

BOOK 205 PAGE 565(45) 134260



SECOND AMENDED  
DECLARATION OF COMMON INTEREST  
COMMUNITY FOR WEST VIRGINIA RESORTS  
LIMITED LIABILITY COMPANY  
d/b/a The New Windwood Fly-In Resort  
Phase I, Phase II, Phase III and Phase IV

THIS AMENDED DECLARATION, revised the 24<sup>th</sup> day of May 2011, made by West Virginia Resorts Limited Liability Company dba The New Windwood Fly-In Resort, (hereinafter referred to as "Declarant"), the developer and owner of certain real estate and improvements thereon and appurtenances thereto, as designated on the plats attached hereto, which as Declarant, and on behalf of Declarant's grantees and assigns, hereby makes the following declaration:

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

Declarant does hereby submit as a Planned Community the real estate as described herein, together with all roadways, improvements and other permanent fixtures now and later situated thereon and a part thereof, and all rights and privileges pertaining thereto (hereinafter referred to as "Subdivision") to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act").

**II. CIC NAME AND LOCATION**

The name by which the CIC is to be identified is "Windwood Fly-In Resort". The property comprising the Subdivision is located in Canaan Valley, Dry Fork District, Tucker County, West Virginia.

**III. THE LAND**

The land submitted to the CIC from: of ownership by this instrument is to be known and designated as "Windwood" and/or "The New Windwood Fly-in Resort" or "Windwood Fly-In Resort", (sometimes hereinafter referred to as "Subdivision") as more fully shown on the plats to be placed on record in the Office of the Clerk of the County Commission of Tucker County, West Virginia, contemporaneously herewith, and any later amendments are hereby made a part for all pertinent purposes; and being the same real estate described as follows:

PHASE I: Plat is to be recorded in the Office of the Clerk of the Tucker County Commission in Plat Cabinet 2, Slide 436.

PHASE II: Plat is to be recorded in the Office of the Clerk of the Tucker County Commission in Plat Cabinet 2, Slide 436.

PHASE III: Plat is to be recorded in the Office of the Clerk of the Tucker County Commission in Plat Cabinet 2, Slide 436.

PHASE IV: Plat is to be recorded in the Office of the Clerk of the Tucker County Commission in Plat Cabinet 2, Slide 436.

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

Definitions of some common terms used herein and referred to in other related documents are as follows, unless the text or context in which such term is used indicates another definition:

A. Association: Windwood Fly-in Resort Unit Owners' Association, Inc., a non-profit corporation, and any wholly owned subsidiary thereof, its successors and assigns, which Association of Unit Owners is organized as and shall be the governing body for the maintenance, repair, replacement, administration and operation of the CIC.

B. Board: The Executive Board of the Association herein designated to act on behalf of the Association as the same are duly elected or appointed in accordance with the Articles of Incorporation and the Bylaws of the Association, none of which Articles or Bylaws may be inconsistent with this Declaration.

C. Building Control Committee: The Committee appointed by the Executive Board composed of three (3) members. The Committee shall approve or disapprove plans and specifications, for all buildings, structures and improvements erected or placed on any unit, as more fully described in Section VIII hereof.

D. Bylaws: The Bylaws of Windwood Fly In Resort Unit Owners' Association, Inc. as the same may be amended from time to time.

E. Common Elements: All of the CIC property other than the individual units, including, without limitation, the land and all improvements and appurtenances thereto, central utilities and services, and areas of common use. Reference to "Common Elements" on the plats are solely for general information, and do not define or limit the Common Elements.

F. Common Expenses: Expenditures made by or financial liabilities of the Association, together with any allocations to reserve, a portion of which may be asserted to individual Unit Owners as set forth hereafter.

G. Common Interest Community (CIC): The real estate with respect to which a person, by virtue of his ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration.

H. Declarant: West Virginia Resorts Limited Liability Company, its successors and assigns, excluding as successors and assigns all purchasers and lienholders of any Unit and their successors and assigns. Declarant control shall be at an end upon recordation of this Amended Declaration and pursuant to paragraph 4 of the agreement that is attached to this Amended Declaration.

I. Declaration: This document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Tucker County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC.

J. Dispose or Disposition: A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.

K. Limited Common Elements: A portion of the common elements allocated by the Declaration or the Common Interest Ownership Act for the exclusive use of one or more but fewer than all of the Units.

L. Member: Any and every person or entity holding membership in the Association in accordance with Article V hereof.

M. Unit: A physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described (i.e., lot or dwelling unit). EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON ELEMENTS AS DETERMIEND BY ARTICLE VIII(H).

N. Unit Owner: Any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding such interest merely as security for performance of an obligation, and including as a Unit Owner the Declarant, as to all unclosed and unsold Units.

O. Agreement and Order: That certain court order dated May 2, 2009 which references the Civil Action in the Circuit Court of Tucker County, West Virginia, Styled Windwood Fly-in Resort Unit Owners Association, Inc. v. West Virginia Resorts Limited Liability Company, Civil Action 06-C-42.

## V. THE ASSOCIATION

A. Membership: Every Unit Owner, shall, by reason of ownership, automatically be a Member of the Windwood Fly-In Resort Unit Owners' Association and be subject to the rules, regulations, covenants and restrictions of this Declaration, by Bylaws of the Association, and further subject to rule and regulation by the Association in accordance with this Declaration. Ownership of a unit is the sole qualification for membership in the Association. Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation. Following a termination of the CIC, Members shall be deemed to be all former Unit Owners entitled to distribution of proceeds hereunder. Membership as defined in the Bylaws shall not be consistent with the provisions of this Article.

