

AMENDED BYLAWS  
OF THE  
WINDWOOD FLY IN RESORT UNIT OWNERS' ASSOCIATION  
CANAAN VALLEY, TUCKER COUNTY, WEST VIRGINIA

ARTICLE I  
GENERAL PROVISIONS

1. Applicability: Windwood Fly In Resort Unit Owner's Association shall be governed by the provisions of these Bylaws which are promulgated pursuant to the requirements and provisions of Article 3 of the Uniform Common Interest Ownership Act (Chapter 36B of the West Virginia Code of 1931, as amended).

2. Principal Office. The Unit Owners' Association and the Executive Board shall be located at Windwood or at such other location as may be designated from time to time by the Unit Owners' Association and/or the Executive Board.

3. Definition. The terms which are used in these Bylaws shall be given the definitions set forth in the Declaration. Any term which is not defined therein shall be given the meaning specified for such terms in the Uniform Common Interest Ownership Act (West Virginia Code, Section 36B-1-1 03).

ARTICLE II  
UNIT OWNERS' ASSOCIATION

1. Membership. The Unit Owners' Association of Windwood shall be comprised of all of the Unit Owners of said Common Interest Community (CIC). The name shall be the Windwood Unit Fly In Resort Unit Owners' Association. For all purposes the Unit Owners' Association shall act merely as an agent for the Unit Owners collectively. The Unit Owners' Association shall have the responsibility of managing the property and shall be delegated the following powers, duties and responsibilities:

- (a) To adopt and amend Bylaws and Rules and Regulations; to amend the Declaration only as permitted by ARTICLE X of the Declaration;
- (b) To adopt and amend budgets, revenues, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners;
- (c) To hire and terminate employees, agents, and independent contractors;
- (d) To institute, defend, or intervene, at the discretion of the Board, in litigation or administrative proceedings in its own name or on behalf of itself or two or more Unit Owners on matters affecting the CIC;
- (e) To make contracts and to incur liabilities;
- (f) To regulate the use, maintenance, repair, replacement and modification of Common Elements;

- (g) To cause additional improvements to be made as part of the Common Elements;
- (h) To acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property;
- (i) To grant easements, leases, licenses, and concessions through or over the Common Elements;
- (j) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, to levy reasonable fines for violation of the Declaration, Bylaws, and Rules and Regulations of the Unit Owners' Association;
- (k) To provide for the indemnification of its officers and Executive Board and to maintain directors' and officers' liability insurance;
- (l) To exercise all other powers conferred by the Declaration, Bylaws and the Uniform Common Interest Ownership Act;
- (m) To exercise any other powers necessary and proper for the governing and operation of the Unit Owners' Association.

2. Annual Meetings. The annual meeting of the Unit Owners' Association shall be held at least sixty (60) days before the beginning of each fiscal year on such date as may be established by the Executive Board. Any business may be transacted at an annual meeting if included in the agenda of said meeting, proper notice of said meeting, and the date and time of the meeting is given.

3. Place of Meetings. Meetings of the Unit Owners' Association shall be held at the principal office of the Unit Owners' Association or at such other suitable place in Tucker County as may be convenient to the Unit Owners and may be designated by the Executive Board from time to time.

4. Special Meetings. Special meetings may be called by the President, or by a majority of the Executive Board, or upon the petition signed and presented to the secretary by the Unit Owners having not less than twenty percent (20%) of the aggregate percentage interests.

5. Notice of Meetings. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary shall cause notice to be hand delivered or sent 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 amendments to the Declaration or these Bylaws, any budget changes, and any proposal to remove an officer or member of the Executive Board.

6. Adjournment of Meetings. If at any meeting of the Unit Owners' Association a quorum is not present, Unit Owners having a majority of the aggregate percentage interest at such meeting (in person or by proxy) may adjourn the meeting to a time after the time the original meeting was called.

7. Order of Business. The order of business at all meetings of the Unit Owners' Association shall be as follows:

- (a) Roll call (proof of quorum);
- (b) Proof of adequacy of notice of meeting;

- (c) Reading of the minutes of the preceding meeting;
- (d) Reports of officers (including treasurer's financial report);
- (e) Reports of committees;
- (f) Election of members of the Executive Board;
- (g) Unfinished business;
- (h) New business;
- (i) Adjournment.

