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STATE OF INDIANA

PORTER COUNTY

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**DECLARATIONS OF COVENANTS, CONDITIONS,
RESTRICTIONS & EASEMENTS FOR
THE EXECUTIVE COTTAGE HOMES AT FALLING WATERS**

Plat 44-A-4A 2619-021541

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Declaration") is made as of this *2nd* day of November, 2020 by FWA Development, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant") and DDB Homes, Inc., an Indiana corporation (hereinafter referred to as "Builder").

RECITALS

1. All capitalized terms used herein shall have the meaning ascribed to them at the first time they are used herein or in the definition set forth in Article I below.

2. Declarant intends to, and by recording this Declaration does, subject and submit to the provisions of this Declaration the Submitted Parcel as legally described on Exhibit "A" attached hereto.

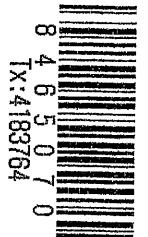
3. In order to provide for the necessary administration, preservation, maintenance and enhancement of those portions of the Development Area and any other land subject to the provisions of this Declaration, Declarant or Builder will form an Association which shall be responsible for the maintenance of the areas described in Article IV hereof and each Owner of a Tract which is subject to this Declaration (excluding the Declarant and Builder) shall be assessed for his share of the cost thereof by the Association.

4. Declarant intends by this Declaration to impose upon the portions or the Development Area subject to the provisions of this Declaration mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Submitted Parcel made subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the development of the Submitted Parcel, and to establish a method for the administration, maintenance, enhancement, preservation, use and enjoyment of the Submitted Parcel and Development Area.

5. Declarant and Builder shall retain certain rights set forth in this Declaration. Prior to the Turnover Date, Builder shall retain the right to appoint all members of the Board and the right to use the Submitted Parcel for the purposes set forth in Section 16.06 hereof.

6. This Declaration shall be in addition to the Restrictive Covenants for Falling Waters Subdivision recorded May 19, 2003 as Instrument Number 03-20698, as amended from time to time ("Master Declaration"). In the event the terms hereof conflict with the Master Declaration, the terms set forth herein shall govern. This Declaration shall also be subject and subordinate to Ordinance 2018-23, filed in the Porter County Recorder as Document No. 2018-024267.

NOW THEREFORE, Declarant hereby declares that the real property legally described in Exhibit "A" and referred to herein as the Submitted Parcel, is and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, burdens, uses, privileges, charges and liens which shall exist at all times hereafter among all parties having or acquiring any



right, title or interest in or to any portion of the Submitted Parcel; which are for the purpose of protecting the value and desirability of, and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Submitted Parcel or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1.01. "Assessments" shall mean Assessments for Common Expenses provided for herein or by any Supplemental Amendment or by any other amendment hereof pursuant to Article XIII hereof which shall be used for the purposes of promoting health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. Assessments shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

Section 1.02. "Association" shall mean and refer to The Cottage Homes at Falling Waters, an Indiana not-for-profit corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana law. The Association shall be organized and governed in accordance with the Articles of Incorporation, and By-Laws, attached hereto as Exhibits "B" and "C", respectively.

Section 1.03. "Builder" shall mean and refer to DDB Homes, Inc., an Indiana corporation, and its successors and assigns.

Section 1.04. "Common Area" shall mean (i) landmark signage with associated landscaping features, identifying The Executive Cottage Homes at Falling Waters, but only if installed by Builder or the Association, (ii) all personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, and (iii) all other improvements located on or within the Submitted Parcel owned or controlled by the Association and available for the common benefit and/or use of the Owners or for the maintenance or management of any part of the Development Area.

Section 1.05. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, as may be found to be appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 1.06. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Development Area. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

Section 1.07. "Declarant" shall mean FWA Development, LLC, an Indiana limited liability company, and its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant as provided in Article XVI hereof.

Section 1.08. "Development Area" shall mean the real estate described on Exhibit "A" hereto with all improvements thereon and any additional real estate.

Section 1.09. "Tract" shall mean and refer to any individual parcel within the Submitted Parcel herein described, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a single family residential unit could be constructed, whether or not one has been constructed. Said Tract may be designated by number, as well as, tax identification numbers.

Section 1.10. "Member" shall mean and refer to a person or entity entitled to Membership in the Association, as provided herein.

Section 1.11. "Mortgage" shall include a deed of trust, as well as a mortgage.

Section 1.12. "Mortgagee" shall include a beneficiary or holder of a deed or trust, as well as a mortgagee.

Section 1.13. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

Section 1.14. "Occupant" shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by leave, license, contract or any other means, whether or not lawful, and shall include, without limitation, Owners, tenants, subtenants, and their guests and invitees.

Section 1.15. "Owner" shall mean and refer to one or more persons or entities who hold the record title to any Residential Unit which is part of the Development Area, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Residential Unit is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.

Section 1.16. "Parcel" shall mean a Tract, fee simple title to which shall be conveyed by deed of the Declarant or Builder to each Owner, upon which a single-family residential unit is located or to be located, and which may be identified by a separate parcel identification number.

Section 1.17. "Person" means a natural person, a corporation, a partnership, limited liability company, trustee or other legal entity.

Section 1.18. "Plat" shall collectively mean the real estate legally described in Exhibit "A" under the "Development Area" subheading.

Section 1.19. "Project" shall mean the attached Development Area owned by the Declarant and held for development under a common plan for single-family dwellings from time to time.

Section 1.20. "Residential Unit" shall mean a Tract and the single-family executive cottage home constructed thereon, which is part of the subdivision intended for independent ownership for use and occupancy as a single-family residence. The boundaries of Residential Units shall be the boundary lines of the Parcel conveyed by Declarant or Builder to the Owners.

For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of Porter County, Indiana.

Section 1.21. “Subdivision” shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations and shall initially include the real property described in Exhibit “A”.

Section 1.22. “Submitted Parcel” shall mean that portion of the Development Area which is described on Exhibit “A” attached hereto, as Exhibit “A” may be amended from time to time, together with all rights appurtenant thereto.

Section 1.23. “Turnover Date” shall mean the date on which the right of Builder to select and designate all of the members of the Board of Directors is terminated pursuant to Section 16.01 hereof.

ARTICLE II

PROPERTY RIGHTS

Section 2.01. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit 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 necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to the intentional, willful, or knowing conduct on the part of any Owner or Occupant.

Section 2.02. Easements for Utilities, Etc. Declarant hereby reserves for Builder, Declarant and its designees (including, without limitation, Porter County and any utility) easements upon, across, over and under the residential Units for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Development Area.

Without limiting the generality of the foregoing, there are hereby reserved for any utility, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing, and maintaining the respective infrastructure servicing any Residential Unit.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association’s Board of Directors or as provided in the development and sale by Declarant or Builder. Should any entity furnishing a service covered by the general

easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article II shall in no way adversely affect any other recorded easement on the Submitted Parcel.

Section 2.03. Ingress and Egress Easements. The ingress and egress easements are depicted on the Plat.

Section 2.04. Non-Exclusive Easements. Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Area, if any:

a. Each Owner and their respective guests, invitees and employees shall have a non-exclusive easement for use and enjoyment in and to the Common Area subject to the following: (i) right of the Association to pass reasonable rules and regulations relating to such use and enjoyment, (ii) the right of the Association to suspend an Owner's right to use or enjoy such easement for any period during which such Owner may be in violation of this Declaration, (iii) the right of the Association to levy assessments as herein provided, and (iv) any and all rights reserved to Declarant, Builder and the Association as herein provided.

b. A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements is hereby granted to the Association and reserved by the Declarant over, under, across and through the Common Area. If any such drainage or utility facilities are not installed or in any easements for such purposes are not created with respect to a Tract or Residential Unit or any portion thereof prior to delivery of a Deed to an Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute and record any such easements with respect to any Tracts or Residential Units owned by said Owner for the benefit of the Subdivision. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

The Declarant, Builder, Association and any of their respective agents, employees and independent contractors shall have the right to enter upon the Common Area and any Tract or Residential Unit to the extent necessary for the purpose of maintaining, repairing and replacing the Common Area as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Builder, Association, or any of their agents, employees or independent contractors shall not be guilty of trespass.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 3.01. Membership and Meeting. Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Residential Unit owned. In the event the Owner of a Residential Unit has more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by

a Member or the Member's spouse, but in no event shall more than one (1) vote be cast for each Residential Unit.

