

# REAL ESTATE PURCHASE AGREEMENT

This is a form recommended for uniformity purposes, but it is not intended to address all potential terms and conditions of all transactions nor is it required to be used for any transaction.

**Listing Office/Broker** Howard Hanna Premier Properties Phone 304.594.0115

**Listing Agent** R. Scott Summers Phone 304.282.3463

**Selling Office/Broker** \_\_\_\_\_ Phone \_\_\_\_\_

**Selling Agent** \_\_\_\_\_ Phone \_\_\_\_\_

**Date Purchase Agreement Written:** \_\_\_\_\_

The **SELLER** hereby agrees to sell, and the **BUYER** hereby agrees to purchase, the following described real estate and its improvements, (the "Property") on the terms and conditions set forth below:

## 1. PARTIES

**SELLER'S Name** Windstar Holdings LLC

**Current Address** 129 Hickory Ridge Road, Morgantown, WV 26508

**BUYER'S Name** \_\_\_\_\_

**Current Address** \_\_\_\_\_

**Property Address** \_\_\_\_\_ **City** Morgantown, WV **Zip Code** 26508

**Legal Description** \_\_\_\_\_

District Union, County Monongalia, Deed Book/Page P/O 1354/426

Tax Map 7C, Parcel \_\_\_\_\_, Lot(s) No. \_\_\_\_\_ Subdivision/Addition The Backwaters of Cheat Lake, Dimensions or acreage \_\_\_\_\_ +/-

## 2. PURCHASE PRICE

- **Price** \$ \_\_\_\_\_ **Dollars**

Cash Purchase  Financed

- **Earnest Money Deposit** \$5,000 **Dollars**

Check  Cash  Other

- **Payable to:** Howard Hanna Premier Properties

## 3. EARNEST MONEY

All earnest money shall be deposited in the non-interest bearing trust fund account of the listing broker only upon acceptance of this offer by the **SELLER**. **ALL EARNEST MONEY SHALL BE HELD IN TRUST UNTIL SUCH TIME AS FUNDS ARE AVAILABLE FOR DISBURSEMENT AND UNTIL ALL PARTIES TO THIS AGREEMENT MUTUALLY AGREE IN WRITING AND INSTRUCT SUCH BROKER HOLDING SUCH EARNEST MONEY IN TRUST TO DISBURSE SUCH FUNDS. IN THE EVENT THE PARTIES DO NOT MUTUALLY AGREE AND SO INSTRUCT, THE ESCROWED FUNDS WILL NOT BE DISBURSED UNTIL AN ORIGINAL ENTERED COURT ORDER ORDERING DISBURSEMENT OF SUCH FUNDS IS DELIVERED TO THE BROKER HOLDING SUCH EARNEST MONEY IN TRUST.**

**4. TIME OF PERFORMANCE AND DEFAULT**

This offer expires on \_\_\_\_\_ at 5:01  A.M.  P.M.

After signature of the **BUYER** and until signed by the **SELLER**, this instrument shall constitute an offer to purchase which shall terminate and be automatically withdrawn unless accepted by the **SELLER** before the time of expiration. This offer shall be accepted by delivery to the **BUYER** of a duplicate of this instrument executed by the **SELLER**. If the offer is not accepted within said period, the earnest money remitted herewith shall be returned immediately to the **BUYER**. If the offer is accepted within said period, **SELLER** and **BUYER** shall consummate the sale on or before \_\_\_\_\_.

In the event **BUYER** has not performed the terms of this Agreement within the time stated above, **SELLER** shall be entitled to retain the earnest money deposit made by **BUYER** as damages for the breach of this Agreement, and the parties shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of this Agreement. However, the retention of such earnest money deposit shall not preclude **SELLER** from pursuing any other claim for damages for breach of this Agreement.

In the event **SELLER** fails, refuses, neglects or is unable to consummate the sale as provided for in this Agreement and through no fault or neglect of the **BUYER**, **BUYER'S** earnest money shall be returned to **BUYER**, and the parties shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of this Agreement. However the return of the earnest money deposit shall not preclude the **BUYER** from pursuing any other claim for damages for breach of this Agreement.