B. Powers of the Association: Subject to other provisions of the Declaration, the Association may:

1. Adopt and amend Bylaws and rules and regulations:

2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners;
3. Hire and discharge managing agents and other employees, agents and independent contractors;
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the CIC;
5. Make contracts and incur liabilities;
6. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
7. Cause additional improvements to be made as a part of the Common Elements;
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the CIC may be conveyed or subjected to a security interest only pursuant to the provisions of the Declaration;
9. Grant easements, leases, licenses and concessions through or over the Common Elements;
10. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Unit Owners;
11. Impose charges for late payment of Assessments and, after notice of an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, rules and regulations of the Association;
12. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration, resale certificates or statements of unpaid Assessments;
13. Cause to be placed or kept in effect liability insurance on Common Elements;

14. Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance as desired;

15. Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent the Declaration expressly so provides;

16. Exercise any other powers conferred by the Declaration or Bylaws;

17. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;

18. Exercise any other powers necessary and proper for the governance and operation of the Association, and;

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

C. Executive Board: Subject to other provisions of the Amended Declaration, the Executive Board shall be generally empowered as follows:

1. Except as otherwise provided in the Amended Declaration or the Bylaws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise ordinary and reasonable care.

2. The Board may not act on behalf of the Association to amend the Declaration, to terminate the CIC or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board Members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

3. Within thirty (30) days after adoption of any proposed budget for the CIC, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date

for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board,

4. Except as otherwise provided in this Amended Declaration, the Unit Owners shall elect a Board of five (5) members, at least a majority of whom must be Unit Owners. The Board shall elect all officers. The Board members and officers shall take office upon election.

5. Notwithstanding any provision of the Amended Declaration or the Bylaws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause.

6. Unless the Bylaws or Amended Declaration specify a larger percentage, a quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

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

1. That the member or members of the Board is to be five (5) in number;
2. Election by the Board of a president, treasurer, secretary and other officers of the Association;



3. The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies;

4. Which, if any, of its powers and executive board or officers may delegate to other persons or the managing agent;

5. Which of its officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association; and

6. A method for amending the By-laws.

7. Any other matter may be provided for which the Association deems necessary and appropriate.

E. CIC Upkeep: Except to the extent otherwise provided by the Amended Declaration, the Association is responsible for maintenance, repair, replacement and upkeep of the Common Elements. West Virginia Resorts Limited Liability Company shall be responsible for the runway until 2019 and shall hold harmless the Association on any runway matters.

F. Association Meeting: A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the president, a majority of the board, or by Unit Owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent postage prepaid by United States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed budget changes, any amendment to

the Declaration or Bylaws, and any proposal to remove an officer or member of the Board.

G. Association Meeting, Quorum and Voting: Unless the Bylaws or Declaration provide otherwise, a quorum is present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes that may be cast for election of the Board are present in person or by proxy at the beginning of the meeting. Votes at a meeting where a quorum is present shall be cast as follows:

1. Members of the Association shall be entitled to one vote for each Unit in which they hold the interest required for membership. Allocation of votes is generally formulated as the principal "one vote for one Unit".

2. If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to the Unit. If more than one of the Owners is present, the Vote is allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

3. The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Unit owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after that date, unless it specifies a shorter term.

4. Any Unit held by the Association shall not be entitled to vote. Voting rights of members, as set forth in the Bylaws may not be consistent with the provisions in this Article.

5. Only members in good standing shall be entitled to vote. A member shall lose his good standing status should any Association assessments or fines remain delinquent when due for a period of more than thirty (30) days.

H. Tort and Contract Liability: An action alleging a wrong done by the Association must be brought against the Association and not against any Unit Owner. If the wrong occurred during any period of Declarant control and the Association gave Declarant reasonable notice of and an opportunity to defend against the action, Declarant is then liable to the Association or to any Unit Owner for (1) all other losses not covered by insurance suffered by the Association or the Unit Owner, and (2) all costs that the Association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever Declarant is liable to the Association under this section, Declarant is also liable for all expenses of litigation, including reasonable attorney's fees incurred by the Association. Any statute of limitations affecting the Association's right of action under this section is tolled until the termination of Declarant control. A Unit Owner is not precluded from maintaining an action contemplated by this section because he is a Unit Owner, member or officer of the Association.

I. Association Conveyance or Encumbrance of Common Elements:

1. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to case at least eighty percent (80%) of the

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

2. An agreement to convey Common Elements or to subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners.

3. The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Elements, but the contract is not enforceable against the Association until approved pursuant to subsections (1) and (2). Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

4. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the CIC is void.

5. A conveyance or encumbrance of Common Elements pursuant to this section does not deprive any Unit of its rights of access and support.

6. A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

J. Insurance:

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

(a) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after

application of any deductibles must be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and (b) Liability Insurance, including medical payments insurance, in limits of not less than \$300,000 / \$1,000,000 and thereafter, in an amount determined by the Board, so as to cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

2. If the insurance described in the subsection (1) is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.

3. Insurance policies carried pursuant to subsection (1) must provide that:

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

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

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

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

4. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of subsection (7), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the CIC is terminated.

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

6. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of his proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known address.

7. Any portion of the CIC for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the CIC is terminated; (ii) repair or replacement would be illegal under any State or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Unit Owners vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire CIC is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the

CIC. The remainder of the proceeds must be distributed to all the Unit Owners or lien holders as their interests may appear, in proportion to the common expense liability of all of the Units.