The first annual meeting of the Association shall not be held until such time as the rights of the Builder to appoint directors and to thereby control the Association shall have expired as provided in Section 3.03 of this Declaration or at such earlier time or times as may be determined by the Builder. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

Section 3.02. Voting. The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 3.01 hereof; there shall be only one (1) residential Unit, the vote for such Residential Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advisement, the Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

The voting rights of Members shall be subject to the Declarant and/or Builder's rights pursuant to the provisions of Article XVI and Article XVII hereof.

Section 3.03. Number Terms and Selection of Board of Directors. The initial Board of Directors shall consist of three (3) directors appointed by the Builder who may but need not be Owners or Members of the Association, and who shall serve those terms of office as established by the By-Laws. The Builder shall have the right to select and designate all of the directors, and accordingly therefore the right to operate and control the Association, until the Turnover Date. Thereafter, directors shall be elected as otherwise required by the Articles of Incorporation and By-Laws of the Association and must be Members of the Association.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by Builder. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners of Residential Units, one or more committees to advise and assist it in the performance of its functions. The rights and powers of such Board of Directors shall be limited as follows:

- a. All assessments shall be made in accordance with this Declaration.
- b. Such Board shall have no power to reallocate the voting power among the Members in any manner contrary to this Declaration.
- c. Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Builder shall have the right to waive, on behalf of the Association, the annual meeting and annual accounting provided for in this Declaration, so long as Builder retains control of the Association. At the time of turnover of control by Builder, a meeting of the Association will be called, at which time the rights and powers of the Builder appointed Board of Directors shall terminate and the Association shall thereafter be governed in accordance with the other provisions of this Declaration, the Articles of Incorporation and the By-Laws. Each Member shall be deemed to have given to Builder an irrevocable proxy to vote on any and all matters on which such Member is entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The proxy hereby granted to Builder shall be deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the Turnover Date as set forth above.

ARTICLE IV

MAINTENANCE

Section 4.01. Association's Responsibility. Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of four-fifths (4/5) of all Members, the Association's responsibility for maintenance of the Submitted Parcel (except for services provided by Porter County) shall be limited to:

- a. the providing for the care of lawns, grass mowing, paring of trees and bushes, planting of vegetation, fertilizing and landscaping (the type and placement of such landscaping to be determined by the ARC (as hereinafter defined in its discretion), including the obligation to maintain the irrigation system;
- b. the removal of the snow and de-icing products, as needed, from private walks and driveways within a reasonable time, when accumulation is two inches or more, to provide access to the entry door and garage located adjacent to any Residential Unit; and
- c. repair and maintenance of all Common Areas.

Section 4.02. Owner's Responsibility. Except as provided in Section 4.01 hereof, all maintenance, repair and replacement of the single-family residential unit, its sidewalk and driveway located on the Residential Unit thereon shall be the sole responsibility of the Owner thereof who shall perform such maintenance, repair and replacement in a manner consistent with the Community-Wide Standard of the Project and the applicable covenants; provided, further, the Owner shall be responsible for the following with respect to such Owner's Residential Unit:

- a. removing snow from the rear of the Residential Unit;

- b. the maintenance, repair and replacement of the post light, the light bulbs within the post light and the dusk-to-dawn sensor on the post light on the Residential Unit;
- c. to maintain, repair and replace the Owner's mailbox to Subdivision standards; and
- d. to provide the Association with the Owner's name, address, phone number and insurance company information and to keep the Association informed of any changes thereto.

ARTICLE V

INSURANCE AND CASUALTY LOSSES

Section 5.01. Insurance. Each owner shall obtain such insurance in accordance with Section 5.02 hereof. All provisions of this Article shall apply to all policy provisions, loss adjustment and all other subjects of all policies of insurance.

The Association, acting through its Board, shall obtain a master casualty policy affording fire and extended coverage insurance insuring the capital assets of the Association in an amount equal to the full replacement value thereof or any improvements located upon the Common Area or reserved easement herein as determined by a qualified property and casualty insurer. The amount shall be determined and the insurance renewed annually.

Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association as an additional insured as to such policy. The public liability policy shall have at least a Five Hundred Thousand Dollars (\$500,000.00) limit per occurrence and a One Hundred Thousand Dollar (\$100,000.00) minimum property damage limit. In addition, each Owner upon request of the Association shall provide a copy of the insurance policy or a certificate to the Association.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the Assessments, as described in Article IX. Premiums for insurance obtained by Owners shall be paid by such Owners.

All casualty insurance coverage obtained by the Association or by any Owner shall be for the respective benefited parties, as further identified in b. below. Such insurance shall be governed by the provisions hereinafter set forth.

a. All policies shall be written with a company licensed to do business in Indiana and holding a "secure rating" of A or better as reflected in the current A.M. Best Company, Inc. guide, if reasonably available, or, if not available, the most nearly equivalent rating. Additionally, property damage insurance shall be for the full replacement cost.

b. All policies on Residential Units shall be for the benefit of the Residential Unit Owners and their Mortgagees as their interests may appear. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the

absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

c. In no event shall any insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees.

d. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Porter County area.

e. The Association's Board of Directors and the Owner shall be required to make reasonable efforts to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association, its Board of Directors, and manager, the Owners, and each of their respective tenants, servants, agents and guests;

(2) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(3) that no policy obtained by the Association may be canceled, invalidated or suspended on account of any one or more individual Owners;

(4) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or Mortgagee;

(5) that any "other insurance" clause in any policy exclude the Association and individual Owners' policies from consideration; and

(6) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association or the Owner.

Section 5.01A. Other Association Insurance. In addition to the other insurance required by Section 5.01 hereof, the Board shall also have the authority to and shall obtain, as a Common Expense, the following:

a. Comprehensive public liability and property damage insurance against claims for person injury or death or property damage suffered by the public or by any Owner occurring in or about the streets, sidewalks and passageways and other areas within the Submitted Parcel and/or with respect to the Association's maintenance obligations set forth in Section 4.01 hereof, in such amounts as the Board shall deem desirable.

b. Such workmen's compensation insurance as may be necessary to comply with applicable laws.

- c. Employer's liability insurance in such amount as the Board shall deem desirable.
- d. Directors' and Officers' liability insurance, as set forth in Section 14.02 hereof.
- e. Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insurance parties. The premiums for such insurance shall be Common Expenses.

Section 5.02. Individual Insurance. By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the residential Unit and structures constructed thereon as provided for in Section 5.01 hereof, unless the Association carries such insurance, which the Association is not obligated to do. Each individual Owner further covenants and agrees that in the event of any loss or damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration.

Section 5.03. Damage and Destruction. Immediately after the damage or destruction by fire or other casualty to all or any part of a Residential Unit, the Owner of the Residential Unit shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Residential Units. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Residential Units to substantially the same condition in which they existed prior to the fire or other casualty. Any damage or destruction shall be promptly repaired or reconstructed by the Owner.

ARTICLE VI

NO PARTITION

Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Submitted Parcel has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII

CONDEMNATION

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner damaged by such condemnation shall be entitled to pursue all available remedies against the condemning authority. Should any property owned or maintained by the Association as Common Area be affected by the condemnation, the Association shall be

entitled to pursue all available remedies against the condemning authority for the damages sustained to such property.

ARTICLE VIII

RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

Section 8.01. Personal Property for Common Use. The Association, through the actions of its Board of Directors, may acquire, own, lease, hold and dispose of tangible and intangible personal property.

Section 8.02. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the operations of the Association, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may be imposed in accordance with Article XII. The Board shall also have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit Porter County to enforce ordinances on the Submitted Parcel for the benefit of the Association and its Members.

