fee or community service fee from the transfer of ownership of each Unit, which said fee shall be payable at closing and shall be the obligation of the purchaser to pay. All Initial Membership Fees shall be deposited by the Association in its capital reserve account to be held for future repairs, maintenance and improvement of the Common Elements and Limited Common Elements, preservation and maintenance of natural areas, development or improvement of recreational facilities on the Common Elements and for community events and community activities benefitting the Unit Owners. The initial membership fee is, and during Declarant control of the Association shall remain **Six Hundred Dollars (\$600.00)**. After termination of Declarant Control, the Board shall have the sole discretion to determine the amount and method of determining such Initial Membership Deposit, provided, however, that the Initial Membership Fee shall never exceed or be greater than one-half of the most recent Annual Assessment for Common Expenses. Initial Membership Fees are not due or payable as the result of any conveyance or transfer to a Builder as defined herein, to a successor Declarant or to any entity wholly owned by the Declarant. Provided, however, that Initial Membership Deposits shall be due when such otherwise exempt Units are subsequently conveyed by such entities to the ultimate consumer.
- I. Voluntary Capital Contributions by Declarant: At the time of the initial sale of each Unit by Declarant to an unrelated third party, Declarant shall voluntarily contribute the sum of **Six Hundred (\$600.00)** dollars to the Association's Capital Account. Said sums shall be held in the Capital Account until after Declarant relinquishes control of

the Association for future use by the Association pursuant to the limitations imposed on the Capital Account.

2. Special Assessments: In addition to Annual Assessments, the Board may periodically levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments must be budgeted for and levied against all Units proportionate to the Units' Common Expense Liability allocation. Special Assessments may, at the Board's discretion, be made payable over a period of time which extends beyond the calendar year in which same is levied.
3. Fines and Penalties: The Association may assess any Unit Owners with reasonable fines and penalties for any uncured material violation of the Governing Documents. The Association may not Assess Units owned by Declarant for any material violation by Declarant as Declarant rather than Declarant as a Unit Owner. The Association, not the Declarant, is vested with exclusive authority to assess and levy fines and penalties resulting from violations of the Construction Standards or Construction Guidelines or any BCC ruling. Prior to assessing any reasonable fine or penalty Association shall:
  - A. provide the Unit Owner with written notice of the violation and a reasonable opportunity to cure same, which said period shall except in circumstances where the violation is reasonably likely to result in immediate damage or injury to person or property, not be less than thirty (30) days;
  - B. if the violation continues after initial notice, notify Unit Owner that a fine or penalty will be imposed if the violation is not cured within an additional thirty (30) days;
  - C. notify the Unit Owner of the amount of the fine, whether the fine will be re-occurring and if so on what basis; and
  - D. afford Unit Owner an opportunity to address the offense at a hearing with the Association Board. The Association shall not levy any fine or penalty against a Unit Owner, and the Association shall not attempt to collect any fine or penalty if Unit Owner produces a petition signed by the owners entitled to cast votes on behalf of fifty-one (51%) percent of all Units indicating that said Unit Owners oppose the fine or approve of the violation.
4. Surplus of Assessment: Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any pre-payment of reserves must be credited to the Unit Owners in proportion to their Common Expense liability assessed to them to reduce their future Common Expense Assessments. The Association may, at the option of its Directors, elect to retain such excess in its capital fund for future maintenance and improvement of the Common Elements in which case such excess shall be a credit on behalf of the Units owners with regard to such future expenses.

5. **Limitation on Assessments:** *The initial purchase price of all lots in the Subdivision reflects the improvements provided by Declarant and which Declarant has elected to provide in the future. Declarant has elected to forego construction of certain amenities which, if constructed by Declarant would have resulted in a greater Unit sales price at the time of the initial sale of each Unit from Declarant to purchaser. Declarant does not intend to create, install or otherwise cause any of the following amenities and improvements:*

- A. *sidewalks or street lights*
- B. *comprehensive or uniform roadway curbing*
- C. *the addition of fire hydrants other than as shown on the plats*
- D. *construction of any Common Element or Limited Common Element improvement such as a pool, park, pavilion, gazebo, playground equipment or other amenity not included in Declarant's development plan.*

6. **Agreement Not to Undertake Additional Improvements without Declarant's Consent:**

*By acceptance of a Deed from the Declarant, each unit purchaser, his or her successors and assigns, covenant and agree that, so long as Declarant owns at least one (1) Unit, the Association shall not, without Declarant's prior written consent, make any assessment for the cost or purpose of installing, constructing or otherwise paying the cost of the above amenities and improvements. Because Declarant would not have undertaken development and sale of the Subdivision and Units therein if it intended to affect the above amenities and improvements, the Association may not undertake such capital improvements without Declarant's consent or until Declarant no longer owns any interest in any Unit. Provided, however, in the event that Declarant should elect to implement or install such amenities and improvements to any portion of the Subdivision, but not all of the Subdivision, no such partial provision of amenities and/or improvement shall be deemed to create any obligation for declarant to provide same to all Units in the Subdivision.*

