

PUBLIC OFFERING STATEMENT

OF

THE BACKWATERS

(A Common Interest Community situate in Union District, Monongalia County, West Virginia)

1. NAME AND ADDRESS:

THE BACKWATERS is a Common Interest Community of not more than sixty (60) residential single family Units and appurtenant Common Areas being offered by **WINDSTAR HOLDINGS LLC**, a West Virginia limited liability company (hereinafter sometimes “Declarant”), with a local office at:

129 Hickory Ridge Road
Morgantown, WV 26508

2. GENERAL DESCRIPTION:

THE BACKWATERS (sometimes hereinafter “Common Interest Community” or “CIC”) is a “Planned Community” which currently consist of approximately twenty-one (21) residential single family Units for sale, together with rights-of-way, easements and other Common Areas, which are more specifically displayed and described on the Plat attached hereto as **Exhibit 1**. The CIC is located in Union District, Monongalia County, West Virginia. The real estate is PART OF that certain property conveyed to Windstar Holdings LLC, a West Virginia limited liability company, by virtue of a deed to it dated November 1, 2007, from Metropolitan Savings Service Corporation, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1354 at Page 426, and referred to therein as TRACT D, containing 51.36 acres, MORE OR LESS, but EXCEPTING AND RESERVING therefrom: (1) that certain real estate conveyed to Brian P. Anderson and Tina L. Anderson, by a

Deed dated September 15, 2005, from Stony Brook Properties, LLC, of record in said Clerk's Office in Deed Book 1303, at Page 649, and shown on a plat of record in said Clerk's Office in Map Cabinet D, Envelope 36B as Unit 18 of Lake Crest Estates and on the Plat of THE BACKWATERS as Unit 11, and (2) all coal, oil, gas and other minerals that have not been previously conveyed by Declarant's predecessors in title, and all rights appurtenant to the mining and severance of the same, with the express agreement by Declarant to not use or interfere with the surface of the real estate in the CIC for such purposes.

3. TITLE TO LAND:

Title to the land that Declarant submitted to the development of this CIC is held in FEE SIMPLE, subject to:

(a) The Declaration and its restrictions and protective covenants, attached hereto as **Exhibit 2**, as amended.

(b) The Articles of Incorporation, By-laws and other regulations promulgated by The Backwaters Property Owners Association, Inc., attached hereto as **Exhibits 3 and 4**, as amended.

(c) Those Deeds of Trust more specifically described in Section 19 of this Public Offering Statement.

(d) All exceptions, reservations, rights-of-way, easements and other conditions as made and imposed upon the real estate as conveyed to Declarant, as conveyed by the Declarant, and as excepted and reserved as set forth hereinabove in Section 2.

(e) All rights-of-way and construction set-backs as shown on the Plat attached hereto as **Exhibit 1**, as amended, and set forth in the Declaration attached hereto as **Exhibit 2**, as amended.

(f) The construction set-backs are the following number of lineal feet:

PHASE I:

Minimum distance from the Unit front boundary(s)	Minimum distance from the Unit rear boundary(s)	Minimum distance from the Unit side boundary(s)	Minimum distance from any Unit boundary which is also the perimeter of the CIC	Minimum distance from any Unit boundary abutting a road or Common Area
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50 feet 50 feet 25 feet 25 feet 50 feet

FUTURE PHASES (IF ANY):

To be Determined	To be Determined	To be Determined	To be Determined	To be Determined
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(g) A ten (10) foot wide utility right-of-way and easement along the rear and side property lines of each Unit and a twenty-five (25) foot wide utility right-of-way and easement along the front property line of each Unit and each side of all CIC owned and State owned (County Route 71 and 71/1) roadways.

(h) All Common Areas as shown on the Plat attached hereto as **Exhibit 1**.

4. **DEFINITIONS:**

Unless, as used elsewhere, the text or context in which such term is used indicates another definition, the following are definitions of common terms used herein and/or referred to in the related documents attached hereto:

A. **Association:** The Backwaters Property 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 Board of Directors of the Association herein designated to act on behalf of the Association as the directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-laws of the Association, none of which Articles or By-laws may be inconsistent with the Declaration.

C. Building Control Committee ("BCC"): A committee appointed by the Board of Directors, if it so chooses, and composed of not more than three (3) members, with Declarant or its designee as at least one or possibly all of such members, for the purpose of approving or disapproving plans and specifications, including color for all buildings, structures and improvements erected or placed on the land or exterior of any Unit.