8. West Virginia Resorts, LLC, D/B/A the New Windwood Fly-In Resort shall be solely responsible to maintain liability insurance on the runway and that West Virginia Resorts shall name the Windwood Fly-In Resort Unit Owners Association as a secondary party on such insurance policy. It is expressly agreed that West Virginia Resorts, LLC, d/b/a The New Windwood Fly-In Resort shall save harmless the Windwood Fly-In Resort Unit Owners Association from any liability that West Virginia Resorts, LLC may create during its control of the runway and its use thereof.

K. Surplus Funds: Any surplus funds of the Association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the Unit Owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

## **VI. ASSESSMENTS, LIENS AND RECORDS**

### **A. Assessment for Common Expenses:**

1. Assessments must be made by the Association at least annually based on a budget adopted at least annually, by the Association.

2. Except for assessments under subsections 3, 4 and 5, all Common Expenses must be assessed against all the Units in accordance with allocations set forth in VIII(H) of this Declaration. Any past due common expense assessment or installment thereof bears interest at the rate established by the Association not exceeding eighteen percent (18%).

3. To the extent reasonably determinable, any common expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited.

4. Assessments to pay a judgment against the Association may be made only against the Units in the CIC at the time the judgment was entered, and in proportion to their common expense liability.

5. If any common expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against his Unit.

B. Lien for Assessments: The total annual assessment of each Unit Owner for Common Expenses or any special assessment, or any other sum duly levied (including without limitation fines, interest, late charges, etc.), made pursuant to these By-laws, is hereby declared to be a lien levied against the Unit of such Unit Owner as provided in Section 36B-3-115 of the Uniform Common Interest Ownership Act, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the CIC and, as to special assessments and other sums duly levied, on the first day of the next month which begins more than seven days after delivery of the Unit Owner of notice of such special assessment or levy. The Executive Board may file or record such other or further notice of any such lien, or such other further document as may be required to confirm the establishment and priority of such lien.

1. The Association has a lien on a Unit for any assessment levied against that Unit for fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fine and interest are enforceable as



assessments. If an assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment there of becomes due.

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

3. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments become due.

4. This section does not prohibit actions to recover sums for which this Article creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

5. A judgment or decree in any action brought under this Article must include costs and reasonable attorney's fees for the prevailing party.

6. The Association, upon written request, shall furnish a Unit Owner a statement setting forth the amount of unpaid assessments against the Unit. The statement must be

in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the Association, the Board and every Unit Owner.

7. For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, or pursuant to West Virginia Code Section 56-2-1, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchases for value without notice unless the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Tucker County, West Virginia. The notice shall contain:

- (a) A legal sufficient description of the Unit;
- (b) The name or names of the Owners of the Unit;
- (c) The amount of unpaid Assessments due, together with the date when due; and
- (d) The date of recordation.

8. The foresaid Clerk of the County Commission shall index the notice in the appropriate lien books in the name of the Unit Owners as debtors and of the Association as creditor. The cost of recordation shall be assessed against any Unit Owner found to be delinquent.

9. Upon payment of the Assessment, the Association shall execute a written release of the lien in the manner prescribed in West Virginia Code, Section 38-12-1. This release shall be recorded at the expense of the debtor in the aforesaid Clerk's Office wherein the notice of the lien was filed.

C. Other Liens:

1. Except as provided in subsection (2), a judgment for money against the Association (if recorded) is not a lien on the Common Elements, but is a lien in favor of the judgment lien holder against all of the Units in the CIC at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association.

2. If the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to Article V, Section 1, the holder of that security interest shall exercise its rights against the Common Elements before its judgment lien on any Unit may be enforced.

3. Whether perfected before or after the creation of the CIC, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the CIC becomes effective against two or more Units, the Unit Owner of an affected Unit and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that Unit. The amount of the payment must be proportionate to the ratio which that Unit Owner's Common Expense liability bears to the Common Expense liabilities of all Unit Owners whose Units are subject to the lien. After payment, the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expenses incurred in connection with that lien.

4. A judgment against the Association must be indexed in the name of the CIC and the Association; and when so indexed, provides notice of the lien against the Units.

D. Association Records: The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing CIC assets and to permit

the Association to provide, upon request and for a Fifty Dollar (\$50.00) fee relative to each Unit, a Unit Resale Certificate setting forth information required by a Unit Owner selling to lawfully reconvey his Unit pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended. All financial and other records must be made reasonably available for examination by any Unit Owner and his authorized agent.

#### **VII. THE PLATS**

The Plats are surveys which set forth the measurements, locations and other required data with respect to (1) the CIC and its exterior boundaries, (2) the Units, and (3) the Common Elements. The parties shall have recorded in the aforesaid Clerk's Office from time to time amended plats or plans showing the actual locations and dimensions of the boundaries of the CIC or lots contained therein, for which amended plats or plans are completed after the date hereof. In this Amended Declaration, whenever the terms "plats" or "plans" appear, they shall be deemed to include such amended plats or plans as may hereafter be recorded pursuant to this paragraph.

#### **VIII. THE UNITS – USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS**

A. Legal Description: The legal description of each Unit is generally designated by the indentifying number of such Unit as shown on the Plats of the CIC. No Unit Owner shall, by deed, plat, court decree or otherwise, sub-divide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat, except that Lot 43 Phase III may be subdivided into no more than four (4) lots. Except for the subdivision of Lot 43, Phase III, there shall be no additional Units

created within the boundary of Windwood other than the Units identified on the plats described in Section III of this declaration. The identifying number for each Unit shall always be deemed to include all of that Unit's ownership interest in all appurtenant rights, duties, covenants and restrictions herein set forth or referenced.

B. Use and Development Restrictions: The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon Units in the CIC as shown on the Plat. Said restrictions shall be binding upon all purchasers or other parties having any interest therein, and are intended to be covenants running with the land.