## **XVII ASSOCIATION LIENS:**

1. **Lien for Assessments:** The Association has a lien on a Unit for any Assessment levied against that Unit or fines imposed against its Unit Owner from the time the Assessment or fine becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Provided, the Association may only levy liens against Units for Unit Owner obligations to the Association. The Association may levy a lien against Units owned by Declarant for any actual or alleged breach or failure by Declarant in its capacity as Declarant rather than its capacity as a Unit Owner. Association may thus perfect a lien against Declarant owned Units

for Declarant failure to pay Association dues but not for Declarant failure to complete improvements or to fulfill other development related Declarant obligations.

2. Assessment Lien Priority: A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first security interest on the Unit recorded before the date on which the Assessment sought to be enforced becomes delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The lien is also prior to all security interests described in clause (ii) above to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of liens for other assessments made by the Association. The lien under this section is not subject to the provisions of homestead, dower, curtesy or other like exemptions.

3. Limitation on Liens: A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due. This limitation shall, however, only apply to the lien against real property and shall in no manner restrict the limitations period applicable to the underlying obligation.

4. Enforcement of Lien: This section does not prohibit actions to recover sums for any valid Association lien or prohibit the Association from taking a deed in lieu of foreclosure.

5. Attorney's Fees, Costs, Expenses: Any Lien shall include the costs of preparation, service, and recordation of same. A judgment or decree in any action brought to enforce a lien or collect any past due assessment, shall include costs and reasonable attorney's fees for the prevailing party.

6. Statement of Assessment Balance: The Association, upon written request, shall furnish to a Unit Owner a statement setting forth the amount of unpaid assessments against the Unit Owner's interest in real estate. The statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the Association, the Board and/or every Unit Owner.

7. Notice of Lien: For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the Assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. The notice shall contain:

- A. a legally-sufficient description of the Unit;
- B. the name or names of the Owners of the Unit;

- C. the amount of unpaid Assessments due, together with the date when each became due; and,
  - D. the date of recordation.
  - E. the Clerk of the County Commission in whose office the notice is recorded shall index the notice in the appropriate lien books in the names of the Unit Owners as debtors and in the name of the Association as creditor. The cost of recordation shall be assessed against any Unit Owner found to be delinquent.
8. Release of Lien: Upon payment of the Assessment, the Association shall execute a written release of the lien. This release shall be recorded at the expense of the Unit Owner in the office of the Clerk wherein the notice of the lien was filed.
9. Other Association Liens: A judgment for money against the Association (if recorded) is not a lien on the Common Elements, but is a lien in favor of the judgment lien holder against all of the Units in the Subdivision at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association. If the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to Article V, Section I, the holder of that security interest shall exercise its right against the Common Elements before its judgment lien on any Unit may be enforced.

#### **XVIII ASSOCIATION - MISCELLANEOUS MATTERS:**

1. Tort and Contract Liability: An action alleging a wrong done by the Association must be brought against the Association and not against any Unit Owner. If the wrong occurred during any period of Declarant's control and the Association gives Declarant reasonable notice of, and an opportunity to defend against the action, Declarant is then liable to the Association or to any Unit Owner for (i) all other losses not covered by insurance suffered by the Association or that Unit Owner, and (ii) all costs that the Association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever Declarant is liable to the Association under this section, Declarant is also liable for all expenses of litigation, including reasonable attorney's fees incurred by the Association. Any statute of limitation affecting the Association's right of action under this section is tolled until the termination of Declarant's control. A Unit Owner is not precluded from maintaining an action contemplated by this section because he is a Unit Owner, member or officer of the Association.
2. Association Conveyance or Encumbrance of Common Elements: Beginning at the time Common Elements are deeded to the Association, portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%)



of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by Declarant agrees to that action. Provided, however, that:

- A. An agreement to convey Common Elements or to subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof in the same manner as a deed, by the requisite number of the Unit Owners.
- B. The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Elements but the contract is not enforceable against the Association until approved by the vote of the owners of eighty percent (80%) of all Units. Provided, however, that no such contract or conveyance may be made by the Association without Declarant's consent at any time prior to termination of Declarant's right to add additional real estate to, and dedicate future Phases of, the Subdivision. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- C. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the Subdivision is void.
- D. A conveyance or encumbrance of Common Elements pursuant to this section does not deprive any Unit of its rights of access or ingress, egress and regress across the roads and ways as designated upon the recorded plats of the Subdivision.
- E. A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

3. Insurance:

A. Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

1 Property insurance on the Common Elements against fire and extended coverage perils for undeveloped Units. The total amount of insurance after application of any deductibles must be not less than replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and,

2 Liability insurance, including medical payments insurance, in limits of \$1,000,000 and thereafter, in an amount determined by the Board so to cover all occurrences commonly insured

against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. During the period of Declarant control, such insurance may be by rider to a Declarant's policy of insurance pertaining to the Subdivision.