#### 8. Voting.

(a) Each unit shall have one vote at association meetings. If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast all the votes allocated to that Unit. If more than one of the owners is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the Declaration expressly provides otherwise. There is majority agreement if only one of the owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

(b) No Unit Owner may vote at any meeting or be elected to or serve upon the Executive Board if payment of the assessment on his Unit or payment of any fine or penalty assessed against his Unit is delinquent more than thirty (30) days, and the amount necessary to bring his account current has not been paid at the time of such meeting or election

(c) No votes allocated to a Unit owned by the Association may be cast.

9. Proxies. A Vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner for a specific purpose, such as budget approval, election of individual nominees for the Executive Board, and specific matters included in the meeting notice. Proxies terminate at the adjournment of the meeting. General proxies are prohibited. 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 section only by actual notice of revocation to the person presiding over the meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice.

10. Quorum. Except otherwise provided in these Bylaws, the presence in person or by proxy at the beginning of the meeting of Unit Owners owning twenty percent (20%) or more of the units shall constitute a quorum at all meetings of the Unit Owners' Association.

11. Conduct of Meetings. The President shall preside over all the meetings of the Unit Owners' Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Unit Owners' Association unless such rules are in conflict with the Declaration, these Bylaws or the Uniform Common Interest Ownership Act.

### ARTICLE III EXECUTIVE BOARD

1. Powers and Duties. The Executive Board shall have all of the powers and duties necessary for the administration of the affairs of the Unit Owners' Association as granted by the

Declaration, these Bylaws and the Uniform Common Interest Ownership Act.

(a) In addition to the duties imposed by these Bylaws or by any resolution of the Unit Owners' Association that may hereafter be adopted, the Executive Board shall, on behalf of the Unit Owners' Association:

- (1) Adopt and amend 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 and 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.

(b) The Executive Board is limited in its powers and duties as follows:

- (1) The Executive Board may not amend the Declaration or Bylaws.
- (2) The Executive Board may not terminate the CIC.

(3) The Executive Board may not elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

(4) The Executive Board may make alterations and improvements to the Common Elements without obtaining the prior consent of the Unit Owners if such alterations and improvements do not cost in excess of Five Thousand Dollars (\$5,000.00) in any consecutive twelve month period. All expenditures in excess of Five Thousand Dollars (\$5,000.00) and loans in excess of Ten Thousand Dollars (\$10,000.00) will require approval of the Unit Owners' Association.

2. Number and Term of Office. The Unit Owners shall elect an Executive Board of five (5) members, with unit owners comprising no less than four of the five members. The Executive Board members shall take office upon election and shall serve a term of three (3) years. The initial term of office of the Executive Board members elected subsequent to adoption of these bylaws shall be adjusted such that two Executive Board members shall be elected to three year terms, two Executive Board members shall be elected to two year terms, and one Executive Board member shall be elected to a one year term by the Unit Owners. Subsequent to the initial election of the Executive board after adoption of these bylaws, no more than two members of the Executive Board are to be elected each year. Immediately following the election of the required number of Executive Board members each year, the Executive Board shall elect the officers. The officers shall take office upon election by the Executive Board members and shall serve a term of one (1) year.

3. Election of Executive Board Members. Members of the Executive Board shall be elected by a plurality of the votes cast at the Annual Meeting of the Association.

4. Removal of Executive Board Members. At any regular or special meeting duly called, any one or more of the members of the Executive Board may be removed with or without cause by a two-thirds (2/3) vote of all persons present and entitled to vote at a meeting where a quorum is present, except that any action or proposal to remove a member of the Executive Board must be properly included in the notice of the meeting at which the action or proposal will be voted upon.

5. Vacancies. Vacancies in the Executive Board caused by any reason other than the removal of a director by a vote of the Unit Owners' Association shall be filled by a vote of a majority of the remaining Board members at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum.

6. Regular Meetings. Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least once every three months during each fiscal year. Notice of regular meetings of the Executive Board shall be given in writing to each member, by hand delivery or mail at least ten (10) days prior to the day named for such meeting.