**5. DEED/TITLE/FEES**

**A. Deed:** Upon the acceptance of this offer by **SELLER** and the fulfillment of all conditions stipulated herein to be performed by **BUYER**, **SELLER** shall by proper deed containing covenants of GENERAL WARRANTY, free and clear of all liens and encumbrances, except real estate taxes not yet due and payable, convey said Property to \_\_\_\_\_

jointly with the right of survivorship or  as tenants in common

**SELLER** shall pay for the preparation of the deed and all required documentary and transfer stamps.

**B. TITLE:** In the event **BUYER'S** attorney finds title to the Property to be unmarketable, **BUYER** shall promptly notify **SELLER** of the specific defect in title and **SELLER** shall have 30 days thereafter to correct the defect and, if corrected, this sale shall thereafter be consummated. In the event the title defect cannot be or is not corrected within said 30 days, **BUYER**, at **BUYER'S** option, may declare this Agreement void and the parties shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of this Agreement.

**C. TAXES AND PRORATION:**

1. **Real Property taxes** will be prorated on a calendar year basis as of the date of closing. If the amount of taxes assessed for the current year cannot be ascertained, the taxes will be estimated from the taxes assessed the preceding year. For the purpose of this Agreement, taxes for the current calendar year will be those taxes which were assessed as of July 1 of the preceding calendar year.
2. **Rent:** Rental income, if any, will be prorated as of the date of closing. Any security deposits will be transferred to the **BUYER** from the **SELLER** at closing.
3. **Public Improvements:** All unpaid public assessments for improvements to street, sidewalk, sewer, etc., completed as of the date of closing will be paid by the **SELLER**. Fire fees to be prorated as of the date of closing.
4. **Mandatory Home Owner Association Dues** will be prorated at the time of closing.

**6. LOAN CONTINGENCY**  Yes  No

This Agreement is contingent upon **BUYER** obtaining financing. Type:  Conventional,  FHA,  VA,  West Virginia Housing Fund,  USDA,  owner financing, or  to be determined. Loan will be not more than \_\_\_\_\_ percent of the agreed upon purchase price, at an interest rate not to exceed \_\_\_\_\_ percent for \_\_\_\_\_ years and amortized over 20 years, to be secured by a first lien deed of trust on the Property. **BUYER** agrees to apply for such loan within 5 days of the acceptance of this Agreement and to continue with due diligence and in good faith to make every reasonable effort to secure such loan from a reputable financial institution. **BUYER** agrees to provide **SELLER** with a "loan pre-approval letter" from a financial institution within 5 days from the date of acceptance of this Agreement. A "loan pre-approval letter" shall mean a letter from a lender verifying **BUYER'S** ability to obtain such loan based upon **BUYER'S** employment, income and satisfactory credit report. If, after making reasonable effort to secure a loan and if such loan is not approved, **BUYER** shall provide to **SELLER** written confirmation of loan denial and this Agreement may be terminated by either party. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph # 3 of this Agreement.

**7. APPRAISAL CONTINGENCY**  Yes  No

This Agreement is contingent upon **BUYER** obtaining a current appraisal of the Property indicating an appraised value equal to or greater than the agreed upon purchase price herein and if the appraised market value of the Property is not equal to or greater than the agreed upon sale price, **BUYER** agrees to provide a copy of such appraisal to **SELLER**, and this Agreement is then open for renegotiation. **BUYER** does not have to purchase; **SELLER** does not have to sell. If an agreement is not reached after 5 days of renegotiation, either party may choose to terminate this Agreement. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of earnest money deposit as provided for in paragraph # 3 of this Agreement.

