DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

WINDERMERE VILLAGE

9418292

For

The annexed record, APR 19 1994

Stuart C. Davis, Notary, Western County NY
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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WINDERMERE VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR WINDERMERE VILLAGE (hereinafter referred to as "Declaration") is made this 19th day of April, 1994, by Windermere Partners, an Indiana partnership (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in Hamilton County, Indiana, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and Developer desires to subject such property to the provisions of this Declaration and to develop such property for retail, office, commercial and business use in a development to be known as "Windermere Village" (hereinafter the "Development"); and

WHEREAS, as hereinbefore provided in this Declaration, Developer desires to provide for the reasonable use of the property in the Development and create a method for provision for necessary services in the Development and maintenance of properties used in common by all owners in the Development.

NOW, THEREFORE, Developer hereby declares that all of the property described in Exhibit "A" attached hereto, together with any property as may be added hereunto by subsequent Amendment pursuant to the terms hereof, is hereby subject to this Declaration and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, covenants, charges, liens, and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the property and which shall touch and concern and run with the title to the property subject to this Declaration, and which shall be binding on all parties (including any mortgagees or lienholders) having any right, title, or interest in the described properties or any portion thereof, and their respective tenants, occupants, invitees, heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the Indiana Condominium Property Law, Ind. Code 332-1-6-1, et seq.

Article I
Definitions

DEFINITIONS. The following words, when used in this Declaration, unless the context shall prohibit or otherwise require, shall have all the following meanings. All definitions shall be applicable to the singular and plural forms of such terms:

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Section 1.1. "Access Roads" shall mean and refer to those roads (regardless of whether privately owned or Common Property) designated as easements for ingress and egress, as shown on any recorded plat of the Development, which provide for a means of access to and from the Development and which provide for a means of travel within the Development. All Access Roads shall be surfaced with hard, all-weather surfacing.

Section 1.2. "Architectural Control Committee" shall mean and refer to the committee which shall be responsible for the approval of all landscaping and exterior and structural improvements, additions, and changes within the Development as provided in Article IX hereof.

Section 1.3. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Windermere Village Owners Association, Inc., as filed with the Secretary of State of the State of Indiana.

Section 1.4. "Assessment Percentage" shall mean and refer to the proportion of the acreage of each Owner's Lot compared to the sum of the acreage of all Owners' Lots in the Development. In the formulation of the Assessment Percentage, the acreage of an individual Owner's Lot shall be the numerator and the sum of the acreage of all Owners' Lots in the Development shall be the denominator. When determining the figure for acreage, such figure shall be rounded to the nearest one-hundredth of an acre.

Section 1.5. "Association" shall mean and refer to Windermere Village Owners Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, its successors or assigns.

Section 1.6. "Base Assessment" shall mean and refer to assessments levied by the Association against each Lot in the Development to fund Common Expenses in the manner herein provided.

Section 1.7. "Board of Directors" or "Board" shall mean and refer to the board of directors of the Association.

Section 1.8. "Boulevard Area" shall mean and refer to the area located on and adjacent to Windermere Boulevard between 96th Streets and the northern edge of the Development as shown on any recorded plat of the property which serves as access to both the Development and to the adjacent Windermere residential community.

Section 1.9. "Business" shall mean and refer to any improved property designed or intended for retail, office, commercial or other business use.

Section 1.10. "By-Laws" shall mean and refer to the By-Laws of Windermere Village Owners Association, Inc., attached hereto as Exhibit "B" and incorporated herein by reference, and including any amendments thereto.

Section 1.11. "Class B Control Period" shall mean and refer to the period of time during which the Developer, as the Class B Member, is entitled to appoint a majority of the members of the Board of Directors, as provided in Section 4.20(h) hereof, or to act in lieu of the Board.
Section 1.12. "Common Expenses" shall mean the actual and estimated expenses incurred by the Association for the general benefit of the Development, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association. Unless approved by a majority of the Class A Members of the Association (with Developer excluded from such vote) Common Expenses shall not include original capital improvements for Developer's original construction of the Access Roads, creation of the landscaping in any Landscape Easement Area, the original construction of all utilities to the Lots and the original construction of the storm water drainage system and retention ponds, if any. Common Expenses may include, to the extent such is installed by Developer, the original cost of installation of landscape and boulevard lighting associated with the Access Roads and the Landscape Easement Areas, whether such is purchased or leased.

Section 1.13. "Common Properties" shall mean and refer to all properties, whether real or personal, which are owned by the Association or have been conveyed to the Association or are to be owned by the Association as shown pursuant to any recorded plat of the Development or as shown by the terms and conditions of this Declaration. The designation of any land and/or improvements as Common Properties shall not mean or imply that the public at large acquires any easement of use or enjoyment therein. Initially, the Common Properties shall include the equipment, pipes and other materials comprising the stormwater drainage system within the Development.

Section 1.14. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Development. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

Section 1.15. "Developer" shall mean and refer to Windermere Partners, an Indiana general partnership, and any successors or assigns who take title to any portion of the property described on Exhibit "A", and who are designated as the Developer hereunder in a recorded instrument executed by the immediately preceding Developer.