D. By-laws: The By-laws of the Association, as the same may be amended from time to time.

E. Common Areas: All of the CIC property other than the Units and shown on the Plat referenced in paragraph M. below, including, without limitation, the land and all the improvements and appurtenances thereto and areas of common use, being ALL PORTIONS OF THE CIC EXCEPT THE INDIVIDUAL UNITS. References to "Common Areas" on the Plats are solely for general information, and do not define or limit the Common Areas.

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

G. Common Interest Community: The real estate with respect to which a person or entity, by virtue of ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvements of other real estate described in the Declaration. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit,

including renewal options.

H. Declarant: WINDSTAR HOLDINGS LLC, a West Virginia 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 has reserved Special Declarant Rights as set forth in the Declaration and elsewhere herein.

I. Declaration: **Exhibit 2** attached hereto, and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book _____, at Page _____. The Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a Common Interest Community.

J. Development Rights: Any rights or combination of rights reserved by Declarant in the Declaration to, among other things, (1) add real estate to the Common Interest Community; (2) create Units and Common Areas within the CIC; (3) subdivide Units or convert Units into Common Areas; (4) withdraw real estate from the CIC; or (5) withdraw Common Areas, or any part thereof, and develop the same into Units or add the same to Units.

K. 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.

L. Member: Any and every person or entity holding membership in the Association.

M. Plat: The plat of survey and plan of the Common Interest Community heretofore described and recorded in the aforesaid Clerk's Office in Map Cabinet _____, Envelope _____, together with those additional plats of the CIC hereafter recorded in said Clerk's Office, and any amendments thereto later filed of record in said Clerk's Office.

N. Phase: A physical portion of the CIC designated for separate development by the Declarant and containing more than one Unit, but encompassing less than the entire CIC.

P. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described (also known or commonly referred to as a homesite or lot). EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON AREAS.

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

R. Special Declarant Rights: Rights expressly reserved for the benefit of a Declarant in the Declaration to, among other things: (i) complete improvements indicated on the Plats; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and signs advertising the CIC, Units and improvements thereon; (iv) use easements through the Common Areas for the purpose of making improvements within the CIC or within real estate that may be added to the CIC; and (v) appoint or remove any officer of the Association or any Board of Directors member during any period of Declarant control.

5. SIGNIFICANT FEATURES:

THE BACKWATERS, under a Declaration of Common Interest Community, may eventually consist of up to sixty (60) residential single family Units for residential use, with a maximum number of four (4) Units per six (6) acres in the CIC, and with roadways and other Common Areas described in the Declaration set forth in **Exhibit 2**, to which prospective purchasers are hereby referred. Units and the improvements thereon may be used by Declarant as sales models during its offering of Units.

Exhibit 3 sets forth the Articles of Incorporation and **Exhibit 4** the By-laws of the

Association, which sets forth the rights of governance of Members and their representatives over the Common Interest Community, including assessments of yearly maintenance fees, maintenance duties, and other matters subject to Declarant's reservation of control during an initial period of Unit sales.

Solely for the information of prospective purchasers, copies of a proposed draft of a purchase agreement for a Unit is attached hereto as **Exhibit 5**, and a proposed draft of a deed for the same is attached hereto as **Exhibit 6**.

PROSPECTIVE PURCHASERS ARE URGED TO SEEK LEGAL ADVICE AND CONSULT THE DECLARATION, ASSOCIATION ARTICLES OF INCORPORATION, ASSOCIATION BY-LAWS, AND ALL LEGAL DOCUMENTS APPENDED HERETO OR HEREIN REFERENCED FOR A COMPLETE DESCRIPTION OF COMMON INTEREST COMMUNITY RIGHTS AND RESTRICTIONS AND OTHER MATTERS.

6. CURRENT BALANCES AND PROJECTED BUDGETS:

The Association has a projected budget and balance sheet, prepared by Declarant, copies of which are attached hereto as **Exhibit 7**. Budgets and balance sheets may be amended or updated from time to time to reflect actual expenditures or alterations in future projections based on new information.

7. SERVICES AND EXPENSES OF DECLARANT:

Units are being offered by Declarant without the assumption by Declarant of on-going Common Interest Community services or expenses. The Association will be responsible for maintaining the Common Areas and providing such other services as set forth in the Declaration and as may later become reasonably necessary.