**8. PROPERTY INSPECTION CONTINGENCY**  Yes  No

- A. **BUYER shall** have the right at **BUYER'S** expense to have inspection(s) of the Property for structural, physical and mechanical components, environmental and geological issues and for such other purposes as determined by the **BUYER**. Written notice of the findings will be reported to **SELLER** on or before \_\_\_\_\_. Failure to inspect and report to **SELLER** within the specified time shall be deemed a waiver of **BUYER'S** rights to inspection and to request repairs, and **BUYER** agrees to accept the Property in its present condition. In the event any defects are discovered and repairs are required as a result of such inspection(s), **BUYER** shall have the option of notifying the **SELLER** in writing on or before the date set forth above in this paragraph and providing **SELLER** with a copy of the complete written report from **BUYER'S** inspection company, that:
1. **BUYER** is terminating this Agreement because **BUYER** is not satisfied with the results of such inspections(s) and indicating to **SELLER** in writing that the findings were not satisfactory; or
  2. **BUYER** requires certain unsatisfactory findings identified in such report(s) to be repaired by **SELLER**, and **SELLER** shall have the option of:
    - a. Making such repairs at **SELLER'S** expense, or
    - b. Negotiating the repairs to be made by **SELLER**, or
    - c. Refusing to make such repairs, thereby permitting **BUYER** to terminate this Agreement, or accept the property in "As Is" condition.

**SELLER** shall respond in writing to **BUYER** within \_\_\_\_\_ days of **BUYER'S** request indicating which option is selected, or **SELLER** shall be deemed to agree to make all repairs requested prior to the closing date. If option "b" is selected by **SELLER**, the parties must enter into a written agreement regarding the repairs within \_\_\_\_\_ days of the date the initial repair request was made, or either party may terminate this Agreement. Upon receipt of a written termination notice, the parties hereto

shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph # 3 of this Agreement.

- B. **If BUYER chooses not to have a property inspection, BUYER** accepts the Property in its present existing state and condition and is not to rely upon any representation made by **SELLER** or **SELLER'S** or **BUYER'S** agent(s), except for those made in any written disclosure statement provided to **BUYER**.
- C. **BUYER** agrees that the **SELLER'S** and **BUYER'S** real estate agent(s) and broker(s) shall not be responsible or liable for any agreements, conditions or stipulations not set forth herein relating to or affecting the physical condition of the Property or any fixture or personal property situate thereon or any appurtenances thereto.
- D. **SELLER** agrees to provide access to the Property for **BUYER'S** appraisers, inspectors, surveyors, or any other agents to satisfy any agreed-upon contingencies or to make repairs which have been agreed to by the parties.
- E. **SELLER** agrees to have water, fuel and electric utilities on at the time of inspections or be responsible to reimburse **BUYER** for the costs to connect such utilities and for all utility expenses incurred prior to closing.
- F. **BUYER** hereby agrees to promptly pay for any inspection fees ordered by **BUYER** or **BUYER'S** agent(s), and to indemnify and hold harmless the real estate broker(s) and agent(s) from the costs of such inspections.

**9. WOOD DESTROYING INSECT INSPECTION CONTINGENCY**  Yes  No

This Property is to be conveyed free and clear of all wood destroying organisms. Prior to closing, the **BUYER** may procure at the **BUYER'S** expense a wood destroying insect infestation report from a licensed exterminating company. If evidence of infestation and/or damage caused by such infestation is discovered, **BUYER** may choose to terminate this Agreement or request that the **SELLER** correct the same at the **SELLER'S** expense. If **SELLER** does not correct the problem, then the **BUYER** may declare this Agreement null and void, in which case all deposit money shall be refunded. If Property is new construction (i.e. never lived in), **SELLER** agrees to provide **BUYER** with wood-destroying organisms pre-treatment documentation. If **SELLER** cannot provide pre-treatment documentation for new construction, **BUYER** may terminate this Agreement. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of this Agreement.

**10. RADON INSPECTION CONTINGENCY**  Yes  No

**BUYER** reserves the right to have a Radon Test to be conducted at **BUYER'S** expense. Results of test of the air within envelope space when closed to outside environment (normal entry & exit) must be below the EPA Action Level of 4.0 Pico Curies per liter. This test must be conducted and results provided to **SELLER** or contingency removed on/or before \_\_\_\_\_. In the event test results indicate levels equal to or higher than EPA Action Level, **SELLER** shall have the option of:

- a. Taking remedial action to reduce levels to below the EPA Action Level, or
- b. Negotiating the remedial action/expense with **BUYER**.