C. Restrictive and Protective Covenants

The following covenants and restrictions shall pertain to and apply to all units within the Windwood.

1. Each Unit shall be used solely for single family residential purposes, rental, or non-commercial recreational use. In no event shall any unit or dwelling thereon be utilized on a time-sharing basis.

2. No building, fence, hedge, sidewalk, wall, driveway or other structure shall be erected, placed or altered on any unit until the proposed building plan, specifications, exterior materials, color and finish, site plans and construction schedule shall have been approved in writing by the Building Control Committee. One copy of all such plans, plats, specifications and related documentation shall be furnished to the Building Control Committee for its review and permanent records.

3. With the written approval of the Building Control Committee, two or more contiguous units may be combined by an owner and a single dwelling may be constructed upon such combined units.

4. The ground floor area of any dwelling for two (2) or more floors erected on a unit shall contain a minimum of 800 square feet, exclusive of porches and garages. No dwelling shall be erected upon any unit which contains less than 1,000 square feet of living area, exclusive of porches and garages.

5. The exterior woodwork of every house and building on any unit shall be painted with at least two (2) coats of paint, varnish or stain, as soon after completion as weather permits. However, the Building Control Committee shall have the right to waive this condition in the event that the plans for said dwelling call for exposed, untreated, natural wood. Duplex structures shall only be stained in such color and as such time only as directed by the Building Control Committee.

6. The exterior construction of all buildings shall consist of natural materials such as wood and stone. Materials such as brick, aluminum and vinyl siding, and T-111 paneling are expressly forbidden. The roofing material on all houses and buildings shall be cedar shakes.

Acceptable roofing materials include cedar shake, architectural shingles, and residential metal roofing, including standing seam or ribbed panels. No 3-tab asphalt shingles. Roof color to be approved by the BCC.

Acceptable Fiber Cement siding styles/products include lap siding, board and batten siding, and shingle style siding. Fiber cement paneling, vertical siding panels, are expressly forbidden for use as siding, metal siding and metal buildings are expressly forbidden.

No concrete masonry unit, "cinder block", foundation shall be left exposed. Foundations constructed with concrete masonry units or cinder block must be parged.

7. In order to assure that houses and other structures will be aesthetically located with regard to the topography of the land or in relation to wooded areas of each individual tract, the Building Control Committee shall have the right to control the site and location of any house or dwelling, or other structure to be placed upon any unit, provided, however, that such location shall be determined only after reasonable opportunity is afforded the unit owner to recommend a specific site.

8. The exterior of all houses or other structures must be completed within six months after the construction of the dwelling shall have commenced, except where such completion is impossible or would result in great hardship to the owner or building due to strike, fire, natural emergency, or an act of God.

9. No excavation of stone, gravel or earth shall be made upon any unit except for basements, cellars, retaining walls, landscaping and driveways. All other excavations or removal of earth or deposits of any material on any unit shall not be commenced without first obtaining written approval of the Building Control Committee.

10. Within one month after completion of a dwelling, all debris and waste material remaining on the ground shall be removed and disposed of. Within one year after the completion of a dwelling, the unit shall be landscaped, including the seeding of bare earth in a workmanlike manner. The Building Control Committee shall have the right to waive this covenant at the request of the owner. All foundation plantings and lawns shall be maintained by the Unit Owner; common areas shall be maintained by the Unit Owners' Association.

11. Each unit owners shall construct and maintain suitable and adequate parking space on the unit for parking of vehicles for the owner and guests, so that said vehicles,

when parked shall not obstruct or interfere with the vehicular traffic on any of the roadways or cul-de-sacs within Windwood.

12. Only licensed four-wheel vehicles may be used on the roadways and rights-of-way within Windwood, except vehicles such as cycles may be used for the sole purpose of ingress and egress to individual lots. All ATV's, including, but not limited to three-wheelers and four-wheelers are expressly prohibited on the roadways and rights-of-way of Windwood, as well as upon the individual units and elsewhere within the subdivision; provided, however, that this provision in no way prohibits the use of any type or character of vehicle by unit owners which might be required or necessitated for construction, maintenance, upkeep or repair of the real estate, roadways, rights-of-way and conservancy or retreat areas of Windwood.

13. No unit or any dwelling constructed thereon, may utilize a septic system or any type of individual sewage system. Likewise, no unit or dwelling constructed thereon may use a well, or any stream, brook, pond, or spring as a source of residential water supply. All unit owners, their heirs, successors and assigns, shall be required to hook-up to a central water system and central sewage system within 120 days after commencement of construction of any residence, dwelling or any other structure, unless specifically waived in writing by the Building Control Committee.

14. No trailer, shed, or other temporary or moveable building or facility shall be erected or maintained upon any unit except as may be reasonably necessary for short-term use in the construction of a dwelling on said unit, and if so used, must be removed within 20 days after completion of a construction.



15. No trailer, basement of a partially completed dwelling, tent, garage, barn, shed, or other similar structure shall be used as residence. Camping on units within the Windwood is specifically prohibited.

16. No Unit shall be used or maintained as a dumping ground for rubbish, nor shall any rubbish, garbage or any other waste be allowed to accumulate on a unit. Rubbish, garbage and other waste shall be kept in sanitary containers and all such containers or incinerators or other equipment used for the storage or disposal of said materials shall be kept in a clean and sanitary condition and located in as inconspicuous a place as possible. It is understood and agreed that there is no obligation on the part of any party of this agreement to provide garbage or trash removal services.

17. No fowl, swine, cattle, sheep, goats, horses or other domestic or wild animals shall be kept or maintained on any unit. This restriction shall not apply to dogs, cats or other small domestic animals generally considered as pets so long as said domestic animals are not of an offensive nature and so long as such domestic animals are not permitted to roam at large.