Section 1.16. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements for Windermere Village and all amendments thereto filed for record in the public records of Hamilton County, Indiana.

Section 1.17. "Development" shall mean and refer to those tracts or parcels of real estate described on Exhibit "A", which real estate may be platted from time to time as a part of Windermere Village, together with all improvements thereon.

Section 1.18. "Landscape Easement Areas" shall mean and refer to those areas identified on any recorded plat of the Development as "Landscape Easement" or Landscape Easement Areas. The landscaping located within the easement area shall be maintained by the Association and the Association shall have an easement of ingress and egress on any over the area adjacent thereto for the purpose of this maintenance obligation. The landscaping and other improvements planned or installed by the Developer and/or the Association within the Landscape Easement Areas may not be removed by an Owner, nor may the Owner add any landscaping or improvements in such area without the approval of the Developer and/or the Association.
Section 1.19. "Lot" shall mean and refer to each plot of land included in the Development identified as a lot on any recorded plat of the Development upon which it is intended that a building or buildings shall be constructed.

Section 1.20. "Member" shall mean and refer to a Person holding membership in the Association, as provided in Article IV below.

Section 1.21. "Owner" shall mean and refer to the record owner, whether one or more Persons, with fee simple title to any Lot which is part of the Development, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" shall include Developer so long as Developer shall own any Lot. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

Section 1.22. "Percentage Interest" shall mean and refer to the amount of acreage owned by each Member in comparison to the sum of all acreage in the Development. In the formulation of the Percentage Interest, the acreage owned by the individual Member shall be the numerator, while the sum of all acreage in the Development shall be the denominator. When determining the figure for acreage, such figure shall be rounded to the nearest one hundredth of an acre. When determining the overall acreage for the Development, there shall be excluded from the calculation the amount of acreage, if any, that constitutes Common Properties.

Section 1.23. "Person" means a natural person, corporation, limited liability company, partnership, trustee, or any other legal entity.

Section 1.24. "Special Assessment" shall mean and refer to assessments levied in accordance with Article VIII of this Declaration.

**Article II**

**Nature of Development and Business Usage**

Section 2.1. Development of Property. All property within the Development shall be and is hereby restricted exclusively to retail, office, commercial and business use and shall be subject to the existing zoning restrictions with regard to the Development and to the standards and restrictions set forth in these Declarations. Developer shall have the right, but not the obligation, for so long as Developer owns any property within the Development to maintain and make improvements, repairs, and changes to property within the Development, without limitation, (i) installation and maintenance of any improvements in and to the Common Properties and Landscape Basements Areas; (ii) changes in the location of the boundaries of any Lots owned by Developer or of the Common Properties or easement areas, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) installation and maintenance of the Access Roads. Notwithstanding the foregoing, however, no Lot will be subdivided, replatted or be adversely affected by any plat amendment without the prior written consent of the Owner of the Lot adversely affected. Upon the termination of the Class B Control Period, or at an earlier date determined in the sole discretion of the Developer.
Developer will turn over to the Association all the Common Properties, and all other documents and information necessary for the administration of the Association.

Section 2.2. Zoning Restrictions. In addition to all other restrictions set forth in this Declaration, all uses of and all improvements made in the Development shall be in compliance with the Zoning Ordinance of the Town of Fishers and the zoning commitments recorded with respect to the Development pursuant to zoning commitments recorded as Instrument Nos. 90-19026 and 91-053206 (and as amended by Instrument No. 95-44252) in the Office of the Recorder of Hamilton County, Indiana, which are hereby incorporated into this Declaration. Included within said commitments are prohibitions against the following types of business being operated within the Development: Auto service stations, video stores or arcades operated as a separate business, fast food restaurants occupying a single free-standing building, liquor stores operated as a separate business and not part of a drug store or grocery store, massage parlors, and any establishment offering sexual materials for sale. Additionally, no business, except a drug store or grocery store, may be open for business in excess of eighteen (18) hours per day.

No part of the Development shall be rented or used for industrial purposes, automobile dealerships or multi-family housing.

Section 2.3. Restrictions on Usage for Medical and Ancillary Services. The following medical and ancillary services shall be prohibited in the Development without the prior written consent of Developer or its assigns:
- Outpatient Surgery and associated technical services
- Laboratory Services
- Radiology Services both diagnostic and therapeutic
- Medical/Health/Wellness Outreach and Educational Services
- Urgent Care Services
- Ophthalmologic, Optometric Services excluding retail sales thereof
- Sports Medicine and Physical Therapy services
- Medical Offices and Services
- Dental Office and Services
- Psychiatric, Behavioral Care and Stress Management Services
- Health and Fitness and Occupational Medicine Services

Developer shall have the right at any time to assign, in part or in whole, the right of control and approval of any exemptions from the restrictions of this Section 2.3 to any Owner of a Lot located within the Development. Developer shall also have the right to release any of the restrictions of this Section 2.3 at any time by the recording of a document with the Recorder of Hamilton County, Indiana, wherein such restrictive covenant is expressly identified and released.