7. Quorum of Executive Board. At all meetings of the Executive Board a majority of the board members shall constitute a quorum for the transaction of business, and the votes of a majority of the board members present at a meeting at which a quorum is present shall constitute

the decision of the Executive Board. A member of the Executive Board who participates in a meeting by means of telephone communication shall be deemed present at the meeting for all purposes.

8. Compensation. No Executive Board member shall receive any salary from the Association for acting as such.

#### ARTICLE IV OFFICERS

1. Designation. The principal officers of the Unit Owners' Association shall be the President, the vice President, the Secretary and the Treasurer, all of whom shall be elected annually by the Executive Board. Any person may hold two offices except that the President shall not also be the Secretary. The President and Secretary shall be members of the Executive Board and be Unit Owners. Any other officers may, but need not be Unit Owners or members of the Executive Board.

2. Removal of Officers. Upon the affirmative vote of a majority of the Executive Board any officer may be removed, with or without good cause, and a successor may be elected at any regular or special meeting of the Executive Board.

3. President. The President shall be the chief executive officer of the Unit Owners' Association; preside at all meetings of the Unit Owners' Association and of the Executive Board; have general active management of the business of the Unit Owners' Association subject to the control of the Executive Board; see that all orders and resolutions of the Executive Board are carried into effect; and appoint committees from among the Unit Owners from time to time to assist in the conduct of the affairs of the Unit Owners' Association.

4. Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act.

5. Secretary. The Secretary shall keep the Minutes of all meetings of the Unit Owners' Association and of the Executive Board; have charge of such books and papers as the Executive Board may direct; give or cause to be given all notices required to be given by the Unit Owners' Association; and in general, perform all the duties incident to the office of Secretary.

6. Treasurer. The Treasurer shall be responsible for Unit Owners' Association funds; keep full and accurate financial records and books of account showing all receipts and disbursements; prepare all required financial data including the annual budget; deposit all monies in the name of the Executive Board or the Unit Owners' Association in such depositories as may from time to time be designated by the Executive Board; and in general, perform all the duties incident to the office of Treasurer.

7. Execution of Documents.

(a) Either the President or the Secretary may prepare, execute, certify, and record amendments to the Declaration on behalf of the Unit Owners' Association.

(b) All agreements, contracts, deeds, leases, checks, and other instruments of the Unit Owners' Association for expenditures or obligations, and all checks drawn upon reserve accounts shall be executed by any two persons designated by the Executive Board.

8. Compensation of Officers. No officer who is also a member of the Executive Board shall receive any compensation from the Unit Owners' Association for acting as such officer.

## ARTICLE V 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 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 lien holders 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 lien holders are not entitled to receive payment of any portion of the proceeds - unless there is a surplus of proceeds after the property has been completely repaired or restored, or the 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 Article 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 the 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 addresses.

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.

## ARTICLE VI COMPLIANCE AND DEFAULT

1. Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Declaration, Bylaws, Rules and Regulations and the Uniform Common Interest Ownership Act as any of the same may be amended from time to time. In addition to the remedies provided in Section 36B-3-115 of the Uniform Common Interest Ownership Act, a default by a Unit Owner shall entitle the Unit Owners' Association, acting through its Executive Board to the following relief:

(a) Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or his employees, agents, tenants, or licensees or any occupant permitted by such owner to occupy his Unit, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

(b) Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a Unit Owner, his family members, or his employees, agents, tenants, or licensees, or any occupant permitted by such Unit Owner to occupy his Unit, the prevailing party shall be



entitled to recover the costs of such proceeding and such Attorney's fees as may be determined by the Court to be reasonable.

(c) No Waiver of Rights. The failure of the Unit Owners' Association, the Executive Board or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Bylaws, Rules and Regulations or the Uniform Common Interest Ownership Act shall not constitute a waiver of the right of the Unit Owners' Association, the Executive Board or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Unit Owners' Association, the Executive Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Declaration, Bylaws, the Uniform Common Interest Ownership Act or Rules and Regulations of the Unit Owners' Association Executive Board shall be deemed to be cumulative and the exercise of anyone or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Declaration, Bylaws, Rules and Regulations, or the Uniform Common Interest Ownership Act or at law or in equity.