A. If the insurance as required is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.

B Insurance policies carried pursuant to subsection A must, if available, provide that:

1 Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;

2 The insurer waives its right to subrogation under the policy against any Unit Owner or member of his household;

3 No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy; and,

4 If, at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

C The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to contrary provision set forth herein and as otherwise set forth by West Virginia law, the proceeds must be disbursed first for the repair or restoration of the damaged property and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Subdivision is terminated.

D An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

E An insurer which has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest in any portion of the Subdivision. The insurer issuing the policy may not cancel or refuse it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed

to the Association and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

F Any portion of Common Elements or Limited Common Elements of the Subdivision for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association, and any portion of any Unit which is damaged or destroyed must be repaired or replaced promptly by the Unit Owner, unless (i) the Subdivision is terminated; (ii) repair or replacement would be illegal under any State or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of all Units, vote not to rebuild. The cost of repair or replacement by Association in excess of insurance proceeds and reserves is a Common Expense. If the entire loss is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Subdivision. Any surplus insurance proceeds shall be credited to the Common Expense for the benefit of the Unit Owners who were members of the Association at the time of the loss. All costs of repair or rebuilding by a Unit Owner must be born by the Unit Owner. In the absence of actual hardship, the Unit Owner shall rebuild or replace in a reasonable time period which shall not exceed one (1) year from occurrence of the damage or destruction.

#### **XIX ASSOCIATION RULES AND REGULATIONS:**

1. Purpose/Amendment: The initial Rules and Regulations of the Association, if any, have been promulgated by the Declarant and are intended as a mechanism for establishing guidelines for use of the Units and Common Elements. The Rules and Regulations may be amended by the Association Board for the purpose of explaining, interpreting and expanding the provisions of the Governing Documents. Provided, however, that no such modification to the Rules and Regulations shall be contrary to the express intent hereof, illegal discriminatory, or enforceable against any party until twenty (20) days after the Rules and Regulations have been published to all Unit Owners. Further, so long as Declarant owns any Unit in the Subdivision, no such amendment may be made without Declarant's prior written consent. To the extent that any issue may arise as to the interpretation or intent of this instrument, Association shall defer to Declarant's intent as stated and affirmed by Declarant, any remaining principal or principals of Declarant, or the scrivener hereof.

2. Limitations on Rules and Regulations: Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules and Regulations of the Association, all Rules and Regulations shall comply with the following provisions:

A Similar Treatment. Similarly situated Unit Owners shall be treated similarly.

- B Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units shall not be abridged, except that the Association may adopt time, place, size, lighting, number and manner restrictions with respect to displays visible from outside the structure.
  
- C Signs. No rules shall regulate the content of political signs; however, rules may regulate the size, time, place, number and manner of posting such signs within the limitations set forth elsewhere herein. No rules may prevent the advertising of a Unit for sale or lease but rules may limit the size, number, placement and location of such signs.
  
- D Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Residential Unit on the basis of the size and facilities of the Residential Unit and its fair use of the Common Element.
  
- E Activities Within Units. No rule shall interfere with the activities carried on within the confines of structures on Units, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities within Residential Units which are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate noise or traffic, unfavorable publicity, parking hazards, unsightly conditions visible from outside of the Units, or an unreasonable source of annoyance to the Community.
  
- F Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Element to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Element available, from adopting generally applicable rules for use of Common Element, or from denying use privileges to those who are delinquent in paying assessments or abuse the Common Element or violate the Governing Documents. This provision does not affect the Association's right to increase or levy assessments.
  
- G Alienation. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Element to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who are delinquent in paying

assessments or abuse the Common Element or violate the Governing Documents. This provision does not affect the Association's right to increase or levy assessments.

- H Abridging Existing Rights. No rule shall require a Unit Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Unit Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule
- I Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Subdivision or other properties in the vicinity of the Subdivision nor increase the cost to Declarant thereof.

The limitations herein shall only limit rule making authority exercised by the Association; they shall not apply to amendments to this Declaration adopted by Declarant or Unit Owners in accordance with the provisions hereof.