Section 2.4. Developer's Right to Create Additional Restrictions. For as long as Developer owns any property within the Development, Developer has the right to amend the Declarations unilaterally without the approval of any other Members to create additional restrictions and prohibitions with respect to certain business uses within the Development and may assign the right of control and approval of any exemption from such restrictions to any Owner of a Lot located within the Development; provided, however, no use restriction creates
hereafter shall prohibit or interfere with any then existing use of any Lot within the Development without the consent of the Owner of that Lot.

Article III

Property Rights

Section 3.1. General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, the right of enjoyment in and to the easements described herein for the benefit of all Owners and their tenants, licensees, guests and invitees as established hereunder. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as its ownership ceases for any reason, at which time its membership in the Association shall automatically pass to its successor-in-title to its Lot, and upon such transfer, each former owner shall simultaneously transfer and assign to his successor-in-title any certificates or other evidences of its membership in the Association. Lots shall not be subdivided, and, except as provided in Section 2.1 hereof, the boundaries between Lots shall not be realigned, unless the realignment thereof is made with the approval of at least seventy percent (70%) of the Percentage Interest of the Members.

Section 3.2. Ingress and Egress Easements. Subject to reasonable rules and regulations as specified by the Association, all Owners, by accepting title to Lots conveyed subject to this Declaration, waive all right of uncontrollable and unlimited access, ingress, and egress to and from such Lots. In addition to the other rights and easements set forth herein, Developer, the Association and their respective successors and assigns, and all Owners shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Lots by means of the paved areas within the Development; provided, however, with the exception of easements for Access Roads, no easement is granted over a Lot which would have an adverse effect on the contemplated use of the Lot without the prior written consent of the Owner of said Lot. All Access Roads and abutting paved portions of any Lots located within the Development, although privately owned by the Owners, shall be reserved at ingress and egress easements, as set forth on the recorded plat of the property, in favor of Developer, the Association, its respective successors and assigns, and all Owners, and their tenants, licensees, guests and invitees. There is also hereby reserved in favor of Developer, the Association and their agents, successors and assigns an easement for purposes of maintenance and repair of the Access Roads. In addition herein, all Owners and their tenants, licensees, guests and invitees shall have cross-easements for parking purposes as specified in Section 3.6 below.

Section 3.3. Utility and Public Service Easements

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power to grant and accept easements to and from Hamilton County, Indiana, or any other public authority or agency, public service district, public or private utility or other
person, upon, over, under, and across (i) all of the Common Property; and (ii) those portions of all Lots as are reasonably necessary for the purpose of installing, repiping, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water, and sewer lines, provided that such easement shall not unreasonably affect the use, development, marketability, or value of any such Lot. To the extent possible, all utility lines and facilities serving the Development and located thereon shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall use reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

(b) Developer hereby grants to Hamilton County, Indiana, Town of Fishers, Indiana, and/or such other governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Access Roads and Lots for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall also exist utility easements reserved in favor of Developer, the Association, and their respective successors and assigns, as well as any public or private utility as such may be necessary in accordance with the terms of Section 3.3(a) above in such areas as may be designated on any Plat or the Development as a utility easement. The Owner of any Lot subject to a utility easement shall be required to maintain that area in the manner it is not the paved area of an Access Road or in a Landscape Easement Area and shall be required to keep such area free from obstructions which have not been approved by the Committee.

Section 3.4. Drainage Easements. There is hereby reserved an easement for the Developer, the Association, or its assigns for access to and installation, repair, or removal of the stormwater drainage system, either by surface drainage or appropriate underground installations, throughout the Development. Additionally, there shall exist designated drainage easements with respect to those areas as shown on any recorded Plat and the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot in the condition originally provided by Developer and free from obstructions so that the surface water drainage will not be impeded. No changes shall be made to any designated drainage easement area by Owner without the written consent of the Association; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.
Section 3.5. Landscape Easement Areas. Landscape Easement Areas, as designated on a Plat of all or any part of the Property, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon said Landscape Easement Areas.

Section 3.6. Parking Lot Easements. The Owner of each Lot and its tenants, guests, and customers are hereby granted cross-easements by way of access to and the right to use, in common with the Owners of each of the other Lots and their tenants, guests and customers, the available parking spaces located in adjoining Lots in the Development. In the event the parking spaces in the Owner’s Lot are occupied and unavailable for use, there is reserved in favor of each Owner’s tenants, guests and customers of each Lot easements for the occasional and unintentional parking by customers, guests, and visitors on an adjoining Lot not owned by such Owner. In all areas where an Owner’s paved portion of its Lot abuts the paved portion of an adjoining Lot, the Owners of said Lots, and their tenants, guests and customers, are hereby granted cross-easements for ingress and egress over the paved portions of such Lots. All Owners agree, to the extent necessary, to hereafter execute all agreements, documents or instruments required to further implement or document the easements created hereby and to carry out the purposes and intent of the provisions hereof. The Association may impose additional rules and regulations in order to carry out the intent hereof, so long as they do not restrict the rights herein.

Article IV
Membership and Voting Rights

Section 4.1. Membership. Every Owner and the Developer shall be deemed to be Members in the Association.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provision of this Declaration and the By-Laws.