Section 8.03. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IX

ASSESSMENTS

Section 9.01. Creation of Assessments. There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 9.06 hereof. Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments. All such Assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys' fees shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each such Assessment together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual

Assessment for delinquent Owners. Unless the board otherwise provides, the Assessments shall be paid in monthly installments.

Section 9.02. Computation of Assessment. It shall be the duty of the Board, at least thirty (30) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) and ten (10) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. Subject to the provisions of Section 9.05 hereof, the budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least seven (7) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding budget year.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time.

Upon the Declarant or Builder's sale of a Residential Unit to a third party Owner, the following assessments shall be collected by and for the benefit of the Association at the time of the initial closing on the Residential Unit: (1) an initial closing assessment of Two Hundred Dollars (\$200.00), and (2) a yearly Assessment of Nine Hundred Dollars (\$900.00) per year or as otherwise determined herein by the Board per calendar year (prorated for the first year of ownership). Thereafter, a yearly assessment of Nine Hundred Dollars (\$900.00) per year or as otherwise determined herein by the Board shall be due and owing for each Residential Unit and payable to the Association on the first day of each month, quarter, half-year or year basis as determined by the Board.

The Owner shall pay directly to the Falling Waters HOA, Inc. all sums due and owing as required under Article VIII of the Declaration of Covenants, Conditions, and Restrictions for Falling Waters Subdivision ("Master Declarations"). In this regard, the Master Declaration initial closing assessment is initially contemplated to be One Hundred Dollars (\$100.00) and the yearly ongoing assessment is initially contemplated to be Eight Hundred Dollars (\$800.00) per year.

Section 9.03. Special Assessments. In addition to the Assessments authorized in Section 9.01, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year, provided, however, that such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of more than fifty percent (50%) of a quorum of Members entitled to vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Owner to reimburse

the Association for costs incurred in bringing an Owner and such Owner's Residential Unit into compliance with the provisions of the Declaration, the Amendments thereto, the Articles of Incorporation, the By-Laws, and the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

Section 9.04. Lien for Assessments. When a notice of the lien has been recorded, such Assessment or Special Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgage or deeds of trust) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association, following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. A suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 9.05. Capital Budget and Contributions. In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in any amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 9.02 hereof. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 9.06. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the Assessments, including interest, late charges subject to the limitation of Indiana law, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any bona fide first Mortgage upon any Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Residential Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments or Special Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchases or a Residential Unit obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to

such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of the Assessments shall be deemed to be Common Expense collectible from all of the Residential Units, including such acquirer, his successors and assigns.

ARTICLE X

ARCHITECTURAL STANDARDS

This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any real estate subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition, staking, clearing, excavation, grading and other site work, and no plantings or removal of plants, trees or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Architectural Review Committee (the "ARC") has been obtained. The ARC shall consist of three (3) members. The initial ARC shall consist of the Declarant. After the Turnover Date, the members of the ARC shall be appointed by the Board of Directors. The ARC shall have exclusive jurisdiction over all modifications, additions or alterations made on or to existing Residential Units and the open space, if any, appurtenant thereto. The original construction of the single-family unit shall be in accordance with the plans and specifications approved by the Declarant in its sole discretion. Notwithstanding anything to the contrary in this Declaration, until the Turnover Date the Builder shall solely act as the ARC for purposes of reviewing and potentially approving landscaping and vegetation, privacy dividers, pavers, patios, and the placement of satellite dishes.

Section 10.01. Architectural Standards. Notwithstanding that it is the Owner's responsibility to maintain and repair the Residential Unit owned by him and/or her, each Owner agrees that they are prohibited from taking any action with regard to the following:

- a. The reconfiguration of any existing structure of a Residential Unit in any manner whatsoever.
- b. The use of any materials on the exterior of any Residential Unit which is not substantially the same to that which was provided as a part of the original construction, both in quality, color and other appearance.
- c. The erection of clotheslines, awnings, or other similar items or devices.
- d. The use of window coverings which are not white or beige or show a white or beige appearance when viewed from the exterior of the Residential Unit.
- e. The use of mailboxes not in conformity with the quality and style and location of the original mailboxes installed for the Residential Units in accordance with Section 11.05.

f. All Residential Units shall have proportions of brick, granite, dryvit/stucco, stone, and LP siding (or siding of similar type and quality) as the ARC shall determine in its sole discretion.

g. No fencing will be permitted for any purpose on a Tract. This provision does not prohibit the ARC from allowing vegetation privacy dividers, so long as an Owner submits a proposal to the ARC and ARC provides prior written approval.

In addition to the foregoing prohibitions, each Owner shall have an affirmative obligation to maintain and repair his and/or her Residential Unit in such manner as to maintain at all times the uniformity of appearance of such Residential Unit with all others in the community. Notwithstanding anything contained herein to the contrary, no permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right to an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

Section 10.02. Architectural Construction and Landscaping Standards and Use Restrictions for Residential Units. No structure shall be erected, including exterior remodeling or additions to existing Residential Units, or permitted on any Tract in the Subdivision until plans and specifications for that structure have been submitted to and approved in writing by the Declarant until control of the Association is turned over to the Owners and at that time, then approved in writing by the ARC. A "structure" is defined as any building or fixture that is permanent. This provision in no manner is meant to imply that a given structure is permitted.

Each contractor or Owner must submit to the Declarant and/or the ARC and receive the Declarant's or ARC's written approval of the following items before any construction on any structure may begin:

- a. Drawings showing all four elevation and masonry areas;
- b. Floor plan showing square footage;
- c. Site plan showing grade plan, placement of the structure on the Tract and the location of driveway and walkways;
- d. Landscape plans; and
- e. Provide detail of materials and manufacturer specifications to be used.

The ARC's approval or disapproval as required in these Covenants shall be in writing. In the event the ARC, or its designated representative, fails to approve or disapprove within sixty (60) days after the plans and specifications have been submitted to it, approval by the ARC will be presumed, provided that no structure, as previously defined, shall be erected which violates any of the Covenants or restrictions as set forth in this Declaration.

Refusal or approval of plans and specifications by the ARC may be based upon any ground, including purely aesthetic ones.

The ARC reserves the power to make exceptions to these restrictions and covenants as it deems proper.

Whether or not a provision specifically states in any conveyance of any Parcel by the Declarant, its successors or assigns, the owner or occupancy of any Parcel, by acceptance of title thereto or by taking possession, covenants and agrees to adhere to all of the covenants, restrictions, duties, obligations and procedures as set forth in this document.

None of the Declarant, the Builder, the Association, the ARC, or their respective representatives, or any member thereof, shall be liable for any damage, loss, or prejudice suffered or claimed by any contractor or Owner or Occupant which submits such a plan or specification on account of:

- (i) Any effects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Article X;
- (ii) Any structural defects in any work done according to the plans and specifications;
- (iii) The approval or disapproval of any plans, drawings and specifications, whether or not defective;
- (iv) The construction or performance of any work, whether or not done pursuant to approved plans, drawings and specifications; or
- (v) The development of any real estate in the Subdivision.

Any person or entity submitting plans or specifications to the Declarant or the ARC, or their representatives, or any member thereof, shall hold them harmless from all damage, loss, or prejudice suffered or claimed by any third party, including attorney's fees incurred.

During construction on any Tract in the Subdivision, the contractor on that Tract shall remove all trash and debris resulting from construction on the Tract. Each building of a Residential Unit in the Subdivision shall maintain a dumpster for all construction debris and mud, although a single dumpster may be used for multiple Tracts. All mud shall be removed from the street. Each contractor other than Builder will specifically be held responsible for clearing the roadway of all mud and debris placed on the road by any contractor, subcontractor or material man. No debris shall be burned or disposed of on any real estate in the Subdivision.

All exterior work in the construction of any Residential Unit, including driveways, shall be completed within nine months from the date of the issuance of the building permit. Extensions of time, for good cause, may be granted by the ARC.

No improvement which has been partially or totally destroyed by fire or other reason, shall be allowed to remain in that state for more than ninety (90) days from the date of such destruction or damage. Extensions of time, for good cause, may be granted by the ARC.