8. INITIAL ASSOCIATION ASSESSMENT:

Upon transfer of a Unit by deed from Declarant to each purchaser there shall be an “initial maintenance assessment” for the benefit of the Association in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**.

9. ANNUAL COMMON EXPENSE ASSESSMENTS:

Unit Owners are subject to a yearly fee for maintenance and operation of the CIC. A budget prepared yearly by the Association determines the yearly projected budget, and the amount determined, divided by twelve (12) calendar months, divided by the number of Units on the Plat of the CIC of record in the aforesaid Clerk’s Office, determines the fee to be paid monthly by the Owners of each Unit, all as more fully set forth in the Declaration and By-laws attached hereto. The maintenance assessments will be due and payable annually in advance and initially are **TWO HUNDRED FORTY DOLLARS (\$240.00) PER YEAR**. Upon the purchase of a Unit, a purchaser shall pay that portion of the annual assessment equal to the number of days remaining in the calendar year after the date of purchase, divided by 365 days, multiplied by the then yearly fee assessed for each Unit, unless otherwise provided in the Purchase Agreement or other Governing Instruments (as defined in the Declaration). The Unit Owners can expect that the assessment will consist of, but not be limited to, fees for snow removal, road maintenance, landscaping, operation and maintenance of any current or future Common Areas, real estate taxes on Common Areas, and all other operating expenses of the Association.

10. MANAGEMENT OF THE CIC:

Declarant will manage the CIC and supervise the maintenance and operation of the CIC until such time as Declarant transfers control of the CIC to the Association. The Association will hold its first meeting as soon as reasonably necessary but in no event more than one (1) year from

the date of the sale of the first Unit.

Costs of management of the CIC are generally paid from annual assessments and charges levied upon the Unit Owners. Declarant has caused the Association, a non-profit corporation, to be formed to provide a managing entity with the power to levy and enforce collection of assessments and other charges. All Unit Owners shall automatically become Members of the Association with the right to vote on matters before the Association and elect the members of the Board of Directors. As more specifically provided in the Declaration, the Declarant has the right to retain control of the Association after a majority of the Units have been sold.

The Association may perform or contract for the performance of such acts as may be necessary in the reasonable, necessary and proper management of the CIC and Common Areas, included but not limited to:

- (a) Hire, pay and supervise all personnel;
- (b) Maintain and repair the CIC;
- (c) Purchase equipment, tools, etc.;
- (d) Cause to be placed or kept in effect liability insurance on Common Areas;
- (e) Maintain the Association's financial record books, accounts, etc.;
- (f) Maintain records to describe the services rendered and to identify the source of all funds collected by the Association;
- (g) Prepare a proposed annual budget to be approved by the Association;
- (h) Collect assessments, fines and fees from Members;
- (i) Maintain and utilize bank accounts;
- (j) Promulgate and enforce reasonable rules and regulations relative to use and occupancy of Units;
- (k) Perform or cause to be performed, repairs, maintenance and alterations and/or additions to any Unit or Common Area;
- (l) Employ and retain such professional and other experts whose services may be reasonably required to effectively perform these duties; and
- (m) Assess and collect such assessments that may be due the Association.

11. BOARD OF DIRECTORS AND BUILDING CONTROL COMMITTEE:

The Association's operation shall be governed by the Declaration, Articles of

Incorporation and By-laws. The Declaration creates two committees within the Association. The first is the Board of Directors, which manages the day-to-day business of operating the Association. The voting Members of the Association elect the Directors to the Board as provided in the Declaration. Each Unit Owner becomes a voting Member in the Association by holding fee simple title to a Unit. Ownership of one Unit entitles that member to one vote. Since Declarant will initially hold title to a majority of Units, Declarant will have a majority of the votes in the Association. Purchasers are advised that Declarant intends to use its majority status to control the make-up of the Board. This process is described in greater detail in Section 13.

The Board of Directors shall appoint the second committee created by the Declaration, the Building Control Committee. Because Declarant will initially elect most or all of the Directors, the Building Control Committee will be composed of individuals who are essentially Declarant designees. The Declarant or the Building Control Committee must approve in writing all buildings, structures and all other improvements prior to their placement on the Unit. To accomplish this, all Unit Owners and prospective Unit Owners are required to submit all plans and specifications showing in detail all aspects of the construction (including, but not limited to, materials, elevations, proposed landscaping, driveways, retaining walls, fences, exterior material colors, building design, and a sediment control plan conforming to the rules and regulations as established by the West Virginia Department of Environmental Protection) to the Declarant or the BCC in order to obtain written approval.