Section 4.2. Voting. The Association shall have two (2) classes of membership, Class A and Class B. Each Member (regardless of class designation) shall be entitled to one (1) vote for each one percent (1%) of such Member’s Percentage Interest, rounded to the nearest one hundredth. There shall be a total of one hundred (100) votes. The rights of the Class A and Class B Members with respect to voting matters shall be as follows:

(a) Class A. Class A membership shall be all Owners (including Developer as to any platted Lot it owns).
The number of votes to which each Class A Member shall be entitled shall be in proportion to such Member’s Percentage Interest, as defined in Section 1.11. Notwithstanding the foregoing, however, the Class A membership shall be non-voting during the Class B Control Period and such shall be subject to the voting control of the Class B Member as provided in subsection (b) below.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) person holds the interest in such Lot required for membership, the vote for such Lot shall be executed as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot’s vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to appoint all of the members of the Board of Directors and shall be entitled to one hundred percent (100%) of the votes of the Class A Members as to all matters of the Association and the Development during the Class B Control Period as hereinafter defined. The Class B Control Period shall begin as of the date of this Declaration and extend to the earlier of: (i) the date on which sixty percent (60%) of the total acreage of the Development has been sold or conveyed to Persons (other than Developer) holding title solely for purposes of development or sale; or (ii) the date on which Developer determines that the Class B Control Period shall end and notice of such termination is filed by means of an instrument recorded with the Recorder of Hamilton County, Indiana. In making such calculation, the numerator shall be the total square footage sold and the denominator shall be the total square footage anticipated for sale and ownership in the Development as determined by Developer as of that date. Upon termination of the Class B membership, Developer shall give notice to all Class A members with regard to the formation of a new Board of Directors.

(c) At any time during the Class B Control Period Developer shall have the right and authority to act on behalf of the Association and in lieu of the Board of Directors, provided, however, such shall not eliminate the requirement of the Developer to account for the funds of the Association and prepare the budget as required by Article VIII below.

(d) Except where a different percentage is specified in the Declarations as to any vote requiring the approval of the Members of the Association, a voting percentage of sixty percent (60%) of the Percentage Interest of the Members shall control for decision-making purposes.

Article V

Maintenance and Services

Section 5.1. Mandatory Responsibilities of the Association. The Association shall be required to provide and pay for the following services and maintain and keep in good repair the following properties:

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(a) Boulevard Area. The Association shall share fifty percent (50%) of the cost of maintaining the Boulevard Area including, but not limited to, the landscaping in the center island and on both sides of the road, the landscape lighting and entrance features. The remaining fifty percent (50%) of such cost shall be the responsibility of the Windstream Homeowners Association, Inc. The obligation to contribute to the cost of such maintenance of the Boulevard Area may not be changed, altered or amended by the Association without the written consent of the Windstream Homeowners Association, Inc. The Association's share of the cost of such maintenance shall be a Common Expense of the Association.

(b) Additional Mandatory Obligations. The Association shall also provide and pay for the following services and maintain and keep in good repair the following properties:

(i) The storm sewer system, drainage easement areas (to the extent affecting the stormwater runoff), and any retention ponds created by Developer for the benefit of the Development;

(ii) The Landscape Easement Areas, including any exterior landscape lighting within such areas and the cost of operating and/or leasing such lighting;

(iii) The Access Roads, including sidewalks associated with such roads if created by Developer and designated as such;

(iv) The cost of maintaining any landscape and boulevard lighting associated with the Access Roads including the cost of operating and/or leasing the lighting;

(v) Snow removal for all Access Roads and exterior sidewalks, if any, associated with such Access Roads;

(vi) The cost of creating and maintaining signage for the Development but not with respect to any signage for the individual Lots; and

(vii) Insurance on behalf of the Association as hereinafter provided.

All costs associated with the maintenance and above-described services provided by the Association shall be a Common Expense to be allocated among all Lots as part of the Base Assessment. The mandatory responsibilities of the Association referenced in this subsection (b) shall not be changed without (i) the unanimous consent of all Members voting with respect to the elimination of such service; and (ii) the making of adequate provision for the replacement of such service or maintenance on behalf of the Members and Association.

Section 5.2. Optional Responsibilities of the Association. In addition to the mandatory maintenance and services described in Section 5.1 above, the Association may also be required to provide such additional maintenance or service items as the Members may approve including, but not limited to, snow removal and maintenance of the individual Lots, trash removal from
the Lots, security services for the exterior of the Lots and landscaping of the Lots. Such service or maintenance item shall require the approval of seventy-five percent (75%) of the Percentage Interest of the Members, in which event the costs thereof will be included as part of the Common Expenses to be allocated among the Lots as part of the Base Assessment.

Upon the approval of sixty percent (60%) of the Percentage Interest of the Members, the Association shall be required to provide any such maintenance or service on an individual basis to one or more Lots, in which event the costs thereof will be billed directly to the Owner of the Lot receiving said maintenance or service and such shall not be a Common Expense.

Section 5.3. Responsibilities of the Owners. Each Owner shall maintain and repair the interior and exterior of its Lot and Building and all structures, parking lots, interior sidewalks, lawns, landscaping, grounds, signage, lighting, water service lines, and other improvements comprising the Lot and Building. Each Owner shall also be responsible for snow removal from its Lot, including its parking lot and interior sidewalks. Notwithstanding the foregoing, designated portions of the Owners’ responsibility may be assigned to the Association in accordance with Section 5.2 above.