Section 10.03. Landscaping.

- a. Within three (3) months from the date of occupancy of any Residential Unit the contractor on any Parcel shall sod all front and sides facing or fronting a street and shall seed or sod all side and rear yards not covered by porches, patios, driveways, or sidewalks, provided however that seeding and sod shall be not required between October 15th and April 30th.
- b. Any Residential Unit erected on any Parcel shall comply with the drainage requirements imposed by the Restrictive Covenants for Falling Waters and as directed by the Falling Waters Conservancy District.
- c. No landscaping shall be permitted by the Owner in the conservation easement.

Section 10.04. Driveway Requirements. No Residential Unit or structure erected or placed on any Parcel in the Subdivision shall be occupied in any manner at any time prior to the installation and construction thereon by the contractor thereof (at the contractor's sole expense), of an asphalt or concrete paved driveway from the street to the garage provided, however, that this requirement may be extended for a period not to exceed one hundred twenty (120) days in the event such Residential Unit shall be ready for occupancy during a time when inclement weather or labor strike shall prevent the construction and installation of such driveway.

Section 10.05. Exterior Color Plan. The Declarant shall have final approval of all exterior color plans and each contractor must submit to the Declarant, and then upon the Declarant's resignation to the ARC, a color plan showing the color of the roof, exterior walls, shutters, trim, and any other surface visible from the exterior of the Residential Unit. The Declarant/ARC shall then determine the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for the Subdivision.

ARTICLE XI

USE RESTRICTION

Section 11.01. Residential Restrictions. The Tracts subject to this Declaration may be used for single-family residential units and for no other purpose. Any and all business, trade, or similar activity is prohibited, except that an Owner or occupant residing in a dwelling on a Tract may conduct business activities within the dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (b) the business activity conforms to all zoning requirements; (c) the business activity does not involve door to door solicitation of residents of the Subdivision; (d) the business activity does not generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Subdivision which is noticeably greater than that which is typical of dwellings in which no business activity is being conducted; and (e) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted

meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in a full or part time manner; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. The only exception hereto is any model provided by the Declarant or Builder to promote the sales of the Parcels and/or Residential Units. The Association, acting through the Board of Directors, shall have standing and the power to enforce the use restrictions contained herein as well as those stated in the ordinances of Porter County as if all of such provisions were regulations of the Association.

Section 11.02. Nuisances. No nuisances shall be allowed upon any Residential Unit nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Residential Units by its residents, or which will obstruct or interfere with the rights of other Owners or the Association. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance, or to prohibit the Association from adopting Rules and Regulations prohibiting conduct which does not constitute a nuisance.

In addition, the following shall apply to all Parcels and Owners of any portion of a Parcel described herein:

- a. No burning of refuse shall be permitted.
- b. The use of any driveway or parking area which may be in front of or adjacent to or part of any Parcel as a habitual parking place for commercial vehicles is prohibited. The term "commercial vehicles" shall include all trucks and cargo vans (3/4 ton or larger), construction equipment and vehicular equipment which bear signs or have printed on the side of said vehicle reference to any commercial undertaking or enterprise. Commercial vehicles shall also include all limousines for hire. The habitual violation of the parking regulations set forth in this paragraph shall be deemed a nuisance. Pick-up trucks (smaller than 3/4 ton) and vans (smaller than 3/4 ton), with or without commercial name, shall be an exception to this exclusion, as long as such vehicles are able to fit fully loaded in a Residential Unit garage (and are garaged there) or are granted an exemption by the Association.
- c. No buildings shall be located or maintained within the utility and drainage easements within the real estate. The removal of such as required by Porter County, Indiana, or any public utility or governmental agency shall be at the sole cost and expense of the Parcel Owner.
- d. No plants or seeds, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Parcel.

Section 11.03. Immoral, Improper, Offensive and Unlawful Uses. No immoral, improper, offensive or unlawful use shall be made of any Residential Unit nor any part thereof and all laws, zoning ordinances and regulations of all governmental bodies regarding the

maintenance, modification or repair of Residential Units shall be the same as provided in Article IV hereof.

Section 11.04. Uses Affecting Insurance Rates. An Owner shall not permit or suffer anything to be done or kept in a Residential Unit which will increase the insurance rates on any other Residential Unit.

Section 11.05. Mailboxes. The Declarant shall select and designate a standard mailbox and post. The Builder or contractor of the Residential Unit shall cause such standard mailbox and post to be installed prior to the occupancy of the Residential Unit. The Owner shall cause such standard mailbox to be maintained and/or replaced, if necessary, at the Owner's expense.

Section 11.06. Flags. Only state and/or federal flags are permitted, provided the flag is attached to a standard or bracket affixed to the Residential Unit. Flags may not be flown for a period in excess of three (3) days in a 15 day period unless removed nightly at dusk.

Section 11.07. Air Conditioning Units. No window or wall unit air conditioners or heating systems (HVAC) shall be installed on any Residential Unit.

Section 11.08. Storage Sheds. No free standing structures, detached garages, metal, prefab or steel storage sheds of any kind shall be erected on any Parcel.

Section 11.09. Temporary Structures. No trailer, tent, shack, garage, barn, motorized home and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent, on any Parcel.

Section 11.10. Parcel Maintenance. Each Parcel shall at all times be kept in a clean and slightly condition. No trash, litter, junk, boxes, containers, bottles or cans shall be permitted to collect or remain exposed on any Parcel, except as necessary during the period of construction and in approved containers. The Owner of each Parcel shall be responsible for the cutting or removal of weeds periodically on such Parcel so as to conform with the requirements, ordinances and regulations of Porter County, Indiana.

Section 11.11. Outdoor Furniture. Outdoor furniture shall be maintained in good "like new" condition and shall not be stored or maintained so as to create an eyesore or nuisance to neighboring houses or residents. Any such furniture shall be permitted in the rear yard only. No swing sets, slides or other children's play equipment, bikes or toys may be kept or maintained outside on a Parcel. Front porch shall only have three pieces of outdoor furniture.

Section 11.12. Discharge of Contaminants. The discharge or dumping of any harmful chemicals, paper, boxes, metal, wire, junk or other refuse on or in any area shall be prohibited and the cost of removing same shall be borne by the party depositing or causing the same to be deposited thereon. In the event the responsible person or party cannot be determined, then the Parcel Owner shall be responsible for the removal and cleaning of the Parcel. Garbage containers may not be stored outside.

Section 11.13. Swimming Pools. Swimming pools below ground and hot tubs may be permitted on any Parcel upon receiving written approval from ARC, in its sole and absolute discretion.

Section 11.14. Underground Wiring. No lines or wires for communication or the transmission of electrical current or power shall be constructed, placed or permitted to be placed anywhere in Subdivision other than within buildings or Residential Units or attached to their walls, unless the same shall be contained in conduits or approved cable, constructed, placed and maintained underground.

Section 11.15. Leasing Residential Units. All lease or rental agreements to allow any other Person to occupy the Residential Unit as an Occupant with or without rent independent of the Owner must be in writing and shall not be for an initial term of less than six (6) months nor for less than thirty (30) days for any term thereafter. Every Owner shall cause all occupants of such Owner's Residential Unit to comply with this Declaration, the By-Laws, and the Rules and Regulations, and shall be responsible for all violations and losses to the Common Area caused by such occupants, notwithstanding the fact that such occupants of a Residential Unit are fully liable and may be sanctioned for any violation of this Declaration, the By-laws, and the Rules and Regulations.

Section 11.16. Building Guidelines. Each Residential Unit shall be constructed in accordance with the Development Agreement submitted to the Porter County Plan Commission and in conformance with the Ordinance establishing the Planned Unit Development – Ordinance No. 2018-23, which provisions are incorporated by reference.

Section 11.17. Rules and Regulations. Rules and Regulations concerning the use of the Residential Units may be promulgated and amended by the Association acting by and through its Board of Directors each of which shall be deemed to be incorporated herein by reference and made a part hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same shall become effective. All Rules and Regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all of the Owners. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said rules and regulations in accordance with the provisions of Article XII.