## **XX REPRESENTATIONS AND WARRANTIES:**

1. All Unit Owners herein, their heirs, successors and assigns, by their acceptance and recordation of a deed conveying any interest in any Unit acknowledge the conditions, limitations, restrictions, provisions, exceptions and reservations set forth herein. The Declarant makes no representation or warranty direct, express or implied, which is contrary to the provisions hereof and no representation or warranty by any realtor, real estate broker or real estate agent contrary to the provisions of this document shall be binding on the Declarant unless reduced to writing and signed by the Declarant.
2. The Subdivision is a Common Interest Community created and designed for use as a single-family residential community. Declarant makes no express or implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept and acknowledge that all expressed or implied warranties of quality are excluded. Units are being offered for sale by Declarant upon an "AS IS" basis.
3. All Purchasers from Declarant shall execute a separate instrument attached as an Exhibit to the Public Offering Statement and marked as "Agreement and Waiver." This Agreement and Waiver, between Declarant and Purchaser, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two (2) years of the date the Purchaser enters into possession. Purchasers should consult the Agreement and Waiver for more detailed information. All Units are subject to a One (1) year express builder warranty as set forth in the Public Offering Statement and two

(2) year statutory warranty. To the extent that any appliance or fixture is covered by any dealer warranty, manufacturer warranty, installer warranty or other warranty offered by any party other than Declarant, all Unit Owners must exhaust all remedies under such warranties prior to pursuing any warranty from the Declarant. The Agreement and Waiver is attached as Exhibit J to the Public Offering and the Builder Warranty is attached as Exhibit P to the Public Offering.

#### **XXI REMEDIES:**

In the event of any violation of the provisions of the Declaration by any Unit Owner other than Declarant (either by the Unit Owner's own conduct or by the conduct of any occupant of a Unit, or other person present in the Subdivision or on the Unit as a guest, family member, or invitee of a Unit Owner), the Association and Declarant shall have all of the rights and remedies which are set forth in the Governing Documents or otherwise provided for in the West Virginia Acts to which this Subdivision is submitted and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit, or for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any subject actions or proceedings, including Court costs and reasonable attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expenses of the Association and the Association shall have a lien against the Unit for all of the same.

#### **XXII AMENDMENT:**

The provisions of this Declaration may be changed, modified or rescinded with regard to future Units, future Phases or real estate withdrawn from the Subdivision by an instrument in writing setting forth such change, modification or rescission and executed by Declarant.

The provisions of this Declaration may be changed, modified or rescinded as to platted and dedicated Units and Phases which have not been withdrawn by Declarant only by an instrument in writing setting forth such change, modification or rescission and executed by vote or agreement of Unit Owners owning Units to which not less than sixty-seven percent (67%) of the votes in the Association are allocated and prepared, executed, acknowledged and properly recorded for the Association by its President; provided, however, no change, modification or rescission may increase or create Special Declarant's Rights, increase the number of Units, alter Unit boundaries, increase the allocated interests of a Unit or the uses to which any Unit is restricted, without the consent or agreement of all Owners of all affected Units and their respective lien holders unless otherwise specified in this Declaration.

The change, modification or rescission whether accomplished under either of the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Office of the Clerk of the County Commission of Monongalia County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Acts to which the Subdivision is submitted, and **FURTHER PROVIDED** that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Declarant or Board where alteration of the provisions hereof are made solely to bring this document into compliance with the Acts aforesaid, other existing law or to correct errors of scribes, architect or surveyor with no notice to Unit Owners or lien holders as above said unless such change, modification or rescission directly adversely and materially affects an individual Unit Owner's or lien holder's interest in the real estate or appurtenances held as security.

**XXIII. NOTICES**

Notices provided for in the Act or Governing Documents shall be in writing and shall be addressed to the Association (in care of its Secretary), Board or any Unit Owner, as the case may be, at the Unit address provided by said Owner to Association. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners or registering same with the West Virginia Secretary of State. Any Unit Owner may designate a different address for notice to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof. Upon written request to the Board setting forth its address, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration or the By-Laws to be given to the Owner or Owners whose Unit is subject to such mortgage or deed of trust, and otherwise any required notice may be given by publication in a newspaper of general circulation in the absence of submission of a lien holder's address.

**XXIV. SEVERABILITY**

If any provision of this Declaration or any Governing Documents , or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and the Governing Documents and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby and the remainder of this Declaration, or the Governing Documents shall be construed as if such invalid part was never included therein.

**XXV. PERPETUITIES AND RESTRAINTS ON ALIENATION**

If any provision of the rights-of-way, easements, options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of the President of the United States, George W. Bush.