18. No obnoxious, offensive, unlawful or criminal activity shall be carried on upon any unit, nor shall any unit be used for such purposes.

19. No sign of any kind may be displayed upon a unit to the public view without first obtaining written approval from the Building Control Committee, except that one sign showing the owner's name and the name of the premises shall be permitted on the unit so long as the sign does not extend more than three feet in length or height, nor comprise an area greater than two square feet.

20. No open fires shall be permitted on any unit, and any outdoor fireplaces shall be equipped with proper screening and approved by the Building Control Committee.

21. All guns, bows, and weapons shall be cased and no firearms shall be discharged within the Windwood.

22. Outside illumination of any dwelling, or of a sign erected in accordance with Paragraph 19, shall be accomplished by means of a constant light utilizing ordinary light bulbs or small flood lights, it being the intent of this restriction that no neon or similar type lighting, no flashing light or illumination of or by any type of reflective lettering, nor dusk to dawn lights, nor the use of luminous or reflective material of any nature shall be permitted in connection with said lighting or the outside illumination of said dwelling.

23. No exterior television or radio antenna of any kind shall be constructed, erected or permitted to remain on any tract or residence other than a dish or antenna to receive satellite television signals. Such dish or antenna shall be placed to minimize effect on visual harmony of the community.

24. All electrical service lines and telephone lines to any structure shall be by an underground entry unless waived in writing by the Building Control Committee.

25. No trees measuring six inches or more in diameter at breast height may be removed without the written approval of the Building Control Committee unless such tree is located within ten feet of the unit's dwelling site.

26. No tract shall be subdivided, or its boundary lines changed, except with the written approval of the Building Control Committee and as provided for by this Declaration or the Common Interest Ownership Act.

D. Building Control Committee:

1. The Committee shall be composed of three (3) members to be appointed by the Executive Board. Committee members shall be subject to removal by said Executive Board and any vacancies from time to time existing shall be filled by appointment by the said Executive Board.

2. All buildings, structures and improvements (including exterior color) erected or placed on any Unit must be approved in writing by the Building Control Committee.

3. There shall be submitted to the Committee a complete set of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Unit unless and until the final plans, elevations and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the Unit of the building, utility entrances, walls, or other structures proposed to be constructed, altered, placed or maintained, together with the proposed construction material and proposed landscaping and off street parking.

4. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. The Committee shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest, welfare or rights of all or any part of the real property subject hereto, or the owner thereof. The decisions of the Committee shall be subject to appeal or review by the Executive Board of said Association.

E. Variances:

1. The Building Control Committee may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the interest and purpose of the general development scheme and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

2. The Building Control Committee shall have specific authority to grant variances, in appropriate circumstances, to Unit Owners who desire to construct (over and upon the 10 foot easement along each side of all boundary lines) porches, decks or other appurtenances not integral to the primary structure. Any variances which the Building Control Committee may grant shall be based upon plans first submitted by the Unit Owner to the Committee.

3. The Unit Owner will bear the entire risk associated with the removal of the appurtenance in the event the Association must enter the easement for any purpose. The Association shall have no duty to repair, replace or otherwise compensate the Unit Owner for any damage resulting to any part of the appurtenance while working within the easement.

F. Easements Reserved:

There is reserved for the Association, its successors and assigns, the following easements and rights-of-way incident to the development of this CIC:

1. A ten (10) foot wide easement along each side of all road rights-of-way and along all Unit and property boundary lines for the purpose of altering, adding, installing,

operating and maintaining sewage disposal lift stations, utility lines, drainways, culverts, electric lines, cable television, water and sewer mains, as well as other services, reserving also the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to trim, cut and remove any trees and/or brush located in said rights-of-way. There is a five (5) foot easement in Alpine Village which is to be consistent with this section.

2. The Units shall be subject to an air easement which precludes the construction of any improvements or the maintenance of any trees in excess of twenty-five (25) feet above the surface of any Unit. The purpose of such easement is for the proper operation of the airstrip which is a common element of the CIC.

3. The Units shall be bordered by such additional rights of way and easements as may be shown on the recorded maps or plats of said Subdivision, or as may be placed in any deeds of conveyance for each individual Unit.

4. There is reserved a perpetual, alienable and releasable easement and right to use the roads in the subdivision, and the right on, over and under the cables, conduits, gas lines, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water and other public conveniences or utilities within the right of way of the roads and on such other reserved areas as are shown on the recorded plans of the Subdivision. CIC may also cut drainways for surface water whenever and wherever such action may appear to CIC to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical

and safe utility installations and to maintain reasonable standards of health, safety and appearance. Such right may be exercised by any license, but this reservation shall not be considered an obligation of Declarant to provide or maintain any such utility or service.

G. Easements, Rights-of-Way, Restrictions and Limitations to which CIC is Subject:

The CIC is subject to certain easements, rights-of-way, restrictions and limitations which run with the land which are set forth and described as follows:

1. Road rights-of-way and easements for ingress and egress as shown on the plats in Plat Book 1, Slides 74 and 75, of record in the Office of the Clerk of the County Commission of Tucker County, West Virginia.
2. Road rights-of-way and easement for ingress and egress as shown on the plat at Plat Book 1, page 267, of record in the aforesaid Clerk's Office.
3. Road rights-of-way and easements for ingress and egress as shown on the plats attached hereto.
4. An easement granted to Monongahela West Penn Public Service Company by Charles S. Harper by agreement dated the 3<sup>rd</sup> day of June 1943, of record in the aforesaid Clerk's Office in Miscellaneous Book 1 at page 333.
5. An easement granted to Monongahela Power Company by Glen Miller and Esther Miller by agreement dated the 29<sup>th</sup> day of November 1967, of record in the aforesaid Clerk's Office in Right-of-Way Book 4 at page 305.
6. An easement granted to Monongahela Power Company by Glen Miller and Esther Miller by agreement dated the 24<sup>th</sup> day of May 1979, of record in the aforesaid Clerk's Office in Right-of-Way Book 6 at page 676.

