

AGREEMENT & WAIVER

THIS AGREEMENT AND WAIVER, Made this the ___ day of _____, 20___, by and between **WINDSTAR HOLDINGS LLC**, a West Virginia limited liability company (hereafter “Declarant”), party of the first part, and _____ (hereafter “Buyer” whether singular or plural), party of the second part.

WHEREAS, Declarant is the developer of a residential Subdivision known as “The Backwaters” located in Union District, Monongalia County, West Virginia; and,

WHEREAS, Buyer has contracted to purchase Unit ____, Phase I, situate within the said Subdivision which will be occupied for residential use; and,

WHEREAS, under the provisions of West Virginia Code Chapter 36B, “Uniform Common Interest Ownership Act” (specifically Sections 36B-4-113 and 36B-4-114), Declarant is subject to a six-year statute of limitation for both express and implied warranties of quality; and,

WHEREAS, the provisions of the Code (specifically Section 36B-4-116) further provide that the parties hereto may agree to reduce the statute of limitation to not less than two years; and,

WHEREAS, it was a requirement of the contract of sale between Declarant and Buyer that Buyer would execute and deliver this document as a condition precedent to delivery of a deed conveying the Unit from Declarant to Buyer.

NOW, THEREFORE, the parties hereto, intending to be legally bound and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

1. Buyer shall take possession of the Unit in an “AS IS” condition, subject to the terms and conditions of the Public Offering Statement and Governing Instruments (as defined in the Declaration which is Exhibit 1 to said Public Offering Statement) for “The Backwaters” Subdivision; and
2. Buyer waives and releases the Declarant from the maximum time period of the statute of limitation for commencement of a legal action against Declarant for breach of either implied or expressed warranties of quality; and
3. Buyer shall, in accordance with the terms of the Uniform Common Interest Ownership Act, be subject to the reduction of the statute of limitations for the commencement of a judicial proceeding against the Declarant for breach of warranties of quality, either expressed or implied, to two (2) years; and

4. The commencement of a cause of action for breach of warranty of quality, either express or implied, shall accrue to the Buyer beginning at the time the Buyer enters into possession of the Unit.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to day first above written.

DECLARANT:

WINDSTAR HOLDINGS LLC

By: _____
R. Scott Summers
Its: Sole Member & Manager

BUYER:

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

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, Buyer, and also by R. Scott Summers in his capacity as Sole Member and Manager of Windstar Holdings LLC, a West Virginia limited liability company, for and on behalf of said company.

Given under my hand this ____ day of _____, 2008.

Notary Public

(SEAL)

This instrument was prepared by:

R. Scott Summers, Esquire
R. SCOTT SUMMERS, P.L.L.C.
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P. O. Box 842
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