No Owner shall (a) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Building or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Architectural Control Committee as provided in Article IX hereof; or (b) do any work which in the reasonable opinion of the Architectural Control Committee, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement therein, without in every such case obtaining the written approval of the Architectural Control Committee.

Each Owner shall be responsible for the landscaping of its Lot. During any period in which the Lot remains unimproved, the Owner must plant grass seed and maintain the Lot in a neatly mowed and clean condition. Upon completion of construction of a building, the Owner must sod or hydroseed all exposed land with an acceptable strain of grass and must maintain its Lot and Building in a clean, neat and well-maintained condition which shall include, but not be limited to, fertilization of plants, shrubs and trees and the replacement of any grass, plants, shrubs or trees which have failed.

In the event that Developer or Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he has or its responsibility hereunder; or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Developer or the Association, except in the event of an emergency situation, may give such Owner written notice of Developer’s or the Association’s intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of an emergency situation, such Owner shall have ten (10) days within which to complete the same, in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and
diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision herein after such notice, Developer or the Association may provide (but shall not have the obligation so to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Developer for Developer's costs and expenses, including reasonable attorneys' fees. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors, and assigns, a maintenance easement to enter upon any Lot for the purpose of accomplishing the performance of any maintenance or repair work referenced in this paragraph, provided that such easement shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

Article VI
Insurance and Casualty Losses

Section 6.1. Insurance. The Association, Board of Directors, or its duly authorized agent, shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements comprising the Common Properties or property in which the Association has an insurable interest. If a blanket all-risk coverage policy is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage may be obtained. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its agents. The public liability policy shall have at a minimum a Five Hundred Thousand Dollar ($500,000.00) single person limit as respects to bodily injury and property damage, a One Million Dollar ($1,000,000.00) limit per occurrence, if reasonably available, and a Five Hundred Thousand Dollar ($500,000.00) minimum property damage limit.

In addition to other insurance required by this Section, the Board shall obtain workers' compensation insurance, directors, and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgement but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessment on all Lots, plus reserves on hand.

The cost of all insurance purchased pursuant to this Section 6.1 shall be a Common Expense of the Association.

Section 6.2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance and public liability
insurance meeting, as a minimum, the same requirements as set forth in Section 6.1 of this Article VI. The Association shall be named as an additional insured on all such liability policies. The Board of Directors may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of loss or damage to any Building by fire, wind, flood, or otherwise, the Owner shall proceed promptly to repair or to reconstruct the damaged Building in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration and all applicable zoning, building and other governmental regulations. No boarded-up glast Buildings shall be maintained on any Lots.

Article VII

Rights and Obligations of the Association

Section 7.1. Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Indiana Nonprofit Corporation Act of 1991, as limited by this Declaration, the By-Laws, and the Articles of Incorporation, together with those rights and privileges reasonably implied to effect the purposes of the Association. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public and private utilities, or others, as a Common Expense or by billing directly to Lots to furnish trash collections, water, sewer, and/or security service for the Common Properties and/or the Lots. The Association shall have the right to own (as a common property) any drainage system, piping, sewer equipment or materials, or any other utility equipment which Developer or the Association deems to be in the best interest of the Development. Notwithstanding the foregoing provision of this Declaration to the contrary, so long as Developer shall own any portion of the Development, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Properties.

Section 7.2. Agreements. All agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possessory and enjoyment of any part of the Development, and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity (including Developer or any affiliate) to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which a contract exists. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the
dues of the Association, excepting any of those powers or duties specifically and exclusively reserved to the Directors, Officers, or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for as a Common Expense, and the Board of Directors may hire or contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

The Association shall have the right to enter into an agreement with the Developer (or any affiliate thereof) for the management of the Association's responsibilities and affairs provided such agreement: (i) does not extend for more than one year after the expiration of the Class B Control Period; and (ii) the rate of compensation paid to Developer is comparable to that which an independent management company would charge the Association.

Section 7.3. Personal Property and Real Property for Common Use. The Association, acting through its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The share of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is an appearance to such Lot.

The Board of Directors shall have the authority to have real estate property tax statements issued separately for each Assessable property interest in which the Owners of Association possess an interest in as a result of this Declaration and to pay the tax generated thereby as a Common Expense of the Association. Each owner agrees to cooperate in the execution and filing of any documents necessary to accomplish such assessment.

Section 7.4. Rules and Regulations. The Association, as provided in Article XI hereof, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances.

Section 7.5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Article VIII

Assessments

Section 8.1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by this Declaration or
the Board of Directors to be commenced at the time and in the manner set forth in Section 8.7 of this Article. There shall be two (2) types of assessments: (a) Base Assessments; and (c) Special Assessments. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

Each Owner’s assessment shall be in proportion to such Owner’s Assessment Percentage.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Indiana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney’s fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and his or her grantee. shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by Developer, its affiliates, successors, or assigns, who takes title to a Lot through foreclosure or to any purchaser of such Lot at such foreclosure sale. In the event of co-ownership of any Lot all of such co-owners shall be jointly and severally liable for the entire amount of such assessments. All assessments are payable without relief from valuation and appraisal laws.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. All assessments shall be prorated from the date of closing for each Owner. Each Owner by acceptance of a deed to its Lot, acknowledges that all Base Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; provided, however, the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessment or other charge levied on his Lot, the Board may revoke the privilege of paying in installments and require all annual assessments to be paid in full immediately.