(d) Interest. In the event of a default by any Unit Owner in paying any sum assessed against his Unit other than for Common Expenses which continue for a period in excess of fifteen days, interest at a rate not to exceed the current mortgage rate, may be imposed in the discretion of the Executive Board on the principal amount unpaid from the date until paid.

(e) Abating and Enjoining Violations by Unit Owners. The violation of any of the Rules and Regulations adopted by the Executive Board, the breach of any Bylaw contained herein or the breach of any provision of the Declaration or the Uniform Common Interest Ownership Act shall give the Executive Board the right, in addition to any other rights set forth in these Bylaws: (i) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Executive Board shall not thereby be deemed guilty in any manner of trespass; (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; and/or (iii) to levy reasonable fines in accordance with Rules and Regulations promulgated which establish fines and the various types of violations for which fines may be imposed. All fines shall be levied only in accordance with 36B-3-102 (a) (11) of the Act.

(f) Legal Proceedings. Failure to comply with any of the terms of the Declaration, these Bylaws and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure or the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Unit Owners' Association, the Executive Board, or, if appropriate, by any aggrieved Unit Owner and shall not constitute an election of remedies.

## ARTICLE VII ASSESSMENTS, LIENS AND RECORDS

1. Assessment for Common Expense. Common expense assessments must be made at least annually based on the annual budget adopted by the Association.

(a) Except for assessments under subsection (c) and (d), all Common

Expenses must be assessed against all the Units in accordance with allocations set forth in the Declaration. Any past due Common Expense assessment or installment thereof bears interest at the rate established by the Association not exceeding eighteen (18%) percent.

(b) To the extent reasonably determinable, any Common Expense or portion thereof benefitting fewer than all of the Units must be assessed exclusively against the Units benefitted.

(c) 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.

(d) 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.

2. 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 Bylaws, is hereby declared to be a lien levied against the Unit of such Unit Owner as provided in Section 36B-3-11S 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 to 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 or further document, as may be required to confirm the establishment and priority of such lien.

(a) The Association has a lien on a Unit for any assessment levied against that Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fines 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 thereof becomes due.

(b) 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 subsection 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, curtesy or other like exemptions.

(c) 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.

(d) 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.

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

(f) 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.

(g) 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 purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Tucker County, West Virginia. The notice shall contain:

- (1) A legally sufficient description of the Unit;
- (2) The name or names of the Owners of the Unit;
- (3) The amount of unpaid Assessments due, together with the date when each became due; and
- (3) The date of recordation.

(h) The aforesaid Clerk of the County Commission in whose office the notice is recorded 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.

(i) 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.

### 3. Other Liens.

(a) Except as provided in subsection (b), 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.

(b) If the Association has granted a security interest in the Common Elements to a creditor of the Association, the holder of that security interest shall exercise its rights against the Common Elements before its judgment lien on any Unit may be enforced.

(c) 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.

(d) 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.

4. 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 agents.

5. 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.

#### ARTICLE VIII BUILDING CONTROL COMMITTEE

The Executive Board shall establish a Building Control Committee in order to assure that Windwood shall always be maintained in a manner providing for visual harmony and consistent architectural design for the benefit of all Unit Owners. The Building Control Committee is responsible for determining compliance of Unit Owners with the Restrictive and Protective Covenants described in Article XIII of the Second Amended Declaration of Common Interest Community.

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 therefor 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 thereto, or the owners thereof. The decisions of the Committee shall be subject to appeal or review by the Executive Board of said Association.

5. 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.

6. 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 nonintegral to the primary residential structure. Any variance which the Building Control Committee may grant shall be based upon plans first submitted by the Unit Owner to the Committee.

7. 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 incurred by any part of the appurtenance while working within the easement.

8. Prior to the commencement of construction of the appurtenance, the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Owner has or may have against the Association for any and all damages sustained by an appurtenance encroaching upon the aforesaid 10-foot easement.