12. ASSOCIATION BY-LAWS:

The By-laws of the Association set forth in their entirety in **Exhibit 4** provide, in addition to other matters, the following:

- (a) That the members of the Board are to be two (2) in number until Declarant control

- is relinquished, thereafter the Board shall consist of three (3) members;
- (b) Election by the Board of a president, treasurer, secretary and other officers of the Association;
 - (c) The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies;
 - (d) The delegation by the Board or officers of duties to other persons or to a managing agent;
 - (e) Which of its officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association; and,
 - (f) A method for amending the By-laws.

13. CONTROL OF THE ASSOCIATION:

Declarant or its successors and assigns have the right to appoint all or a majority of the persons who will serve as members of the Board of Directors of the Association until the occurrence of certain designated events as set forth below. In accordance with the Declaration, Articles of Incorporation, and By-laws, the Board of Directors may act in all instances on behalf of the Association. In the performance of their duties, the officers of the Association and members of the Board of Directors are required to exercise, (i) if appointed by the Declarant, the care required of fiduciaries of the Unit Owners, and (ii) if elected by the Unit Owners, ordinary and reasonable care.

There shall be an initial period of Declarant's control of the Association during which the Declarant, or persons designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant's control terminates no later than the earlier of: (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units by the Declarant; (ii) Two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) Two (2) years after any right to add new Units was last exercised.

Initially, there shall be two (2) Board members, but not less than ninety (90) days after conveyance of seventy-five percent (75%) of the Units that may be conveyed to Unit Owners

other than Declarant the Board shall consist of three (3) members and not less than one (1) of the members of the Board must be elected by Unit Owners other than the Declarant. The three (3) Directors so elected shall serve for staggered terms of at least two (2) years, but shall hold office until their respective successors shall have been chosen and qualified. Beginning in the second year after election of the initial Directors of the Association, no more than two (2) Directors shall be elected during any given year. Except as otherwise provided in the Declaration, not later than the termination of any period of Declarant's control, the Unit Owners shall elect a Board of three (3) members, at least a majority of which must be Unit Owners. The Board shall elect all officers. The Board members and officers shall take office upon election. Provided, however, at all times prior to the sale of Declarant's final Unit in the CIC, Declarant may appoint at least one (1) member of the Board.

14. RESTRICTIONS ON SALE, USE, OCCUPANCY OF COMMON AREAS:

(1) Portions of the Common Element may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association consent to such action.

(2) Unless made pursuant to the Declaration, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of the Common Areas of the CIC is void.

(3) A conveyance or encumbrance of Common Areas pursuant to this Section shall not deprive any Unit of its rights of access or ingress, egress and regress across the road ways as designated upon the recorded plats of the CIC.

(4) Declarant does not desire or intend that there be any restriction on the use or occupancy of the Common Areas except to reserve those areas for common use. It is possible, however, that the Association at some time in the future would impose a user's fee on the usage

of recreational areas, if any. That decision, if made during the period of Declarant control of the Association, will be imposed for the purpose of reducing the assessment burden on all Unit Owners and transferring such burden to the Unit Owners using the services. The use or occupancy of the Limited Common Areas may be restricted to those Units having a right to such areas and may not be open for common use.

15. DECLARANT'S SPECIAL RETAINED RIGHTS:

Declarant has reserved the right, among other reserved rights set forth in the Declaration, to (1) complete improvements indicated on plats; (2) exercise any Development Right; (3) maintain sales offices, management offices and signs advertising the Common Interest Community, Units and improvements thereon; (4) use easements through the Common Areas for the purpose of making improvements within the Common Interest Community or for real estate that may be added to the Common Interest Community; (5) merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; or (6) appoint or remove any officer of the Association or any Board of Director during any period of Declarant control.

Declarant has no duty or responsibility to exercise any of its reserved rights. In the event Declarant does exercise any right in any portion of the CIC, there is no assurance that Declarant will exercise that right in all or any other portion of the remainder of the CIC.