No Owner may waive or otherwise except himself from liability for the assessment provided for herein, including by way of illustration and not limitation, by non-use of Common Properties, non-use of services or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. The Developer shall be required to pay its Assessment Percentage of all assessments but only with respect to property Developer owns and which has been placed such that it constitutes a Lot as defined herein. Property in the Development which has not, as yet, been placed by Developer shall not be subject to assessment and Developer shall maintain such property at its own expense.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind” contribution of services or materials or a combination of services and materials with Developer or other entities for the payment of some portion of the Common Expenses.

Section 8.2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget for Common Expenses shall include a capital contribution for sustaining a reserve fund for future repairs and replacements in accordance with Section 8.5 below.
The Base Assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves.

The total annual assessments shall be divided among the Lots based upon the Assessment Percentage of the Owner of each such Lot.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 8.4 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees;

(ii) the Association’s cost of maintenance of the Boulevard Area as provided in Section 2.1(a);

(iii) charges for Common Expenses for the Development, including trash collection, snow removal, security service, if any such services or charges are provided or paid by the Association;

(iv) the cost of any policies of insurance purchased for the benefit of all Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

(v) the expenses of maintenance and operation of the Association and its properties as set forth under the provisions of this Declaration;

(vi) the expenses of the Architectural Standards Committee which are not defrayed by plan review charges;

(vii) ad valorem real and personal property taxes assessed and levied against the property interests of the Association;

(viii) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Buildings; and

(ix) the establishment and maintenance of a reasonable reserve fund or funds (a) for inspections, maintenance, repair, and replacement of Access Roads and those portions of the Development which are the responsibility of the Association and which must be inspected, maintained, repaired, or replaced on a periodic basis, (b) to cover
emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

Section 8.3. Special Assessments.

(a) Entire Membership. The Association shall levy Special Assessments against each Lot in proportion to the Assessment Percentage of the Owner of such Lot in the event there exists a deficiency in the fund for Real Assessments to pay for the Common Expenses and the expenses which are the obligation of the Association. Additionally, the Association may levy Special Assessments from time to time for purposes other than to cure said deficiency, provided any such assessment receives the affirmative vote of at least sixty percent (60%) of the Percentage Interest of the Members. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Less Than All Members. The Association may levy a special Assessment against any Member individually and against such Member’s Lot to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, and amendments thereto, the Articles, the By-laws, or the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 8.4. Lien for Assessments. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments of priority and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgement, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged to such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgement for unpaid Common Expenses and attorney’s fees shall be maintainable without foregoing or waiving the lien securing the same.

Section 8.5. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost, including, but not limited to, costs to repair or replace the Access Roads within the Development. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and
timely by annual assessments or the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessment, as provided in Sections 11.3 and 11.4 of this Article.

Section 8.6. Date of Commencement of Annual Assessments. The Annual Assessments provided herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual Assessments and any outstanding Special Assessments shall be adjusted on a pro rata basis for each Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is first conveyed.

Section 8.7. Abatement of Assessments. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

Article IX

Architectural Standards

Section 9.1. Purpose. In order to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to prevent and promote the value of the Development, the Lots and all improvements located thereon shall be subject to the restrictions set forth in Articles II, IX and X herein, and, as with all other covenants, easements, restrictions and conditions contained in the Declaration, such restrictions shall run with the land and shall inure to the benefit of and be enforceable by the Owners, the Developer, the Association and their respective heirs, successors and assigns.

Nothing shall be erected or constructed on any Lot, which terms shall include staking, clearing, excavation, grading, and other site work without meeting the requirements of this Article and without the approval of the Committee established in Section 9.2. By way of example only, no erection or construction of signage, loading docks, trash dumpster or removal areas, parking facilities, parking lot lighting, and no exterior alteration or modification of existing improvements or landscaping, plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Committee has been obtained pursuant to Sections 9.2 below. The Board of Directors may establish reasonable fees to be charged by the Committee on behalf of the Association for reviewing of applications hereunder and may require such fees to be paid in full prior to review of any application.
This Article shall not apply to the activities of the Developer with respect to the original
construction of the Development, nor to construction or improvements or modifications to the
Development by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the
Association, to enforce in courts of competent jurisdiction decisions of the committee established
in Section 9.2 of this Article IX. This Article may not be amended without the Developer's
written consent so long as the Developer owns any land subject to this Declaration.

Section 9.2. Architectural Control Committee. The Architectural Control Committee
(ACC) shall consist of three (3) persons. Until ninety-five percent (95%) of the total acreage
of the Development has been conveyed to purchasers in the normal course of development and
sale, the Developer shall retain the right to appoint all three (3) members of the ACC, which
members shall serve at the discretion of the Developer. Thereafter, all members shall be
appointed by and shall serve at the discretion of the Board of Directors. Members of the ACC
may include persons who are not Members of the Association. Members of the ACC may or
may not be members of the Board of Directors.