#### ARTICLE IX BUDGET

The fiscal year for which the budget is to be adopted will begin January 1 of each year and end December 31 of such year. Within thirty (30) days after adoption of a proposed budget for the CIC, the Executive 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 or any larger vote specified in the Declaration 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 Executive Board.

#### ARTICLE X MANAGING AGENT

The Executive Board may employ for the CIC a managing agent or managing agents at such compensation and benefits as may be established by the Executive Board.

1. Requirements. The managing agent shall be a natural person or a bona fide business enterprise which manages common interest residential communities with a high level of competence in the technical skills necessary to perform that service. The managing agent must be able to advise the Executive Board regarding the administrative operation of the ele and shall, when authorized by the Executive Board or the Unit Owners' Association, employ personnel knowledgeable in the areas of insurance, accounting, contract negotiation, labor relations and the Uniform Common Interest Ownership Act

2. Duties. The managing agent shall perform such duties and services as the Executive Board or the Unit Owners' Association shall direct. Such duties and services may include, without limitation, the delegable duties of the Executive Board. The managing agent shall perform the obligations, duties and services relating to the management of the property, the rights of mortgagees and the maintenance of reserve funds in compliance with the provisions of these Bylaws and the Uniform Common Interest Ownership Act.

3. Standards. The Executive Board shall impose appropriate standards of performance upon the managing agent. Unless the managing agent is instructed otherwise by the Executive Board:

- (a) The accrual method of accounting shall be employed;
- (b) Expenses required by these Bylaws to be charged to more than one (1) but less than all Unit Owners be accounted for separately;
- (c) Cash accounts of the Unit Owners' Association shall not be co-mingled with any other accounts;
- (d) No remuneration shall be accepted by the managing agent for vendors, independent contractors or others providing goods or services to the Unit Owners' Association whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Unit Owners' Association;
- (e) Any financial or other interest which the managing agent may have in Any firm providing goods or services to the Unit Owners' Association shall be disclosed promptly to the Executive Board; and
- (f) A monthly financial report shall be prepared for the Unit Owners' Association.

4. Limitations. The Executive Board may employ a Managing Agent of a term not to exceed one (1) year. Any contract with the Managing Agent must provide that it may be terminated without payment of a termination fee without cause on no more than ninety (90) days written notice and with cause or no more than thirty (30) day written notice. Upon a vote of a majority of the percentage interest present at a meeting of the Unit Owners' Association, a Managing Agent may be removed in accordance with this subsection notwithstanding the desire of the Executive Board to the contrary.

## ARTICLE XI MISCELLANEOUS

1. Amendments. These Bylaws may be modified or amended upon the affirmative vote of at least sixty-seven percent (67%) of the percentage interests present (in person or by proxy) at a meeting of the Unit Owners' Association after the establishment of a quorum. All amendments to the Bylaws shall be prepared, executed, and recorded by the Secretary.

2. Notices. All notices, demands, bills, statements or other communications under these

Bylaws shall be in writing and shall be deemed to have been duly give if delivered personally or sent by United States Mail, postage pre-paid, or if notification is of a default or lien, sent by register or certified United States Mail, return receipt requested, postage pre-paid.

3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Bylaws or the intent of any provision thereof.

4. Construction. These CIC Instruments are intended to comply with all of the applicable provisions of the Uniform Common Interest Ownership Act (Chapter 36B of the West Virginia Code) and shall be so interpreted and applied.

IN WITNESS WHEREOF this amendment dated April 26, 2014 of the Bylaws made and executed on the 1<sup>st</sup> day of January, 1997.

WINDWOOD FLY IN RESORT UNIT OWNERS' ASSOCIATION

By: Lydia Hambrick  
Lydia Hambrick

Its: Secretary

COUNTY OF Washington TO-WIT:

I, Sharon Hoffer, a Notary Public in and for the county and State aforesaid, do certify that Lydia Hambrick, who signed the writing above, bearing date the 26<sup>th</sup> day of April, 2014, as Secretary of Windwood Fly In Resort Unit Owners' Association, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said Association. Given under my hand this 10<sup>th</sup> day of October, 2014.

My commission expires 12-14-14

Sharon Hoffer  
Notary Public