16. ALLOCATED INTEREST:

Each Unit Owner shall be allocated an undivided interest in the Association equal to a numerator value of each Unit held in fee simple over a denominator of the total number of Units to be built in all Phases. The current number of Units in Phase I of the CIC is twenty-one (21).

17. LOCATION LIMITATIONS ON IMPROVEMENTS:

Declarant has established certain rights-of-way and easements in the CIC, some of which are specifically set forth in Article VII of the Declaration, and certain building set-back requirements for the he CIC some of which are specifically as set forth in Article XII of the Declaration. The Declarant or the Building Control Committee may allow reasonable variances and adjustments on restrictions in order to overcome practical difficulties and prevent unnecessary hardship.

18. DECLARANT RIGHTS AFFECTING USE, OCCUPANCY AND ALIENATION:

Declarant has reserved certain rights of development as described previously. However, the rights reserved by Declarant do not apply to the use, occupancy or alienation of the Units.

19. LIENS AFFECTING TITLE:

Units are being offered subject to the following liens and encumbrances that shall be released as to each individual Unit at closing:

- (a) No judgments, unsatisfied or otherwise, or pending suits exist against Declarant.
- (b) That certain Deed of Trust dated November 2, 2007, conveying the entire CIC, made by Declarant to James B. Hayhurst, as Trustee, securing United Bank, Inc., the principal sum of \$591,500.00, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Trust Deed Book 1598, at Page 25; and
- (c) That certain Credit Line Deed of Trust dated November 2, 2007, conveying the entire CIC and other property described therein, made by Declarant to Craig M. Steele, Trustee, to secure R. Scott Summers in the payment of the principal sum not to exceed \$500,000.00, of record in said Clerk's Office in Trust Deed Book No. _____, at Page _____.

Units are additionally subject to possible liens from time to time, including, but not limited to:

(a) Units shall be separately assessed for taxation purposes on the Land Books of Monongalia County, West Virginia, and any assessment for any Unit constitutes a lien on that Unit for real estate tax purposes until its payment.

(b) Unit Owners are subject to assessments and charges by the Association in accordance with the attached Declaration and other documents, and liens may accrue against individual Units for non-payment of the same.

20. FINANCING THROUGH DECLARANT: Currently, NONE.

21. CLOSING COSTS.

No closing costs or expenses will be paid by Declarant with the exception of:

- (1) Deed preparation
- (2) Transfer stamps
- (3) Pro-rata taxes affecting the Unit
- (4) Realtor's commission, if any (amount to be negotiated by Declarant)
- (5) Releases of liens

All purchasers shall be responsible for all closing costs and expenses, including, but not limited to:

- (1) Title examination
- (2) Recording fees
- (3) Title insurance
- (4) Purchase money obligations
- (5) Pro-rata taxes affecting the Unit
- (6) Due diligence expenses

22. JUDGMENTS OR PENDING SUITS:

There are no present judgments or pending lawsuits against the Association.

23. EARNEST MONEY DEPOSITS:

All earnest money deposits for the prospective purchase of Units in the CIC shall be placed in an escrow account until time of closing. Said earnest money shall be applied to the purchase price when the sale is consummated or will be returned to the purchaser only if the purchaser cancels the contract on or prior to fifteen (15) days after receiving this Public Offering Statement or as otherwise provided pursuant to the purchase contract.

24. RESTRICTIONS UPON SALE, TRANSFER OR CONVEYANCE:

All Unit Owners are subject to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code Chapter 36B-1-101 *et seq.* The Code provides that prior to a conveyance of the Unit Owner's Unit, a purchaser must be furnished a copy of the Declaration, the By-laws and any rules or regulations of the Association and a certificate supplied by the Association containing various information on the judgments, liens, assessments, operations and workings of the Association.

ALL PROSPECTIVE PURCHASERS SHOULD OBTAIN LEGAL ADVICE AND CONSULT THE UNIFORM COMMON INTEREST OWNERSHIP ACT PRIOR TO THE PURCHASE OF ANY UNITS TO DETERMINE THEIR RESPONSIBILITIES UPON RESALE OF ANY UNIT IN THE BACKWATERS.

25. RESTRICTIONS ON USE:

Contained within the Declaration are protective covenants and restrictions which impose upon the CIC extensive restrictions on the manner in which each Unit may be improved and used. Every restriction will limit the manner in which Unit improvements may be improved and used; however, restrictions generally include, among many other things, those of residential use

only, with no authorization to alter, construct or otherwise affect the exterior appearance or structure of any Unit or the exterior grounds, without the written approval of the Declarant or the Building Control Committee. These covenants and restrictions are for the protection of all Units in the CIC.