If no written agreement regarding remedial action/expense is entered into on/or before \_\_\_\_\_ either party may terminate this Agreement. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph # 3 of this Agreement.

**11. MOLD INSPECTION CONTINGENCY**  Yes  No

The **BUYER** shall have the right at **BUYER'S** expense to have the Property inspected by a licensed mold inspector. Test and results must be provided to **SELLER** or contingency removed on/or before \_\_\_\_\_

In the event mold is found on the property the **SELLER** shall have the option of:

- a. Taking remedial action to correct the problem or,
- b. Negotiating the remedial action/expense with **BUYER**.

If no written agreement regarding remedial action/expense is entered into on/or before \_\_\_\_\_ either party may terminate this Agreement. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph # 3 of this Agreement.

**12. SURVEY CONTINGENCY**  Yes  No

This Agreement is contingent upon the  **BUYER**  **SELLER** obtaining and the  **BUYER**  **SELLER** paying for a survey of the Property on/or before \_\_\_\_\_ to determine (1) there are no unsatisfactory rights of way or encroachments affecting the anticipated use of the Property, (2) the size of the Property is not materially different from that which has been represented, and (3) that the Property boundaries and corners as and where they were represented to **BUYER** prior to entering into this Agreement. If a discrepancy is determined, the **SELLER** shall have the right to cure said defect. If the **SELLER** is unable/or unwilling to cure the discrepancy and an agreement cannot be reached on/or before \_\_\_\_\_, this Agreement may, at the option of **BUYER** or **SELLER**, be considered null and void and the parties hereto shall be obligated to authorize the release of the earnest money deposit, as provided in Paragraph # 3 of this Agreement.

**13. PRIVATE SEWAGE AND/OR PRIVATE WATER SYSTEM INSPECTION CONTINGENCY**  Yes  No

This Agreement is contingent upon approval and/or certification of any on-site or other private sewage disposal system and/or private water system, with such inspection being at  **BUYER'S**  **SELLER'S** expense on/or before \_\_\_\_\_. Any septic tank pumping fee, if required, will be at **SELLER'S** expense. If the approval cannot be obtained, and **SELLER** refuses or is unable to do what is necessary for approval of the private sewage disposal system and/or private water system, **BUYER** shall have the option of waiving the defect. In the event **BUYER** refuses to waive the defect, then either **SELLER** or **BUYER** shall have the option of terminating this Agreement in writing. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of this Agreement. In the event the Property is vacant and the necessary inspections cannot be completed until after the Closing on the Property and **BUYER** has taken occupancy, the parties agree to make a good-faith effort to enter into an escrow agreement within \_\_\_\_\_ days of the signing of this Agreement, which escrow agreement shall control the terms under which money will be set aside to obtain approval. In the event that an escrow agreement is not entered into, then either **SELLER OR BUYER** may terminate this Agreement in writing. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit, as provided in Paragraph # 3 of this Agreement.

**14. PROPERTY DISCLOSURE STATEMENT**

- A. **BUYER**  has  has not received a copy of the Property Disclosure Statement provided by **SELLER**.
- B. **SELLER** agrees to provide **BUYER** a Property Disclosure Statement within \_\_\_\_\_ days after acceptance of this Agreement. Buyer shall acknowledge receipt and have until \_\_\_\_\_ to review and terminate this Agreement as a result of a disclosure made in the Property Disclosure Statement. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of the Agreement.
- C. **BUYER** understands that the Property Disclosure Statement is not a substitute for an inspection made by experts but is a representation of the condition of the Property, to the knowledge of the **SELLER**, and not a representation by the listing or selling broker(s) or agent(s).
- D. **LEAD BASED PAINT DISCLOSURE**  
If house was built before 1978, a lead based paint disclosure form is to be attached and made a part of this Agreement.