7. An easement granted to Berea Oil & Gas Corp. by Glen Miller and Esther Miller, by agreement dated the 9<sup>th</sup> day of February 1983, of record in the aforesaid Clerk's Office in Right-of-Way Book 7 at page 583.

8. An easement granted to West Virginia Telephone Company by Glen Miller and Esther Miller by agreement dated the 30<sup>th</sup> day of December 1982, of record in the aforesaid Clerk's Office in Right-of-Way Book 7 at page 503.

9. An easement granted to Monongahela Power Company by Glen Miller and Esther Miller by agreement dated the 20<sup>th</sup> day of May 1985, of record in the aforesaid Clerk's Office in Right-of-Way Book 8 at page 302.

10. An easement granted to Monongahela Power Company by Glen Miller and Esther Miller by agreement dated the 11<sup>th</sup> day of May 1988, of record in the aforesaid Clerk's Office in Right-of-Way Book 10 at page 88.

11. An easement granted to Canaan Valley Gas Company by Glen Z. Miller and Esther Miller by agreement dated the 14<sup>th</sup> day of August 1991, of record in the aforesaid Clerk's Office in Right-of-Way Book 11 at page 248.

12. An easement granted to Monongahela Power Company by Cabin Mountain View by agreement dated the 21<sup>st</sup> day of August 1976, of record in the aforesaid Clerk's Office in Right-of-Way Book 6 at page 307.

13. An easement granted to Berea Oil & Gas Corporation of Talheim Village by agreement dated the 2<sup>nd</sup> day of July 1983, of record in the aforesaid Clerk's Office in Right-of-Way Book 7 at page 564.

14. An agreement granted to Monongahela Power Company by Talheim Village by agreement dated the 17<sup>th</sup> day of January 1984, of record in the aforesaid Clerk's Office in Right-of-Way Book 8 at page 113.

15. An easement granted to Continental Telephone Company by Allen D. Judy, Jr. et.al., by agreement dated the 1<sup>st</sup> day of August 1989, of record in the aforesaid Clerk's Office in Right-of-Way Book 10 at page 385.

16. An easement granted to Monongahela Power Company by Windwood Incorporated by agreement dated the 16<sup>th</sup> day of November 1989, of record in the aforesaid Clerk's Office in Right-of-Way Book 10 at page 489.

17. An easement granted to Canaan Valley Gas Company by Windwood, Inc., by agreement dated the 25<sup>th</sup> day of October, 1989, of record in the aforesaid Clerk's Office in Eight-of-Way Book 11 at page 244.

18. Reservation of easement for water, sewer and roads, easements for utility installation and maintenance and other easement affecting the subject property as contained in the Declaration for the Establishment of Talheim Village dated March 22, 1994, of record in the aforesaid Clerk's office in Deed Book 107 at page 655.

19. Reservation of easements for water, sewer and roads, easements for utility installation and maintenance and other easement affecting the subject property as contained in the Protective Covenants and Restrictions for Windwood, Inc., Phase One dated September 15, 1989, of record in the aforesaid Clerk's Office in Deed Book 130 at page 50.

20. Restriction appearing of record in a deed dated the 1<sup>st</sup> day of July 1975, of record in the aforesaid Clerk's Office in Deed Book 87 at page 327, which restriction



reads as follows: No alcohol shall be sold on said premises and this restriction shall be considered as a covenant running with the land.

21. Reservation of water rights as contained in a deed dated the 15<sup>th</sup> day of July 1975, of record in the aforesaid Clerk's Office in Deed Book 87 at page 327.

22. Reservation of water rights as contained in a deed dated the 1<sup>st</sup> day of January 1968, of record in the aforesaid Clerk's Office in Deed Book 75 at page 23.

23. Grant of water use and sewage right by Windwood, Inc. to Webster Woodlands, Inc., by deed dated the 20<sup>th</sup> day of November 1991, of record in the aforesaid Clerk's Office in Deed Book 127 at page 254.

24. A Right-of-Way granted to Canaan Construction Company by Windwood, Inc. by agreement dated the 1<sup>st</sup> day of April 1990, of record in the aforesaid Clerk's Office in Deed Book 132 at page 391.

25. Easement granted to Monongahela Power Company by instrument dated November 28, 1989, of record in Right-of-Way Book 10 at page 487.

26. Easement granted to Continental Telephone Company of West Virginia by instrument dated May 2, 1990 and recorded in Right-of-Way Book 10 at page 557.

27. Easement granted to Monongahela Power Company by instrument dated August 12, 1994 and recorded in Right-of-Way Book 12 at page 322,

H. Allocated Interest, Use and Enjoyment of Common Elements:

1. West Virginia Resorts, LLC, its successors and assigns can establish up to 69 Units within the surveyed acreage as shown on the survey of Windwood. The 69 Units include the 66 Units on the plats described in Section III of this declaration and the permitted subdivision of Lot 43, Phase III into no more than four (4) lots or units. The

same covenants and conditions applicable to single family dwellings and duplex units that currently exist on the real estate shall be applicable that are on previous recorded documents.

2. The complex referred to as Windwood Heights and any portion of real estate that may have been associated with Windwood Heights under any declaration or was under Declarant control if any, is hereby excluded.