26. NO RESTRICTIONS OF SALE PRICE UPON RESALE:

It is not Declarant's intention nor has Declarant adopted any language in its Declaration, this Public Offering Statement or elsewhere that limits or prohibits the amount of consideration that a Unit Owner may receive upon sale and disposition of a Unit to a third person or that a Unit Owner must first offer a Unit to the Declarant or any other person or entity.

27. INSURANCE COVERAGE:

(a) The Association will provide insurance coverage for liability purposes on all Common Areas in limits of coverage of not less than \$300,000.00/\$1,000,000.00. It shall be the responsibility of the Association to determine the extent and amount of insurance necessary to provide proper insurance coverage on the Common Areas. Neither Declarant nor the Association will provide personal coverage on any of the Unit Owner's Units or its improvements.

(b) EACH UNIT OWNER IS SOLELY RESPONSIBLE FOR PROVIDING INSURANCE COVERAGE ON THEIR UNIT AND ITS IMPROVEMENTS. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring their Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to at least ninety percent (90%) of the purchase price of the Unit and improvements thereon.

(c) In the case of fire, casualty or other disaster, each Unit Owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to restore the Unit

improvements. The Unit Owner shall reconstruct and restore all buildings and landscaping to substantially the same condition in which they existed prior to the fire, casualty or other disaster. Such restoration shall begin within thirty (30) days of the date of damage and shall be completed within one hundred eighty (180) days of commencement of restoration.

(d) Each Unit Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.

28. UTILITY SERVICES:

The following services will be obtained from the sources indicated:

(a) Water – Each Unit Owner will be responsible for constructing a private well and water system on their Unit to service their Unit;

(b) Telephone – Verizon Communications, a public utility;

(c) Natural Gas – None at this time. Propane Tanks may be installed and used by the Unit Owners as set forth in the Declaration.

(d) Cable – None at this time. Satellite service may be installed and used by the Unit Owners as set forth in the Declaration.

(e) Electric - Allegheny Power, a public utility; and

(f) Sewage – Each Unit Owner will be responsible for constructing a private sewage disposal/septic system on their Unit to service their Unit;

THERE IS NO PUBLIC WATER, NATURAL GAS, CABLE OR SEWAGE AVAILABLE TO THE CIC OR ANY UNITS.

29. ZONING REQUIREMENTS:

The CIC is situate in Union District, Monongalia County, West Virginia. There are no

zoning laws or land use restrictions imposed upon the CIC by the County Commission of Monongalia County, the State of West Virginia or the United States of America. However, all prospective buyers must take notice that Declarant has imposed restrictions and protective covenants upon each Unit that limits the use and occupancy of the Unit and its improvements by the Declaration. All Units within the CIC are conveyed subject to the Declaration and no use or occupancy in violation of those restrictions shall be permitted or tolerated. The Association is vested with specific powers that permit it to institute legal action to enforce the various restrictions and protective covenants. It is Declarant's intention and desire that the Association, acting through the Building Control Committee, shall strictly enforce all restrictions and protective covenants set forth in the Declaration and other Governing Instruments, which are in place for the protection of the entire CIC and all Unit Owners.

30. FINANCIAL ARRANGEMENTS: Declarant is adequately financed through loans secured by the deeds of trust mentioned in Section 19 to complete the improvements shown on the Plat. **HOWEVER, REGARDLESS OF HOW WELL FINANCED THE DECLARANT IS, THERE CAN BE NO ASSURANCE THAT THE IMPROVEMENTS, AS SHOWN, WILL BE COMPLETED ACCORDING TO THE PLATS OR WILL BE COMPLETED AT ALL.**

31. UNUSUAL CIRCUMSTANCES: The CIC currently has an unusual circumstance of having one parcel of land situate within the borders of the CIC, but not a part of the CIC. The real estate conveyed to Brian P. Anderson and Tina L. Anderson, by a Deed dated September 15, 2005, from Stony Brook Properties, LLC, of record in said Clerk's Office in Deed Book 1303, at Page 649, and shown on a plat of record in said Clerk's Office in Map Cabinet D, Envelope 36B as Unit 18 of Lake Crest Estates and on the Plat of THE BACKWATERS as Unit 11, is not a part of the CIC, but has certain rights to use the common areas as shown on said Plat

of Lake Crest Estates, including the roadways within the CIC from the County Road to access said real estate. Efforts are being made to make said real estate a part of the CIC.