**15. HOME WARRANTY INSURANCE**

**BUYER** and **SELLER** have been made aware of a one-year home warranty program. **BUYER**  declines coverage or  elects coverage of the home warranty program. The cost of the one-year home warranty program shall not exceed \$\_\_\_\_\_ and is to be paid by  **BUYER** or  **SELLER** at closing.

**16. UNIT OWNER RESALE CERTIFICATE**  Yes  No

If applicable, **SELLER** shall provide to **BUYER** a Unit Owner Resale Certificate, as required by West Virginia Code 36B-4-109. **BUYER** shall have 5 DAYS (at least five) days after receipt of the Unit Owner Resale Certificate for review and acceptance. If the Unit Owner Resale Certificate is not approved by **BUYER**, **BUYER** may terminate this Agreement. Upon receipt of such written termination notice, the parties hereto shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph # 3 of this Agreement.

**17. RISK OF LOSS BEFORE CONSUMMATION OF SALE**

If the improvements on the Property are destroyed or damaged because of fire, flood, or an act of nature prior to the closing, **BUYER** may terminate this Agreement by written notice to **SELLER** and the parties shall be obligated to authorize the release of the earnest money deposit as provided for in paragraph #3 of this Agreement. In the event **BUYER** does not elect to terminate this Agreement, **BUYER** shall be entitled to the Property and any insurance proceeds payable on account of the damage or destruction, not to exceed the purchase price agreed to in this Agreement. Risk of loss shall be on **BUYER** after closing and delivery of deed.

**18. POSSESSION**

Purchaser shall be given possession of the Property on the closing date.

**19. PRE-CLOSING WALK-THROUGH INSPECTION**  Yes  No

**BUYER** shall have the right to re-inspect the Property prior to closing in order to ascertain that the Property is in the same physical condition as it was as of the date of this Agreement and to verify that all repairs, if any, have been performed as agreed upon by **BUYER** and **SELLER**. **SELLER** shall have water, fuel and electric utilities on at the time of the final walk-through. The results of the inspection shall be made known to the **SELLER** immediately. Failure to conduct a final walk-through inspection and report results shall be deemed a waiver of **BUYER'S** final inspection and repair right and **BUYER** agrees to accept the Property in its then present condition.

**20. FIXTURES AND PERSONAL PROPERTY**

INCLUDED in the sale are all existing items (in AS-IS condition and free of liens) permanently installed in the Property, including: plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; un-potted shrubbery, plantings, and trees; any remaining heating and cooking fuels stored on the Property at the time of closing; sump pumps; storage sheds; mailboxes; wall- to-wall carpet; existing window screens; storm windows and screen/storm doors; window covering hardware, shades and blinds; built-in air conditioners; built-in appliances unless otherwise stated. Also included:None

EXCLUDED fixtures and items: None

**21. OTHER PROVISIONS**

(a.) SEPTIC SYSTEM APPROVAL: BUYER'S obligations to purchase under this Agreement is contingent upon the County Health Department approving on or before \_\_\_\_\_, a perk test of the Property for an on-site private sewage disposal system. All permits, tests and drilling for such approvals are to be obtained at the expense of the BUYER. In the event the County Health Department expressly fails the private sewage permit on or before \_\_\_\_\_, either party may terminate this Agreement in writing, and upon receipt of such termination the parties hereto shall be obligated to authorize the release of the earnest money as provided in paragraph 3 of this Agreement. In the event the County Health Department cannot approve the private sewage permit on or before \_\_\_\_\_, as a result of the BUYER'S failing to obtain, or timely obtain, the permits, tests or drilling necessary for such approvals, the contingency set forth in this Section 21(a.) above shall be satisfied and deemed removed from this Agreement. (b) UTILITIES: The SELLER agrees to arrange and pay for the installation of electric and telephone services to or near the boundary line of the Property. The private sewage disposal system and private well water system and any other services desired by the BUYER are to be purchased and installed at the expense of the BUYER. (c) MINERAL RESERVATION: The SELLER will except and reserve all mineral rights pertaining to the Property, but will expressly agree not to disturb the surface of the Property. (d) PUBLIC OFFERING STATEMENT: The BUYER has received a copy of the Public Offering Statement with this Agreement and shall have 15 days from the date of this Agreement to review and approve the same, as provided for therein. (e) DOCKING MEMBERSHIP: The BUYER desires to become a member of the docking group and agrees to pay an initial membership fee in the amount of \$3,500 and shall enter into a sub-license agreement for a dock slip (a copy of which is attached hereto), at the closing; (f) LISTING AGENT DISCLOSURE: BUYER acknowledges they have been informed R. Scott Summers is the sole member and manager of the SELLER and is a licensed real estate