Section 11.18. Master Declaration. These Covenants are in addition to the Master Declaration. To the extent there exists an ambiguity or conflict between these Covenants and the Master Declaration, these Covenants shall supersede and control as to matters exclusive to the Submitted Parcel. However, each Tract shall remain subject to and in compliance with those of the Master Declaration.

Section 11.19. Yard Art. An Owner shall not permit, display, install or plant any yard art.

ARTICLE XII

ENFORCEMENT

Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of this Declaration and the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. The Declarant and Builder shall have no personal or other liability, obligation or responsibility to enforce this Declaration or any part thereof. A default or violation by an Owner or Occupant of a Residential Unit shall entitle the Association or, in lieu thereof, any other Owner or Owners, or the Association as established in the Master Declaration ("FW-HOA") to the following remedies in the event the Association fails to take action to effectuate a remedy 30 days after written notice requiring it to do so (i.e., any other Owner or Owners or the FW-HOA may act apart from and in place of the Association and/or the Board of Directors in administering and enforcing the provisions of this Article XII):

Section 12.01. Authority and Administrative Enforcement and Procedures.

a. **Authority.** Tracts and Residential Units shall be used only for those uses and purposes set out in this Declaration, and subject to the covenants and restrictions set forth herein, and in the By-Laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Section 9.03 hereof, which shall constitute a lien upon the Owner's Residential Unit and to suspend an Owner's right to vote, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XII that an Owner or Occupant has violated any provision of this Declaration, the By-Laws, or the Rules and Regulations as duly promulgated.

b. **Procedure.** The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

(1) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.

(2) **Notice.** If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written notice of a hearing. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf; and (d) the proposed sanction to be imposed.

(3) **Hearing.** The hearing shall be held in executive session by the Board of Directors pursuant to the notice affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be

heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting.

c. Sanctions. The Board of Directors' power and authority to impose sanctions shall be governed by the following provisions:

(1) All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances, which may include, but shall not be limited to, the following:

(a) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XII (including but not limited to reasonable attorney fees and costs), and in otherwise attempting to remedy the violation.

(b) The amount of actual damage done to other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of same.

(c) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.

(2) All Special Assessments amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Residential Unit occupied by the violator, and shall be assessed against said Residential Unit and its Owner as a Special Assessment to be due and payable on the date that the next Assessment payment would be due, and any such special Assessments which are not paid as of that date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as Assessments.

(3) All other sanctions imposed shall be reasonably related to the violation found.

(4) The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

Section 12.02. Legal Remedies. In addition to the administrative remedies set forth in Section 12.01 hereof, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

Section 12.03. No Waiver of Rights. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall not constitute a

waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

Section 12.04. No Election of Remedies. All rights, remedies and privileges granted to the Association or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

ARTICLE XIII

AMENDMENT

The Declaration and the Articles of Incorporation, By-Laws, and Rules and Regulations may be amended in the following manner:

Section 13.01. Declaration. Subject to Article XIV, Article XV and Article XVII, amendments to the Declaration shall be proposed and adopted as follows, provided, however, that no amendment may revoke, remove, or modify any right or privilege of the Declarant or the Builder, without such party's written consent.

- a. **Notice.** Notice of the subject matter of any proposed amendment shall be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.
- b. **Resolution.** Except as provided in subparagraph (d) hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the Members (not three-fourths (3/4) of a quorum), at any regular or special meeting of the Members called and held in accordance with the By-Laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).
- c. **Recording.** The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Porter County, Indiana. A copy of any such amendment shall also be sent to each Owner and his Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.
- d. **Amendments by Declarant.** Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-Laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other Person, to: (1) correct scrivener's errors, minor defects or omissions, (2) comply with the requirements of Indiana law, (3) comply with the requirements of any governmental agency, public authority, or title insurance company, (4) comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage

Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each sell, insure or guarantee first mortgages covering Residential Units, (5) induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering residential units, or (6) add portions of the Development Area to the Submitted Parcel by Supplemental Amendment pursuant to Article XVIII hereof. This subparagraph (d) shall constitute an irrevocable special power of attorney to Declarant coupled with an interest on behalf of all Owners, Mortgagees, and any and all other Persons having in interest of any kind in the Submitted Parcel, for so long as Declarant owns any portion of the Development Area and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Porter County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph (c) hereof.

Section 13.02. Articles of Incorporation, By-Laws and Rules and Regulations. The Articles of Incorporation, By-Laws and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

ARTICLE XIV

GENERAL PROVISIONS

Section 14.01. Term. The covenants and restrictions of this Declaration shall run with and bind the Submitted Parcel, and shall inure to the benefit of an shall be enforceable by the Association of the Owner of any Parcel or Residential Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 14.02. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors), to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include an indemnification against all costs and expenses

(including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable to criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board of Directors, there is not reasonable grounds for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer. Any right to indemnification provided for herein shall be not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 14.03. Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 14.04. Re-recording of Declaration. If at any time or times the Board shall deem it necessary or advisable to re-record this Declaration, or any part thereof, in the Office of the Recorder of Deeds of Porter County, Indiana, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained, it shall subject the matter to a meeting of the Members of the Association called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such re-recording; the Board shall have and is hereby granted, power to so re-record this Declaration or such part thereof, and such re-recording shall be binding upon all Owners or any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the re-recorded document executed and acknowledged by each of them.

Section 14.05. Restrictions, Conditions, Covenants, Liens and Charges. Each grantee of Declarant or Builder, by taking title to a Parcel and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

Section 14.06. Enforcement of Covenants. Declarant, Builder and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations herein set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Parcel any improvement which is and remains in violation of the covenants set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof (in the manner provided in Article XII hereof) from Declarant, Builder or the Association to the Owner of any such Parcel, then Declarant, Builder or the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Declarant, Builder and the Owners to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation.

Section 14.07. Special Amendment. Declarant hereby reserves the right and power to record a special amendment (hereafter referred to as "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration: (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or grant first mortgages encumbering any Tract, Parcel or Unit, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereof. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be, said power shall be irrevocable. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Tract, Parcel or Residential Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments. Subject to provisions of Article XIV hereof, the right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds title to any Lot, Parcel or Residential Unit.

Section 14.08. Ownership Under a Trust. In the event title to any Parcel is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Declaration against any such Tract, Parcel or Unit. No claim shall be made

against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon said Parcel and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Parcel.

Section 14.09. Owner's Obligation to Maintain and Repair. Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence and structures keeping the same in a condition comparable to the condition of such residence and structures at the time of its initial construction.

Section 14.10. Self Help. In addition to any other remedies provided for herein, the Declarant, the Builder, the Association, or their respective duly authorized agents shall have the power to take such remedial action, activity or otherwise perform or take such action or obligation of a defaulting Owner to bring a Lot into compliance with this Declaration. The Declarant, the Builder, the Association, or their respective duly authorized agents may enter upon a Tract or any portion of the Subdivision (including Common Area) to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Declaration, the Architectural Guidelines, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Declarant, the Builder or the Association, as the case may be, shall give the violating Tract Owner thirty (30) days written notice of its intent to exercise remedial activity (self help). All costs of the Declarant, the Builder, or the Association's remedial activity (self help), together with interest at the rate of twelve percent (12%) per annum, including attorneys' fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein. No liability shall be assumed or imposed by the Declarant, the Builder and/or the Association's exercise or failure to exercise such remedial activity. Notwithstanding the foregoing, in the event of an emergency or the blockage or material impairment of the easement rights granted hereunder, the Declarant, the Builder, or Association may immediately cure the same and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with interest as above described.

Section 14.11. Notices. Any notices required to be sent to any Owner under any provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the Person who appears as owner on the records of the Porter County Auditor's office property tax records at the time of such mailing.

Section 14.12. Usage. Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

Section 14.13. Effective Date. This Declaration or any amendment hereto shall become effective upon its recordation in the Office of the Recorder of Porter County, Indiana.