The regular term of office for each Member shall be one year, coinciding with the fiscal
year of the Association. Any Member appointed by the Developer or the Board may be
removed with or without cause by the Developer or the Board, depending on who appointed the
member, at any time by written notice to such appointee, and a successor or successors
appointed to fill such vacancy shall serve the remainder of the term of the former member. The
ACC shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice Chairman,
shall be presiding officer at its meetings. The ACC shall meet upon call of the chairman, and
all meetings shall be held at such places as may be designated by the chairman. Two (2)
members shall constitute a quorum for the transaction of business, and the affirmative vote of
a majority of those present in person or by proxy at a meeting of the ACC shall constitute its
action on any matter before it. The ACC is authorized to retain the services of consultant architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ACC in performing its functions set forth herein;
Such costs associated with the use of consultants shall be considered a Common Expense. Each
Member of the ACC may be paid a stipend or honorarium as from time to time determined by
the Board.

Notwithstanding anything contained in the Declarations to the contrary, Developer may,
during the time in which it has the right to appoint all members of the ACC, change the number
of members of the ACC from three (3) to five (5). Such change shall be reflected by minutes
maintained in the permanent records of the Association and no further amendment of these
Declarations shall be required to implement such change. Thereafter, the presence of three (3)
members shall constitute a quorum and the affirmative vote of the majority of those present in
person or by proxy shall constitute an action on behalf of the ACC.

The ACC shall have exclusive jurisdiction over all construction, modifications, additions,
or alterations made on or to existing Lots or structures containing Lots and the open space, if
any, appurtenant thereto. The ACC shall promulgate detailed standards or procedures governing
its areas of responsibility and practice. In addition thereto, the following shall apply: plans and
specifications showing the nature, kind, shape, color, sizes, materials, and location of such
modifications, additions, or alterations shall be submitted to the ACC for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surrounding topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his building, or to paint the interior of his building any color desired; provided, modifications or alterations to any interior portions of a building which are visible from outside the building shall be subject to approval hereunder. In the event that the ACC fails to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings and any additional information having been requested by the ACC, the plans shall be deemed approved but only to the extent such plans do not violate express provisions of the Declaration or any plat.

Section 9.3. No Waiver of Future Approvals. The approval of the ACC of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or materials whatever subsequently or additionally submitted for approval or consent.

Section 9.4. Variances. The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations set forth by the ACC and upon the approval of a minimum of 75% of the Percentage Interest of the Members. Such variance may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration or a recorded Plat, or (c) stop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permits, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9.5. Compliance with Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ACC may be excluded by the Board from the Development without liability to any person, subject to the notice and hearing procedures contained in the By-Laws.

Section 9.6. Construction of Improvements. Buildings may not be temporarily or permanently occupied until the exteriors thereof have been completed and a certificate of occupancy for such Building has been issued. No accessory building or outbuilding shall be permitted on any Lot at any time, except as may be permitted by rules and regulations promulgated by the Board.

Section 9.7. Responsibilities During Construction. Owners shall take necessary action during construction activities to assure the following occurs:

(a) Construction of a Building on a Lot must be completed within a reasonable time from the date construction is commenced based upon the size and complexity of the Building.
(b) Stone shall be installed over the path of the driveway such that it shall be
level with curbs at the lot line to avoid curb breakup.

(c) No track vehicles or heavy equipment vehicles shall be operated or unloaded
on any street.

(d) During the construction period, the Lot shall be maintained in a clean and
orderly manner at all times. All loose shingles, lumber, bricks, block, drywall,
imulation, or other building material which can blow onto adjacent lots shall not be left
lying around. Construction trash shall be contained in a trash fence and shall be removed
from the Lot once per week or contained in a dump site provided by a trash disposal
service which will empty the container as needed but no less than one time per week.

(e) The Lot Owner shall be responsible for removal of dirt, mud or debris or
other foreign material of any kind which may be deposited upon the road or easements
from construction on the Lot. If such trespass occurs, then the Lot Owner shall make
provisions to remove such deposits within five (5) days or the contractor may remove
such deposits and charge the Lot Owner.

(f) No outside toilets shall be permitted on any lot during construction without
prior approval of the ACC.

(g) All utility services including, but not limited to, water, power, sanitary
sewers, telephone or cable, to the lot shall be shown on the plot plan and said services
shall not undermine the curbs or alter the subsurface or surface drainage system.

(h) Upon completion of construction, such Owner shall cause its contractors to
immediately remove all equipment, tools, and construction material and debris from the
Lot on which such construction has been completed.