agent and listing agent for the Property. (g) WELL DUE DILIGENCE: BUYER'S obligations to purchase under this Agreement is contingent upon BUYER receiving on or before \_\_\_\_\_, satisfactory information about the costs of a proposed water well and septic system for the Property from Cato Drilling or any other licensed well and/or septic system installer. If BUYER does not receive such satisfactory information on or before \_\_\_\_\_, BUYER may terminate this Agreement in writing, and upon receipt of such termination the parties hereto shall be obligated to authorize the release of the earnest money as provided in paragraph 3 of this Agreement.

**22. FACSIMILES**

The parties agree that faxed or electronic transmission of any signed original document shall have the same effect as an original.

**23. CHANGES TO AGREEMENT**

This Agreement shall not be amended, modified or changed in any way except by a written agreement executed by **BUYER** and **SELLER**.

**24. INDEMNITY**

**BUYER** acknowledges and agrees to accept full responsibility and risk for not selecting any contingencies set forth above as a contingency to this Agreement and for any matter that may result from such decisions, and that the listing broker and agent(s) and selling broker and agent(s) are not, unless otherwise disclosed herein, qualified to make any inspections of the Property and **BUYER** agrees to exercise due diligence using the appropriate and qualified experts selected by the **BUYER**. **BUYER** hereby further agrees to indemnify and hold harmless **SELLER**, listing broker and agent(s), selling broker and agent(s), and their respective owners, officers, manager, employees, independent contractors, heirs, personal representatives, successors, and assigns from any and all liability, recourse or damages as a result thereof, and from any condition of the structural, physical or mechanical components of the Property or personal property described herein discovered after the closing.

**25. This is a legally binding agreement; you have the right to seek competent legal counsel before signing.**

**26. ACKNOWLEDGEMENT**

**BUYER** acknowledges that **BUYER** has read and understands the provisions of this Agreement and agrees to purchase the Property at the price, terms and conditions set forth herein. **BUYER** acknowledges receipt of a copy of this Agreement and authorizes the Broker(s) in this transaction to deliver a signed copy hereof to the



**SELLER** and to disclose the terms of the sale to members of the Multiple Listing Service or Board/Association of REALTORS® after closing

\_\_\_\_\_  
BUYER DATE

\_\_\_\_\_  
BUYER DATE

**27. ACCEPTANCE:**

**SELLER** acknowledges that **SELLER** has read and understands the provisions of this Agreement and agrees to sell the Property at the price, terms, and conditions set forth herein. **SELLER** acknowledges receipt of a copy of this Agreement and authorizes the Broker(s) in this transaction to deliver a signed copy hereof to **BUYER** and to disclose the terms of the sale to members of the Multiple Listing Service or Board/Association of REALTORS® after closing.

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
SELLER DATE

**NON-ACCEPTANCE:**

By signing here: \_\_\_\_\_ **SELLER** acknowledges that this offer was presented to **SELLER** on \_\_\_\_\_ at \_\_\_\_\_ A.M. /P.M. and said offer is not acceptable and no counteroffer is being made.

This form was written for use by the Morgantown Board of REALTORS, Fairmont Board of REALTORS, Harrison County Association of REALTORS, Weston/Buckhannon Board of REALTORS and Elkins Randolph Board of Realtors

\_\_\_\_\_

Seller Initials

\_\_\_\_\_

Buyer's Initials