32. WARRANTIES DECLARATION:

The CIC is a Common Interest Community created and designed for use as a single-family residential community. Declarant makes no express or implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept and acknowledge that all expressed or implied warranties of quality are absolutely excluded. Declarant is offering Units for sale upon an “AS IS” basis.

ALL PURCHASERS SHALL EXECUTE A SEPARATE INSTRUMENT ATTACHED HERETO AS **Exhibit 8**, titled “Agreement and Waiver.” This Agreement and Waiver between Declarant and Purchaser waives Purchaser’s statutory right to a six-year statute of limitations for the commencement of legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchasers for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should consult **Exhibit 8** for more detailed information.

33. AMENDMENT OF THIS OFFERING STATEMENT:

Declarant shall promptly amend this Public Offering Statement to report any material change in the information supplied, or any information not originally supplied, but subsequently determined to be material.

34. PURCHASE DEPOSITS AND RIGHTS OF CANCELLATION:

Units are offered pursuant to this Public Offering Statement and the **8 Exhibits** attached hereto, as the same may be amended from time to time. Regarding the purchase of a Unit:

(a) **WITHIN FIFTEEN (15) DAYS AFTER RECEIPT OF A PUBLIC OFFERING**

STATEMENT, A PURCHASER, BEFORE CONVEYANCE, MAY CANCEL ANY CONTRACT FOR PURCHASE OF A UNIT FROM THE DECLARANT AND RECEIVE THE RETURN OF PURCHASER'S EARNEST MONEY DEPOSIT.

(b) IF DECLARANT FAILS TO PROVIDE A PUBLIC OFFERING STATEMENT TO A PURCHASER BEFORE CONVEYING A UNIT, THAT PURCHASER MAY RECOVER FROM DECLARANT TEN PERCENT (10%) OF THE SALES PRICE OF THE UNIT, PLUS TEN PERCENT (10%) OF THE SHARE, PROPORTIONATE TO HIS COMMON EXPENSE LIABILITY, OF ANY INDEBTEDNESS OF THE ASSOCIATION SECURED BY SECURITY INTERESTS ENCUMBERING THE CIC; PROVIDED, THAT SUCH PURCHASER MUST SHOW THAT HE/SHE HAS BEEN ACTUALLY DAMAGED AS A RESULT OF HIS/HER FAILURE TO RECEIVE SUCH PUBLIC OFFERING STATEMENT.

(c) IF A PURCHASER RECEIVES THIS PUBLIC OFFERING STATEMENT MORE THAN FIFTEEN (15) DAYS BEFORE SIGNING A CONTRACT OF SALE, SUCH CONTRACT IS VALID, ENFORCEABLE AND CANNOT BE CANCELLED BY SUCH PURCHASER.

(d) CANCELLATION SHALL BE MADE BY HAND-DELIVERING A NOTICE THEREOF TO DECLARANT OR BY MAILING NOTICE THEREOF BY PREPAID U.S. MAIL TO DECLARANT OR ITS AGENT FOR SERVICE OF PROCESS AT THAT ADDRESS GIVEN BELOW:

**WINDSTAR HOLDINGS LLC
Attn.: R. Scott Summers, Manager
129 Hickory Ridge Road
Morgantown, West Virginia 26508**

This Public Offering Statement was prepared (without a title examination and based solely on information provided by the Declarant) by: R. SCOTT SUMMERS, Attorney at Law, R. SCOTT SUMMERS, P.L.L.C., LAW OFFICES OF REEDER & SHUMAN, P.O. Box 842, Morgantown, West Virginia 26507 (304-292-2895).

WF/WINDSTAR/POS OF THE BACKWATERS-FINAL

THE UNDERSIGNED **RECEIVED** THE PUBLIC OFFERING STATEMENT OF
THE BACKWATERS, CONSISTING OF 23 PAGES (THIS PAGE BEING THE 23RD PAGE)
AND **8 EXHIBITS**, ON THE ____ DAY OF _____, 200 ____.

PURCHASER(S):

X: _____

Printed Name: _____

X: _____

Printed Name: _____