**XXVI. TERMINATION AND EMINENT DOMAIN:**

1. Termination: The Subdivision (which includes all Units, Common Elements, rights and restrictions herein created) may be terminated only by agreement of owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. An agreement to terminate must be evidenced by: (1) the execution of a termination agreement; or (2) ratification of a termination agreement by the requisite number of Unit Owners. The termination agreement or individual ratifications thereof must: (i) be executed in the same manner as a deed; (ii) specify a date after which the agreement or ratification shall become void if not recorded before that date. No termination agreement shall be valid until recorded in the aforesaid County Clerk's Office within the time period specified on its face. It is further provided that:

- (A) Notwithstanding any provision to the contrary herein contained, Declarant may, by recording a Notice of Termination, terminate this Declaration as to the entire Subdivision prior to the recordation of the first deed for a Unit from the entire Subdivision or within that particular phase but not as to any remaining phase.
- (B) Foreclosure or enforcement of a lien or encumbrance against the entire Subdivision or any part thereof does not itself terminate the Subdivision or withdraw that part thereof from the Subdivision or from this Declaration and other related documents herein set forth.
- (c) The termination agreement may provide all of the Common Elements and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must set forth the minimum terms of sale.
- (D) The Association, on behalf of the Unit Owners, may contract for the sale of real estate but the contract is not binding on the Unit Owners until approved pursuant to this section. Upon termination, if any real estate is to be sold following termination, title to that real estate vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effectuate the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lien holders as their interests may appear, in accordance with this section. Unless otherwise specified in the termination agreement, so long as the Association holds title to the real estate, each Unit Owner



and the Unit Owner's successors in interest have an exclusive right to occupancy of that portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Declaration.

(E) If a lien or encumbrance against a portion of real estate has priority over the Declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure may record an instrument excluding the real estate subject to that lien or encumbrance from the Subdivision.

2. Eminent Domain: If a Unit is acquired by eminent domain or any part of any Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that Unit and its allocated interests, whether or not any Common Element are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocating. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element. Further:

(A) Except as provided above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless a decree provides otherwise, (i) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interests divested from the partially-acquired Unit are automatically reallocated to that Unit and to the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially-acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

(B) If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken must be paid to the Association.

**XXVII. SEPARATE TITLES AND TAXATION:**

After conveyance by the Declarant, each Unit, together with its interest in the Common Elements, constitutes a separate parcel of real estate for all purposes. Each Unit so conveyed must be separately taxed and assessed.

**XXVIII. RIGHTS AND OBLIGATIONS OF GRANTEES:**

Each Grantee of Declarant, by the acceptance of a deed of conveyance or of trust, accepts the same **SUBJECT TO** all restrictions, conditions, covenants, reservations, liens and charges, the jurisdiction, rights and powers created or reserved herein and **ALL MATTERS SET FORTH IN THIS DECLARATION**. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said land, and shall inure to the benefit of such Grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

**XXIX. HEADINGS:**

The headings or paragraphs and sections in this Declaration or the By-Laws are for reference convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

**XXX. DESCRIPTION INCLUSIONS BY REFERENCE:**

The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and is made a part hereof by reference.

**XXXI. SUBMISSION TO LAW:**

The Declarant, as the legal title holder in fee simple of the parcel, expressly intends to, and by the recording of this Declaration, do hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

**XXXII STATUTE OF LIMITATIONS:**

**All Purchasers shall execute a separate instrument attached hereto and marked as "Agreement and Waiver."** This Agreement and Waiver, between Developer and Purchaser, waives Purchaser's statutory right to a six-year statute of limitations for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should review the Agreement and Waiver for more detailed information and obtain the advice of independent legal counsel prior to executing the Agreement and Waiver.

Witness this 22nd day of July, 2007:

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

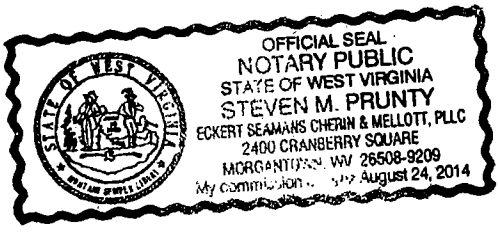
By: [Signature]  
Morgan

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

This instrument was acknowledged before me, the undersigned Notary Public, this 22nd day of July, 2007, by Carrie A. Edwards, in his capacity as manager of Backwater Properties, LLC, LLC, a West Virginia limited liability company.