Section 14.14. Severability of Invalid or Unenforceable Provisions. If any term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner

whatsoever any other terms, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations. If any part of this Declaration, or any term, covenant, provision, phrase or other element, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any other term, covenant, provision, phrase or other element in other circumstances shall not be affected thereby.

Section 14.15. Captions. Captions used in this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations.

Section 14.16. Binding Effect. This Declaration shall be binding upon and inure to the benefit of each Owner, its successor, grantees, assigns and the legal representatives thereof.

Section 14.17. Recitals. The recitals set forth at the beginning of this Declaration are hereby made a part of and incorporated into this Declaration by reference.

ARTICLE XV

MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-Laws of the Cottage Homes at Falling Waters. Where indicated, these provisions apply only to "Eligible Holders," as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

Section 15.01. Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request (such request to state the name and address of such holder, insurer or guarantor and the Residential Unit address), to the Association (thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. any proposed termination of the Association;
- b. any condemnation loss or any casualty loss which affects a material portion of the Submitted Parcel or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- c. any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d. any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

e. any proposed action which would require the consent of Eligible Holders, as required in Section 15.02 hereof.

Section 15.02. Mortgagee's Rights Respecting Amendments to the Declaration. To the extent possible under Indiana law, and notwithstanding the provisions of Article XIII, any amendment of a material nature must be approved by Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a. voting rights;
- b. Assessments, Assessment liens, or subordination of Assessment liens;
- c. responsibility for maintenance and repairs;
- d. boundaries of any Residential Unit;
- e. expansion of the Development Area;
- f. insurance or fidelity bonds;
- g. imposition of any restrictions on an Owner's right to sell or transfer his or her Residential Unit;
- h. restoration or repair of the Submitted Parcel (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- i. any action to terminate the legal status of the Submitted Parcel after substantial destruction or condemnation occurs, provided, however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holders or Owners representing sixty-seven percent (67%) of the votes of Residential Units; or
- j. any provisions that expressly benefit mortgage holders, insurers or guarantors.

Section 15.03. Special FHLMC Provision. So long as required by Federal Home Loan Mortgage Corporation ("FHLMC"), the following provisions apply in addition to and not in lieu of the foregoing two sections of this Article. Unless at least two-thirds (2/3) of the first Mortgagees or Owners provide their written consent, the Association shall not:

- a. by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer);
- b. change the method of determining the obligations, Assessments, dues or other charges which may be levied against the Owner;

- c. by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;
- d. fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- e. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 15.03 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

Section 15.04. Mortgagee's Right to Cure. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for any Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

ARTICLE XVI

DECLARANT AND BUILDER'S RIGHTS

Section 16.01. Control. Notwithstanding any of the other provisions of this Declaration or the By-Laws to the contrary, and in addition to any other right or privilege given or granted or reserved to Builder under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Builder, which individuals may but need not be Owners or Members until the first to occur of any of the following (the "Turnover Date"):

- a. Thirty (30) days after Declarant has conveyed to purchasers for value all of the Residential Units proposed for the Development Area;
- b. The expiration of twenty (20) years from the date of the recording of this Declaration; or
- c. The date on which the Builder elects to terminate its sole control by the delivery of written notice of such election to the Owners.

Section 16.02. Absence of Warranty. THE DECLARANT AND BUILDER EACH SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION IN CONNECTION WITH THE SUBMITTED PARCEL OR DEVELOPMENT AREA OR THIS DECLARATION EXCEPT AS SPECIFICALLY SET FORTH HEREIN; AND NO PERSON SHALL RELY UPON ANY WARRANTY OR REPRESENTATION NOT SPECIFICALLY SET FORTH THEREIN. ANY ESTIMATES OF ASSESSMENTS ARE BELIEVED TO BE ACCURATE, BUT NO WARRANTY OR GUARANTY IS MADE OR INTENDED, NOR MAY ONE BE RELIED UPON.

Section 16.03. Assessment Exemption. Declarant and Builder shall each be exempt from any Assessment levied by the Association on any or all Residential Units owned by the Declarant, Builder and/or such party's designees which are unoccupied and offered by the Declarant or Builder for sale.

Section 16.04. Right to Amend Declaration. The Declarant or Builder shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Section 13.01(d) hereof.

Section 16.05. Transfer of Rights. Any or all of the special rights and obligations of the Declarant or Builder may be transferred to other persons or entities, provided that they transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant or Builder, as the case may be, and duly recorded in the Office of the Recorder of Porter County, Indiana.

Section 16.06. Reserved Rights and Easements. Notwithstanding any provisions herein to the contrary, Declarant and Builder each hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel, for the benefit of Declarant or Builder, or either of its successors, and assigns over, under, in and/or on the real estate and any portion of the Development Area which becomes part of the Submitted Parcel, without obligation and without charge to Declarant or Builder, for the purposes of construction, installation, relocation, development, maintenance, repair, replacement, use and enjoyment and/or otherwise dealing with the Submitted Parcel and Development Area. The reserved easement shall constitute a burden on the title to all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel and specifically includes, but is not limited to:

- a. the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel; and the right to tie into any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel with driveways, parking areas, streets, and drainage systems; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, Internet, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all of any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, and in connection therewith the right to store construction equipment and materials in appropriate areas in areas owned by Declarant or Builder without payment of any fee or charge whatsoever; and
- b. the right to construct, install, replace, relocate, maintain, repair, use and enjoy model units, parking spaces, signs, lighting, construction offices, business offices and sales offices as, in the sole opinion of Declarant or Builder, may be required, convenient,

or incidental to the construction of improvements and sale of units in all or any portion of the Submitted Parcel and Development Area;

c. no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Residential Unit within the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant or Builder releasing its respective right, privilege, or easement by express reference thereto with respect to all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel.

This Section 16.06 may not be amended without the prior written consent of Declarant or Builder as to their respective rights under this Section.

ARTICLE XVII

LIMITATION OF LIABILITY

Section 17.01. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IT IS EXPRESSLY AGREED, AND EACH OWNER, BY ACCEPTING TITLE TO A TRACT AND BECOMING AN OWNER ACKNOWLEDGES AND AGREES, THAT NONE OF DECLARANT OR BUILDER (INCLUDING WITHOUT LIMITATION ANY ASSIGNEE OF THE INTEREST OF DECLARANT OR BUILDER HEREUNDER), NOR ANY MEMBERS OR MANAGERS OF DECLARANT OR BUILDER (OR ANY MEMBER, PARTNER, OFFICER, DIRECTOR OR SHAREHOLDER IN ANY SUCH ASSIGNEE) SHALL HAVE ANY LIABILITY, PERSONAL OR OTHERWISE, TO ANY OWNER OR OTHER PERSON, ARISING UNDER, IN CONNECTION WITH, OR RESULTING FROM (INCLUDING WITHOUT LIMITATION RESULTING FROM ACTION OR FAILURE TO ACT WITH RESPECT TO) THIS DECLARATION EXCEPT, IN THE CASE OF DECLARANT OR BUILDER (OR ITS RESPECTIVE ASSIGNEE), TO THE EXTENT OF ITS INTEREST IN THE SUBDIVISION; AND, IN THE EVENT OF A JUDGMENT NO EXECUTION OR OTHER ACTION SHALL BE SOUGHT OR BROUGHT THEREON AGAINST ANY OTHER ASSETS, NOR BE A LIEN UPON SUCH OTHER ASSETS OF THE JUDGMENT DEBTOR.

ARTICLE XVIII

ADDITIONAL COVENANTS


Section 18.01. Additional Covenants. Any Owner of all or any portion of Tracts in the Submitted Parcel or Development Area shall by acceptance of a deed to acknowledge that said Tracts of any portion hereof are additionally subject to all of the covenants, conditions and restrictions contained in the Restrictive Covenants for Falling Waters Subdivision recorded May 19, 2003 as Instrument Number 03-20698, as amended from time to time, and recorded in the Recorder's Office of Porter County, Indiana, including but not limited to the payment of Assessments as described therein.

IN WITNESS WHEREOF, the Declarant and Builder have caused this instrument to be signed as of this 27th day of September, 2019.