3. Unit Owners can determine their allocated interests by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is the number equal to the number of lots within all dedicated phases. Unit Owners holding a fee simple interest in a Unit may have their allocated interest increased or reduced by an amount equal to the number of Units added or subtracted from the projections.

4. Each of the streets in the Subdivision and the recreational facilities are dedicated to the use of and by members of the Association and shall be under the control and supervision of the Association. An easement for the use and enjoyment of each of said streets and areas designated as recreational is reserved to the Association, its successors and assigns, to the persons who are, from time to time, members of the Association, as provided for in the By-laws of said Association, to the residents, tenants, and occupants of any residential dwelling and to the invitees of the aforementioned persons, the use of which shall be subject to such rules and regulations as may be hereinafter set forth and as may from time to time, be prescribed by the said Association.

5. Each Unit Owner shall be responsible for placing approved culverts, as designated by the West Virginia Department of Highways or Declarant, under sidewalks

and/or driveways in order to facilitate the proper drainage of storm sewers along the streets of the Subdivision.

I. Association's Right to Perform Certain Maintenance:

In the event any owner of any Unit shall fail to maintain the Unit premises and the improvements situated thereon in a manner satisfactory to the Executive Board and the Association, notice shall be provided by the Board, in writing, to the Unit Owner to correct the condition and if after thirty (30) days the condition has not been corrected, the Association shall have the right, through its agents and employees to enter upon said Unit and repair, maintain and restore the Unit and the exterior of the buildings and any other improvements erected thereon to the extent authorized by law. Such right shall not be exercised unless two-thirds (2/3) of such Executive Board and sixty percent (60%) of the members at a duly called meeting for that purpose shall have voted in favor of its being exercised. The cost of such exterior maintenance and maintenance of the Unit shall be added to and become part of the annual charge to which such Unit is subject and until paid shall be a lien on said Unit and improvements thereon.

J. Motor Vehicle Speed Limits and Miscellaneous Rules:

1. Speed limits for streets and the rules governing the use of parks and recreational facilities within the Subdivision shall be promulgated from time to time by the Executive Board of the Association. Appropriate postings of speed limits shall be made. The Association shall have the power to assess fines for violation of motor speed limits in accordance with a schedule of fines promulgated by the Association. Every such fine shall be paid promptly upon its being assessed, but if it is not, the Association may add the amount of the fine to the annual charge made by the Association, and the

amount of such fine shall be collectible by the same means as are prescribed for the collection of delinquent annual charges of the Association or through the use of the sanctions prescribed herein.

2. No motor vehicles of any nature, except a duly licensed vehicle, shall be operated on any street and no such vehicle shall be operated except by a duly licensed operator except the street can be used as a taxi-way for air craft to and from the runway to their tie down area.

K. The runway within the development is a common element as defined under 36B of the West Virginia Code. At the present time the runway shall remain under Declarant control. The Declarant shall hold harmless the Windwood Fly-In Resort Unit Owners Association from any liability associated with management of the runway. Liability insurance shall be maintained on the runway by the Declarant while under its control and management. It is further agreed as per the agreement referenced herein that the runway shall be surrendered to the Windwood Fly-In Resort Unit Owners Association on or before March 1, 2019. Any and all liens on the runway are the responsibility of the Declarant.

L. The swimming pool area which contains 0.38 acres and shall be considered a common element and is described as follows:

Beginning at a 5/8" rebar at the southwest corner of Lot 4A of the Alpine Village of the Windwood Resort and on the northern right-of-way of Cessna Drive; thence with the right-of-way of Cessna Drive

N 57-51' W 31.90 feet to a point on the northern right-of-way of Cessna Drive;  
thence

N 74-13' W 47.51 feet to a point on the northern right-of-way of Cesna Drive;  
thence with a line of the Motel Area

N 30-39' E 134.65 feet to a point, a corner to the Motel Area; thence

S 59-16' E 58.93 feet to a point, a corner to the Motel Area; thence

N 31-20' E 180.58 feet to a point in the line of Glen Miller; thence

S 69-01' E 32.68 feet to a found ½" iron pipe, a corner of Lot 2B of the Alpine Village; thence with a line of Alpine Village

S 31-23' W 182.12 feet to a point, the southwest corner of Lot 3B of the Alpine Village; thence

S 29-35' W 31.87 feet to a 5/8" rebar at the southwest corner of Lot 3A; thence

S 38-51' W 96.29 feet to the beginning, containing 0.38 acres.

Being the area around the pool between the Motel Area and the Alpine Village.

#### **IX. REMEDIES**

In the event of any violation of the provisions of the Declaration, By-Laws or Rules and Regulations of the Board or Association by any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit), the Association or its successors or assigns, or the Board or its agent, shall have each and all of the rights and remedies which may be provided for in the Uniform Common Interest Ownership Act to which this CIC is submitted, the Amended Declaration, By-laws or Rules and Regulations, or other like source which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or other for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages, injunction or specific

performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any subject actions or proceedings, including Court costs and attorneys fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than the current mortgage rate until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expense. The Board shall have a lien for all of the same, as well as for non-payment of his respective share of the Commons Expenses upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of the additions and improvements thereto and upon all of the personality in, upon or located elsewhere on the property.

#### **X. AMENDMENT**

A. The provisions of this Amended Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission by vote or agreement of Unit Owners owning Units to which not less than sixty-seven percent (67%) of the votes in the Association are allocated and prepared, however, no change, modification or rescission may increase or create special Declarant rights, increase the number of Units, alter Unit boundaries, the allocated interests of a Unit or the uses to which any Unit is restricted, without the consent or agreement of all Unit Owners and all lienholders unless otherwise specified in this Amended Declaration. Any instrument changing, modifying or rescinding any provision of this Amended

Declaration with respect to such action shall be signed by all the Unit Owners and all lienholders as required by this Amended Declaration.