My Commission Expires: 8-14-2024



[Signature]  
Notary Public

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

EXHIBIT A

TO

DECLARATION OF COMMON INTEREST COMMUNITY  
FOR FALLING WATER SUBDIVISION

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The land subject of this Declaration is the Units, Common Elements, Limited Common Elements and Easements shown and depicted as Phase 1, Sections A, B, C, and D, on that certain map or plat 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 **226 A** through **229A**, inclusive, which said map or plat is incorporated herein by reference for descriptive and all other pertinent purposes

*Exhibit A*  
*to Declaration of Common Interest Community*  
*Falling Water Subdivision*

**EXHIBIT B**

TO

**DECLARATION OF COMMON INTEREST COMMUNITY**

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**LAND OWNED BY DECLARANT WHICH MAY BE DEDICATED AS ONE OR MORE PHASES OF  
FALLING WATER SUBDIVISION**

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At the execution of the Declaration to which this Exhibit is appended, Declarant has dedicated only one (1) phase of Falling Water, namely Phase I, Sections A, B C and D. Pursuant in, of the Declaration, Declarant has reserved the right to add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised at any time within ten (10) years after the execution of this document, with regard to the following parcels of real estate owned by Declarant at the execution hereof, together with the appurtenances thereunto belonging, which said real estate is situate in Union Tax District of Monongalia County, West Virginia:

Beginning at a 3/4 inch iron rod with survey maker found at a common corner to West Penn Power Co. (Tax Map 8, Parcel 64, Deed Book No. 211, at page 201), Robert C. and Jeffery A. Sanders (Tax Map 8, Parcel 65, Deed Book No. 1124, at page 259) and other lands of the Grantors (hereinafter referred to as Kelly Lands) (Tax Map 8, Parcel 69, Will Book No. 87, at page 335); thence leaving said West Penn Power and with said Sanders for two (2) lines: South 60° 48' 26" East 709.50 feet to a 3/4 inch iron rod found on the northerly edge of an existing gravel road; and South 40°48' 26" East 1,122.59 feet to a 3/4 inch iron rod (found) at a corner common to said Sanders and Suzan A. and Richard C. Harris (Tax Map 8 Parcel 68, Deed Book No. 1252, at page 565). Thence leaving said Sanders and with said Harris for three (3) lines: South 54°36' 14" West 499.68 feet to a stone (found); South 00°48' 26" East 134.95 feet to a 3/4" bent iron rebar (found) at a common corner to said Harris and Kelly Lands (Tax Map 8, Parcel 70, Deed Book No. 1138, at page 476); and South 03°26' 58" West 164.04 feet to a 3/4 inch iron rebar (set) at a corner to said Harris and other lands of the Grantors (Tax map 8, Parcel 70, Deed Book 1138, at page 476). Thence continuing with said Harris and with said Kelly Lands (Parcel 70) for four (4) lines: North 85°17' 23" West 44.03 feet to a 3/4 inch rebar (set) at a corner to Sandra Wolfe Baker and Louella Wolfe (Tax Map 8, Parcel 71, Will Book No. 84, at page 118); South 13°23' 22" West 331.09 feet to a 3/4 inch iron rebar (set) at a corner to Sandra Wolfe Baker and Louella Wolfe (Tax Map 8, Parcel 71, Will Book 84, at page 118); thence leaving said Harris and with said Baker and Wolfe for three (3) lines: South 66°00' 04" West 738.36 feet to a 3/4 inch iron rebar (set) on the westerly side of an existing access right of way; North 19°41' 56" West 488.40 feet to a 3/4 inch iron rebar (found) at a common corner to Kelly Lands (Tax Map 8, Parcel 71.1, Deed Book No. 1138, at page 476); thence leaving said Kelly Lands (Parcel 70) and with said Kelly Lands (Parcel 71.1), South 59°31' 54" West 1,254.61 feet to a 3/4 inch iron rebar (set) at a common corner to Harriet J. Wolfe (Tax Map 8, Parcel 55, Deed Book No. 37, at page 248); thence leaving said Baker and Wolfe and with said Harriet V. Wolfe for two (2) lines: North 61°37' 26" West 340 feet to a 3/4 inch iron rebar (set) at a common corner to Kelly Lands (Tax Map 8, Parcel 56, Will Book No. 87, at page 335); thence with said Kelly Lands (Parcel 56), South 32°35' 01" West 910.83 feet to a 3/4 inch iron rebar (set) at a common corner to Joseph E. Westerman and Harry L. Westerman (Tax Map 8, Parcel 54, Deed Book No. 1101, at page 395); thence leaving said Wolfe and with said Westerman, North 46°47' 21" West 895.95 feet to a 3/4 inch iron rebar (set) at a common corner to said Westerman and Albert Larkin Payne (Tax Map 8, Parcel 53, Deed Book No. 76, at page 51); thence leaving said Westerman and with said Payne, North 79°17' 21" West 825.49 feet to a 2 inch iron rebar (found) at a common corner to said Payne and Sky View Limited Partnership (Tax Map 14, Parcel 76.3, Deed Book No. 915, at page 614) and Kelly Lands (Tax Map 8, Parcel 52, Will Book No. 87, at page 335); thence leaving said Payne and with said Sky View Limited Partnership and said Kelly Lands (Parcel 52) for two (2) lines: North 79°17' 21" West 156.26 feet to a 2 inch rebar (found); thence partially with said Sky View Limited Partnership and with KMD Corporation (Parcel 16) North 10°20' 23" West 485.89 feet to a 3/4 inch iron rebar (set) at a common corner of Kelly Lands (Tax Map 8, Parcel 48.2, Will Book No. 87, at page 335); thence continuing with said KMD Corporation and with said Kelly Lands (Parcel 48.2) for three (3) lines: South 82°09' 21" West 192.87 feet to a 3/4 inch rebar (set); South 12°09' 21" West 1,065.45 feet to a 3/4 inch iron rebar (set); North 75°35' 39" West passing through a 3/4 inch iron rebar (found) at 612.26 feet for a distance of 635.09 feet to a point on the easterly right of way line of Monongalia County Route 88/2; thence crossing said Monongalia County Route 88/2, North 10°55' 21" East 40.24 feet to a point, at a common corner to Patricia Keith (Parcel 48) and on the westerly right of way line of a 40 foot private road; thence with said Keith and said 40 foot private road, South 73°51' 59" East 64.09 feet to a point; thence South 71°29' 41" East 123.29 feet to a concrete monument (found) at a common corner to James J. Donlin (Tax Map 8, Parcel 48.21, Deed Book No. 1148, a page 379); thence continuing with said 40 foot private road and with said Donlin for two (2) lines: with a curve to the left having a radius of 258.49 feet, an arc length of 211.17 feet, a chord bearing North 82°22' 14" East 205.35 feet to a point; and North 51°28' 47" East 38.44 feet to a 3/4 inch iron rebar (found) at a common corner to said Keith and said Donlin; thence leaving said Donlin and with said Keith and said 40 foot private road, for four(4) lines: with a curve to the left having a radius of 344.54 feet, an arc length of 306.01 feet, a chord bearing North 19°33' 52" East 296.05 feet to a point; a curve to the right having a radius of 3,112.01 feet, an arc length of 215.31 feet, a chord bearing North 04°58' 34" West 215.27 feet to a point; a curve to the left having a radius of 243.54 feet, an arc length of 269.39 feet and a chord bearing North 32°31' 30" West 255.87 feet to a point; and North 68°32' 19" West 33.66 feet to a point; thence leaving said Keith and crossing said 40 foot private road, North 01°04' 19" East, passing through a 1/4 inch iron rod (found) at a common corner to David and Donna Alexander ( Tax