FWA Development, LLC

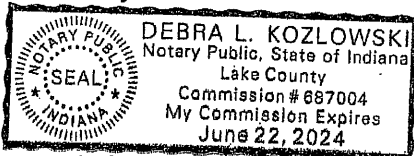
By: 
David E. Woodward, Managing Member

DDB Homes, Inc.

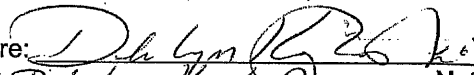
By: 
R. Brian Woodward, Vice-President

COUNTY OF LAKE, STATE OF INDIANA SS:


Before me, the undersigned, a Notary Public in and for said County and State, this 27th day of November, 2020, personally appeared: David E. Woodward and acknowledged the execution of the foregoing deed as his voluntary act for the purposes stated therein. In witness whereof, I have hereunto subscribed my name and affixed my official seal.



My commission expires June 22, 2024
Resident of Lake County

Signature: 
Printed: Debra Lynn Kozlowski Notary Public

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.


David E. Woodward

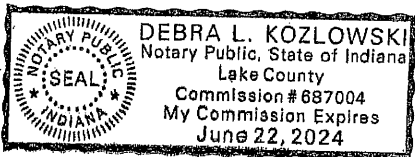
Executed and delivered in my presence:

Carol E. Berwanger
Witness Signature
Carol E. Berwanger
Witness Name

COUNTY OF LAKE, STATE OF INDIANA SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared: Carol E. Berwanger, being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by David E. Woodward and R. Brian Woodward in the above-named subscribing witness's presence, and that the above named subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction. and acknowledged the execution of the foregoing deed as his voluntary act for the purposes stated therein.

Witness my hand and Notarial Seal this 2nd day of November, 2020.



My commission expires: June 22, 2024
Resident of Lake County

Signature: Debra L. Kozlowski
Printed: Debra Lynn Kozlowski Notary Public

This instrument prepared by: Woodward Law Offices, LLP, 200 East 90th Drive, Merrillville, Indiana 46410
by David E. Woodward

EXHIBIT "A"

Legal Description

Lot 1, tracts 1 through 9; Lot 2, tracts 10 through 21; Lot 3, tracts 22 through 25; and Lot 4, tracts 26 through 29, in Falling Waters Executive Cottage Houses, A Planned Unit Development, being a replat of Lots 178 to 197, Falling Waters, as per plat thereof, recorded in Plat File 42-B-6 and as amended and recorded in Plat File 44-A-4, in the Office of the Recorder of Porter County, Indiana.

ORDINANCE NO. 2018 - 23

AN ORDINANCE amending Ordinance No. 07-05 entitled, "PORTER COUNTY UNIFIED DEVELOPMENT ORDINANCE" (2008-004335).

WHEREAS, Ordinance 07-05 as amended by ordinance No. 12-01 amending Chapter 4, Planned Unit Development Districts of the Porter County Unified Development Ordinance, permits the establishment of Planned Unit Development Districts ("PUD Districts"), in which an area of land is developed as a single scheme which combines a mixture of uses and which may not correspond to the development standards otherwise required for such uses by other provisions of the Unified Development Ordinance of Porter County; and,

WHEREAS, Chapter 4 of the Porter County Unified Development Ordinance entitled "Planned Unit Development Districts," authorizes the Board of County commissioners of Porter County, by ordinance to establish PUD Districts and to specify the uses and development requirements that apply in such PUD Districts;

NOW THEREFORE, BE IT, AND IT HEREBY IS, ordained by the Board of County Commissioners of Porter County, Indiana, under authority granted by Indiana Code § 36-7-4-600 et. seq., and Chapter 4 of the Porter County Unified Development Ordinance, entitled "Planned Unit Development Districts":

SECTION 1. CHANGE OF ZONING CLASSIFICATION TO PUD DISTRICT

CLASSIFICATION: The certain parcel(s) of real estate of real property in Porter County, Indiana, legally described and currently classified on the zoning maps of Porter County, Indiana, as follows:

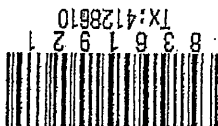
Parcel

Legal Description: Being a re-subdivision of Lots 178 thru 197, inclusive, in Falling Waters Plat of Amendments, clarifications and additional information as shown in Plat File 44-A-4 in the Office of the Recorder of Porter County, Indiana.

Current Zoning Classification: R1 – Low Density Single-family Residential District

Is (are) hereby rezoned and reclassified as "PUD District" Ordinance No. 2018-23. The zoning maps of Porter County, Indiana are hereby amended to incorporate this change.

SECTION 2. DEVELOPMENT STANDARDS: PUD District 2018 -23 shall be developed and shall in all respects comply with all of the following Development Standards:



1. Except as specifically set forth in paragraph 'b' below, PUD District 2018 - 23 shall comply with the Development Standards set forth in the Porter County Unified Development Ordinance.
2. The following modifications from the Porter County Unified Development Ordinance shall apply:
 - a. Uses: R-4, Multiple-family Residential District, Lots 1 thru 4 as shown on attached concept plan (Exhibit 'A') with individual tracts for single-family residential structures. Lot 1 shall contain no more than 9 individual tracts with 9 structures maximum; Lot 2 shall contain no more than 12 individual tracts with no more than 12 structures; Lot 3 shall contain no more than 4 individual tracts with no more than 4 structures and Lot 4 shall contain no more than 4 individual tracts with no more than 4 structures. Said structures shall be single-family residential only with one structure on Lot 1 being for common use with the development.
 - b. Off-street Parking: Parking shall be provided pursuant to the minimum Parking Standard requirements of Chapter 5 (PK) in the Porter County Unified Development Ordinance. Single-family residential uses shall require a minimum of two (2) off street parking spaces located within the tract.
 - c. Streets: Streets are existing per the Falling Waters Subdivision and shall not be altered unless approved by the Board of County Commissioners. Said streets are private as developed on the Falling Waters Subdivision plat thereof.
 - d. Land Use Pattern: All elements of the PUD Plan shall be harmoniously and efficiently organized in relation to topography, the size and type of parcel, the character of adjoining property, and the type and size of buildings. Arrangement of buildings shall be done in such a way to utilize natural topography, existing vegetation and views within and beyond the site.
 - e. Common Open Space: Common open space for the PUD plan shall be per the attached concept plan (Exhibit 'A') and shown as a Conservation Easement.
 - f. Improvements:
 - i. Circulation facilities: Vehicular circulation shall be per the Falling Waters Subdivision and as constructed. Modifications and/or changes to the vehicular circulation shall be per approval of the Board of County Commissioners.
 - ii. Pedestrian Circulation: All lots and tracts shall have a concrete sidewalk constructed within the right per Chapter 8 of the Porter County Unified Development Ordinance within the described PUD parcel in Section 1 of this ordinance.
 - iii. Utilities: Utilities shall be provided as per the Falling Waters Subdivision.

- iv. Recreational Areas: All residents within the PUD District shall have access to the conservation easements shown within the attached concept plan (Exhibit 'A').
- v. Planting: Street tree plantings and lot plantings shall be per the Porter County Unified Development Ordinance.
- g. Modification of Minimum Requirements:
 - i. Lot Area – Lot 1, 1.85 acres; Lot 2, 2.54 acres; Lot 3, 1.03 acres and Lot 4, 0.90 acres.
 - ii. Minimum tract width 50 feet
 - iii. Minimum tract size 0.2 acres
 - iv. Building setbacks minimum, front setback 20 feet; side yard setback 5 feet; rear setback 20 feet. Buildings shall not be closer than 10 feet from each other.
 - v. Building height shall not exceed a single family residential structure of 35 feet for a primary structure and 20 feet for an accessory structure.
 - vi. Maximum lot coverage shall not exceed 50 %.
 - vii. Minimum dwelling size shall not be less than 1725 square feet.