B. The change, modification or rescission accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Office of the Clerk of the County Commission of Tucker County, West Virginia; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Acts to which the CIC is submitted; and FURTHER PROVIDED that the provisions in this Amended Declaration may be changed, modified or rescinded solely upon a vote of the Association Board where alteration of the provisions hereof are made solely to bring this document into compliance with the Acts above said, other existing law or to correct errors of scrivener, architect or surveyor with no notice to Unit Owners or lienholders as above said unless such change, modification or rescission directly affects an individual Unit Owner's or lienholder's interest in the real estate or appurtenances held as security. Notices provided for in the Act, Amended Declaration or By-laws shall be in writing and shall be addressed to the Association (in care of its Secretary), Executive Board or any Unit Owner, as the case may be, at his Unit address provided,. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change or address to all Unit Owners. Any Unit Owner may designate a different address for notice to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof. Upon written request to the Board setting forth its address, the holder

of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration or by the By-laws to be given to the Owners or Owners whose Unit is subject to such mortgage or deed of trust, and otherwise any required notice may be given by publication in a newspaper of general circulation in Tucker County, West Virginia in the absence of submission of a lienholder's address.

#### **XI. NOTICES:**

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

#### **XII. SEVERABILITY:**

If any provision of the Declaration, or By-laws, or any section, sentence, clause, phrase, word or the application thereof in any circumstances is held invalid, the validity



of the remainder of this Declaration and the By-laws and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the By-laws shall be construed as if such invalid part was never included therein.

### **XIII. PERPETUITIES AND RESTRAINTS ON ALIENATION**

If any provision of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the non-living descendants of the President of the United States, Barrack Obama, and the Governor of the State of West Virginia, Joe Manchin.

### **XIV. TERMINATION AND EMINENT DOMAIN**

A. Termination: The CIC (which includes all Units, Common Elements, rights and restrictions herein created) may be terminated only by agreement of owners of Units to which at least eighty percent (80%) of the votes of the Association are allocated. An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof in the same manner as a deed, by the required number of Unit Owners. The termination agreement and all ratifications thereof must specify a date after which the agreement shall become void if not recorded before that date. The termination agreement and all ratifications thereof must be recorded in the aforesaid County Clerk's Office within the time period specified on its face. It is further provided that:

1. Foreclosure or enforcement of a lien or encumbrance against the entire CIC or any part thereof does not itself terminate the CIC withdraw that part thereof from the CIC or from this Declaration and other related documents herein set forth.

2. The termination agreement may provide that all of the Common Elements and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must be set forth the minimum terms of sale.

3. The Association, on behalf of the Unit Owners, may contract for the sale of real estate but the contract is not binding on the Unit Owners until approved pursuant to this section. If any real estate is to be sold following termination, title to that real estate vests in the Association as Trustees for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effectuate the sale. Until the same has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lienholders as their interests may appear in accordance with this section. Unless otherwise specified in the termination agreement, so long as the Association holds title to the real estate, each Unit Owner and the Unit Owner's successor in interest have an exclusive right to occupancy of that portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successor in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Declaration.

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

B. Eminent Domain:

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

#### **XV. SEPARATE TITLES AND TAXATION**

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

#### **XVI. RIGHTS AND OBLIGATIONS OF GRANTEES**

Each Grantee of Declarant, by the acceptance of a deed of conveyance or of trust, accepts the same SUBJECT TO all restrictions, conditions, covenants, reservations, liens and charges, the jurisdiction, rights and powers created or reserved herein and ALL MATTERS SET FORTH IN THIS DECLARATION. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said

land, and shall inure to the benefit of such Grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

#### **XVII: HEADINGS**

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

#### **XVIII. DESCRIPTION INCLUSIONS BY REFERENCE**

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

#### **XIX. SUBMISSION TO LAW**

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

THEREFORE, IN EXECUTION AND SUBMISSION OF THE DECLARATION, NOW WITNESSETH THE NAME, SEAL AND SIGNATURE OF THE DECLARANT.

WEST VIRGINIA RESORTS LIMITED  
LIABILITY COMPANY, dba The New  
Windwood Fly-In Resort

By: \_\_\_\_\_

*Joe Beam*  
It's Managing Partner

STATE OF WEST VIRGINIA

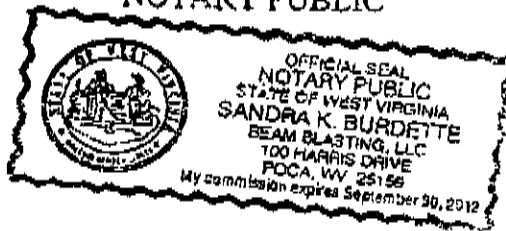
COUNTY OF RANDOLPH, to-wit:

I, Sandra K Burdette a Notary Public in and for the County and State aforesaid, do certify that JOE BEAM, who signed the writing above, bearing date of May 24, 2011, as Managing Partner of West Virginia Resorts Limited Liability Company, has this day and in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this 24 day of May, 2011.

My commission expires September 30, 2012.

Sandra K Burdette  
NOTARY PUBLIC



This Instrument Prepared By:  
PAT A. NICHOLS  
ATTORNEY AT LAW  
P.O. BOX 201  
PARSONS, WEST VIRGINIA 26287

This document presented and filed:  
07/15/2011 10:21:06 AM

Sherry Simmons

Sherry L. Simmons, Tucker County, WV  
134260