*Exhibit B*  
*to Declaration of Common Interest Community*  
*Falling Water Subdivision*

Map 8, Parcel 48.1, Deed Book No. 1282, at page 190) and Kelly Lands (Tax Map 8, Parcel 48.2, Will Book No. 87, at page 335), a total distance of 687.98 feet to a 2 inch iron rod (found) in the southerly right of way line of a previous railroad (now a walking trail); thence leaving said Alexander and with said walking trail, with a curve to the left having a radius of 1,351.52 feet, an arc length of 567.72 feet and a chord bearing North 82°48' 59" East 563.56 feet to a 3/4 inch rebar (set) at a common corner to West Penn Power Company (Tax Map 8, Parcel 57, Deed Book No. 211, at page 201); thence leaving said walking trail and with said West Penn Power (parcel 57) for two (2) lines: South 12°41' 39" East 409.96 feet to a 3/4 inch iron rebar (set); and North 52°54' 37" East 1,115.40 feet to a 3/4 inch iron rebar (set); thence partially with said West Penn Power (Parcel 57) and with other lands of said West Penn Power Company (Tax Map 8, Parcel 61, Deed Book No. 211, at page 201) North 48E24' 37" East 1,299.60 feet to a survey marker with witness post WPP company #37 (found); thence with said West Penn Power Company (Parcel 61), North 43°20' 19" West 50.66 feet to a t-post marked 36 (found) at a common corner to West Penn Power Company (Tax Map 8, parcel 64, Deed Book No. 211, at page 201); thence leaving said West Penn Power Company (Parcel 61) and with said West Penn Power Company (Parcel 64) North 73°25' 01" East 73.99 feet to a t-post marked "35" found at a common corner to West Penn Power Company (Tax Map 8, Parcel 62, Deed Book No. 211, at page 201); thence leaving said West Penn Power Company (Parcel 64) and with said West Penn Power Company (Parcel 62) South 55°16' 18" East 76.44 feet to a 3/4 inch iron rebar (set) at a common corner to said West Penn Power Company (Parcel 64); thence leaving said West Penn Power Company (Parcel 62) and with said West Penn Power Company (Parcel 64) for four (4) lines: South 16°32' 11" East 254.10 feet to a 3/4 inch iron rebar (set); South 22°32' 11" East 99 feet to a 3/4 inch iron rebar (set); South 14°17' 11" East 190.06 feet to a survey marker with t-post WPP Company #33; and South 24°30' 52" East 73.13 feet to a survey marker with witness post WPP Company #32 (found) at a common corner to West Penn Power Company (Tax Map 8, Parcel 63); thence leaving said West Penn Power Company (Parcel 64) and with said West Penn Power Company (Tax Map 8, Parcel 63) for twelve (12) lines: South 00°09' 59" East 194.60 feet to a point; South 08°50' 01" West 153.30 feet to a point; South 08°35' 59" East 66.80 feet to a point; South 19°42' 01" West 129 feet to a point; South 17°42' 01" West 101 feet to a point; South 04°32' 01" West 111 feet to a point; thence North 82°22' 01" East 32 feet to a point; North 40°32' 01" East 94 feet to a point; North 26°52' 01" East 101 feet to a point; North 33°09' 01" East 132 feet to a point; North 27°14' 01" East 103 feet to a point; thence North 20°14' 01" East 127 feet to a point on a common line to said West Penn Power Company (Parcel 64); thence leaving said West Penn Power Company (Parcel 63) and with said West Penn Power Company (Parcel 64) for five (5) lines: South 52°42' 21" East 280.95 feet to a 3/4 inch iron rod WPP company #30; thence North 39°51' 09" East 89.63 feet to a 3/4 inch iron rod WPP company #29; thence South 45°14' 24" East 332.33 feet to a metal fence post with witness marker; thence North 29°48' 14" East 266.88 feet to a 3/4 inch iron rod found at a common corner to said Kelly Lands (Parcel 69); thence continuing with said West Penn Power Company (Parcel 64) and with said Kelly Lands, North 29°48' 14" East 1,270.50 feet to the place of beginning, containing 194.45 acres, more or less, as shown on a plat attached hereto and made part of this description.

BEING part of the same real estate conveyed from STEPHEN L. KELLY and MARSHA L. KELLY, his wife, by SUSAN K. CRIST, their Attorney in Fact, DAVID L. KELLY and KAY B. KELLY, his wife, JAMES K. KELLY, a single individual, SUSAN K. CRIST and JOHN B. CRIST, her husband, to BACKWATER PROPERTIES, LLC, a West Virginia limited liability company, by Deed dated march 27, 2006, which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1315 at Page No. 315.

***Exhibit B***  
***to Declaration of Common Interest Community***  
***Falling Water Subdivision***

**EXHIBIT C**

**TO**

**DECLARATION OF COMMON INTEREST COMMUNITY  
FOR FALLING WATER SUBDIVISION**

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**LAND NOT OWNED BY DECLARANT BUT WHICH MAY BE DEDICATED AS ONE OR MORE  
PHASES OF SLEEPY HOLLOW SUBDIVISION IF ACQUIRED BY DECLARANT**  
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At the execution of the Declaration to which this Exhibit is appended, Declarant has dedicated only one (1) Phase of Falling Water Subdivision, namely Phase I which is comprised of 4 Sections. Pursuant to the Declaration, Declarant has reserved the right to add real estate to, or withdraw real estate from, the Subdivision, which said right may be exercised at any time with regard to any parcel of real estate within ten (10) years after the execution of this document, with regard to any or all portions of the following parcels of real estate which are not at the execution hereof owned by Declarant, but which rights may be exercised if Declarant should hereafter acquire any interest in any portion of the following described real estate situate in Union Tax District of Monongalia County, West Virginia:

	2006 Union Tax District identifier assigned by Monongalia County Assessor's Office			Approximate Acreage
	Tax Map	Tax Parcel	Parcel Split	
1	8	65	0	38.75 Acres
2	8	68	0	15.211 Acres
3	8	71	0	22.044 Acres
4	8	55	0	16.280 Acres
5	8	54	0	24.53 Acres
6	8	53	0	30 Acres
7	8	76	3	5.5 Acres
8	8	52	0	1 Acre
9	8	48		22.596 Acres
10	8	48	1	5.02 Acres
11	8	48	21	.766 Acre
12	14	15	0	.63
13	14	15.2	0	3.046
14	14	16	0	33.597 ★

★ Includes outsales from this tract not yet mapped as of July 1, 2006.

*Exhibit C  
to Declaration of Common Interest Community  
Falling Water Subdivision*

**STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA  
TO WIT:**

Monongalia County Clerk  
Carve L. Blaney  
AGREEMENT Drawer 4  
Date/Time: 07/23/2007 15:56  
Inst #: 250154