Section 3. Conditions precedent to Commencement of Infrastructure Construction. Before Final PUD Plan (Secondary plat) of any plat of subdivision in PUD District 2018 - 23 can be granted, before any improvement location permit can be issued for any improvement to be located in PUD District 2018 - 23, and/or before any construction or development of any kind can be commenced in PUD District 2018 - 23, the following conditions shall first have been satisfied:

1. Final Approval of Drawings. All construction drawings, plans and specifications for infrastructure installations shall be finally approved by the Development Review Committee (DRC) on behalf of the Porter County Plan Commission. Infrastructure may include, without limitation the following: sanitary sewers, storm water management system, potable water distribution system, street construction, finish grading, sidewalks, lot staking, road centerline staking, street name signs, traffic control signs and all other infrastructure improvements necessary for the PUD Plan as set forth in this ordinance 2018 - 23
2. Fire Safety. There must be suitable and sufficient fire hydrant connections for local fire service as necessary to serve all development to be located in PUD District 2018 - 23. The location, number and suitability shall be approved by the local fire department and DRC.
3. Installations of Infrastructure Improvements. Infrastructure improvements shall be finally approved by the Department of Development and Storm Water Management (Department).

Section 4. Performance Surety Standards. Before Final Plan (Secondary Plat) approval of any plat of subdivision in PUD District 2018 - 23 can be granted, before any improvement location permit can be issued for any improvement to be located in

PUD District 2018 - 23 an engineering estimate shall be submitted to the Department for review. Performance surety shall be presented to the Board of County Commissioners for final approval.

Prior to commencement of infrastructure improvements necessary for the development of the PUD District 2018 - 23 an engineering estimate shall be submitted to the Department for review and a performance surety to the County for all necessary infrastructure.

Section 5. Recordation. Before any improvement location permit can be issued for any improvement to be located within the PUD District 2018 - 23, the owner shall first record in the Office of the Recorder of Porter County the Final PUD Plan (Secondary Plat).

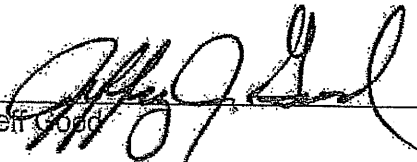
Section 6. Other Ordinances. Any Ordinance or provision of any Ordinance of Porter County in conflict with the provision of this Ordinance is hereby superseded by this Ordinance. Subject to the foregoing, the passage and approval of this Ordinance shall not in any way exempt the owner of any land in PUD District 2018 - 23 from compliance with the provisions of any and all other applicable Ordinances of Porter County, including without limitation the Porter County Unified Development Ordinance.

Section 7. Severability. The invalidity of any section, clause, sentence or provisions of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

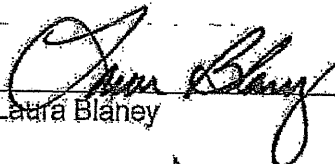
Section 8. Effective Date. This Ordinance shall be in full force and effect after its passage and approval by the Board of County Commissioners of Porter County, Indiana and publication as may be required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Porter County, IN, on the 9th day of October, 2018.

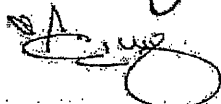
BOARD OF COUNTY COMMISSIONERS
PORTER COUNTY, INDIANA



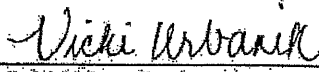
Jeff Good



Laura Blaney

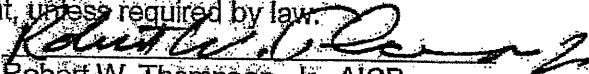


Jim Biggs

Attest: 

Vicki Urbanik, Auditor

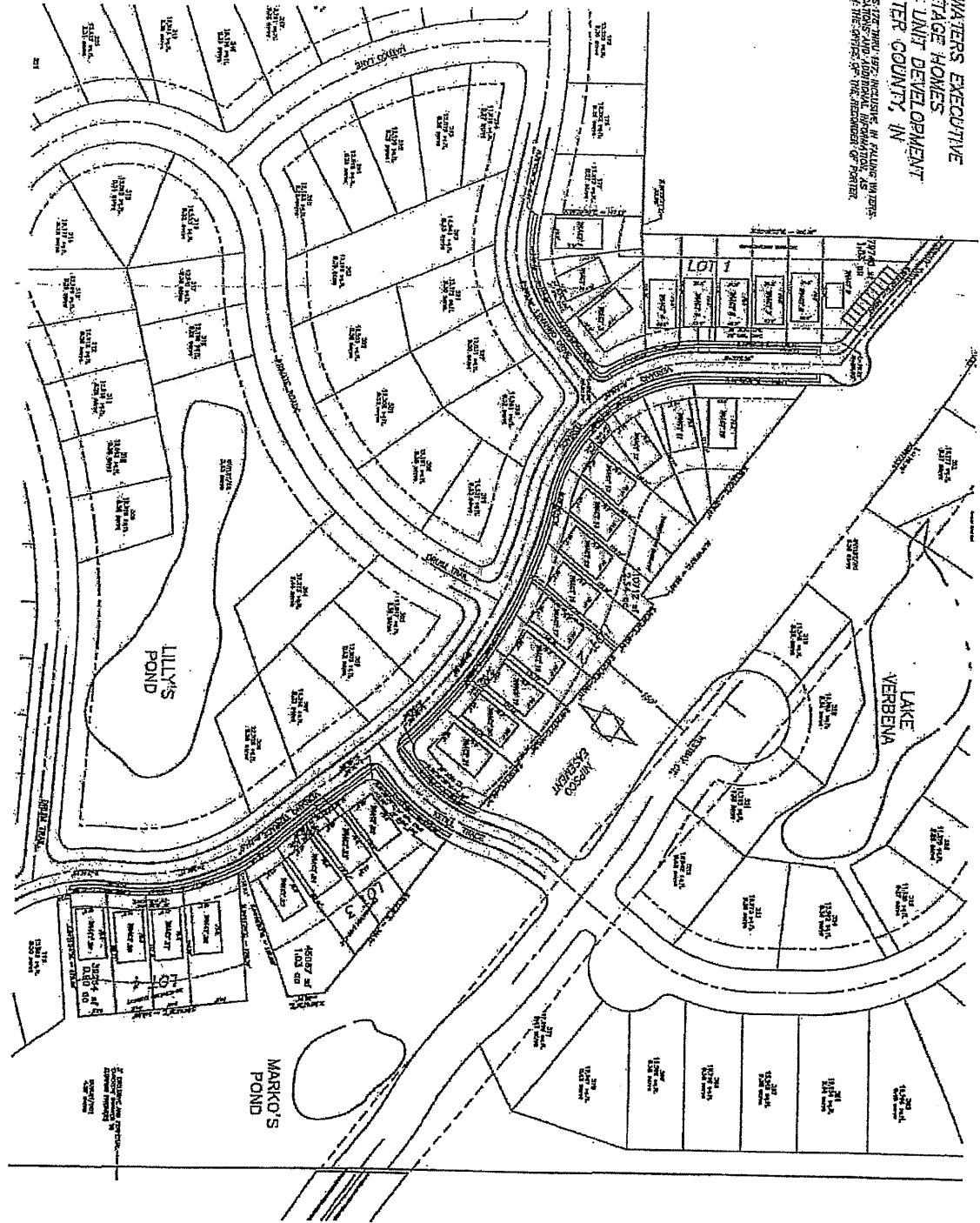
I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.



Robert W. Thompson, Jr., AICP
Director

**FALLING WATERS EXECUTIVE
COTTAGE HOMES
A PLANNED UNIT DEVELOPMENT
IN PORTER COUNTY, IN**

NOTE: A REPRESENTATIVE OF THE STATE OF INDIANA, INCLUDING THE FALLING WATERS
COUNTY, PORTER COUNTY, AND THE STATE OF INDIANA, AS
SHOWN IN THIS PLAN, HAS REVIEWED THE SAME AND HAS DETERMINED THAT THE
COUNTY, INDIANA.



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FALLING WATERS EXECUTIVE COTTAGE HOMES
 A PLANNED UNIT DEVELOPMENT
 PORTER COUNTY, INDIANA

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