Section 9.8. Architectural Approval. To preserve the architectural and aesthetic
appearance of the Development, no construction of improvements of any nature whatsoever shall
be commenced or maintained by an Owner, other than Developer, with respect to the
construction or affecting the exterior appearance of any Building or with respect to any other
portion of the Development, including, without limitation, the construction or installation of
sidewalks, driveways, parking lots, decks, awnings, walls, fences, exterior lights, loading docks,
trash dumpsters and trash removal areas, signs, garages, or other outbuildings, nor shall any
exterior addition to or change or alteration thereof be made (including, without limitation,
painting or staining of any exterior surface), unless and until two (2) copies of the plans and
specifications and related data showing the nature, color, type, shape, height, materials, and
location of the same shall have been submitted to and approved in writing by the ACC as to the
compliance of such plans and specifications with such standards as may be published by the ACC
from time to time including the harmony of external design, location, and appearance in relation
to surrounding structures and topography. One copy of such plans, specifications, and related
data so submitted shall be retained in the records of the ACC, and the other copy shall be
returned to the Owner marked "approved", "approved as noted", or "disapproved".
Section 9.9. Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by an Owner other than Developer, unless and until the plans therefore have been submitted to and approved in writing by the ACC. The provisions of Section 9.8 herein regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling.

Section 9.10. Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Neither Developer, the Association, nor the ACC shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article XII, nor loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations or any defects in construction undertaken pursuant to such plans and specifications.

Section 9.11. Building Restrictions. The exterior walls of all buildings must be constructed of brick of a color and texture approved by the ACC. Stone, metal and concrete block are prohibited; provided, however, metal decorative elements may be incorporated into the design of the Building so long as such elements do not comprise more than twenty-five percent (25%) of the exterior of the Building. The ACC, solely in its discretion, may grant a waiver in some situations with respect to the requirement of brick on the side or back walls of the Building provided such would not be readily observable from any other Owner’s Lot or would not detract from the Development in general. All Buildings, improvements and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and Zoning Commisions Nos. 90-19026 and 91-03106, which have been duly recorded with respect to the Development and are hereby incorporated into this Declaration. No exterior portion of any building, structure or other improvement (excepting sidewalks and driveways) located on or with respect to any Lot shall be located other than as permitted by the applicable set-back line restrictions. All set-back lines shall be as specified in the recorded plat of the Development, but in no event will such lines be closer than thirty-five (35) feet to the edge of any public right-of-way or closer than twenty-five (25) feet to the edge of the pavement of any Access Road.

Article X

Use Restrictions

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Development, in addition to those contained herein. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, added to, canceled or modified in a regular or special meeting of the Association by the vote of at least seventy-five percent (75%) of the Percentage Interest of the Members (unless a different voting requirement is specified elsewhere in the Declarations).
In addition to restrictions set forth elsewhere in this Declaration, each Lot shall be subject to the following restrictions on its use:

Section 10.1. Signs. The erection of any and all signs, including signs on any Building or the painting of signs upon or on any Building, shall be subject to the prior written approval of the ACC, and shall meet the specifications as established from time to time by the ACC.

Section 10.2. Parking. It shall be the responsibility of each Owner to provide and maintain adequate parking facilities with sufficient space in which its employees, customers, investors and tenants may park. All parking areas must be paved with hard, all weather surfacing, shall be subject to the prior written approval of the ACC and must meet the minimum requirements of the Zoning Ordinance of the Town of Fishers, Indiana.

Section 10.3. Quiet Enjoyment. No portion of the Development shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or unsightly condition or that will be conspicuous to the eye; nor shall any substance, thing, or material be kept upon any portion of the Development that will emit foul or objectionable odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or security of the occupants, guests and invitees of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Development. There shall not be maintained any plants or animals or device or thing of any sort whose activities, odors or emissions in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Development. No outside burning of wood, leaves, trash, garbage or refuse shall be permitted within the Development.

Section 10.4. Loading Docks and Facilities. All loading docks and facilities must be attached to the back of a Building and are subject to the approval of the ACC. Trucks, delivery and service vehicles of all types shall be prohibited from parking in the front of any Building. All such docks and facilities must be screened as required by the ACC.

Section 10.5. Ungainly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. The pursuit of certain activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Development. Nothing which could cause embarrassment, discomfit, annoyance or nuisance to the occupants of other portions of the Development or which result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development. During the construction period on any Lot, the Owner thereof shall be responsible for the removal of all debris, trash and waste materials from the Lot and the Development on a weekly basis. In the event the Owner fails to timely remove such materials, the Association or any Owner may remove such materials and receive reimbursement for the costs thereof from the Owner of the Lot.
Section 10.6. Hazardous Materials. No hazardous or toxic materials of any kind may be brought, placed on, mixed or created on any Lot in the Development. Each Owner shall be responsible for the compliance of its tenants, guests and invitees with all applicable health, environmental and hazardous waste management laws, rules and regulations. Hazardous materials shall not include janitorial materials, supplies, cleaning fluids or chemicals necessary for the day-to-day operation or maintenance of the Development nor any other materials which are ancillary to the business conducted on said Lot; provided, however, all such materials must be stored and used in a careful and secure manner.

Section 10.7. Trash. All trash dumpsters and containers or trash pick-up areas shall be located or screened so as to be concealed from view of neighboring Lots and streets and shall be subject to the prior written approval of the ACC.

Section 10.8. Outside Storage. No outside storage areas shall be permitted, with the exception of trash areas meeting the requirements of Section 10.6 above.

Section 10.9. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Developer, however, hereby expressly reserves the right to plat any Lot or Lots owned by Developer. Any such division, boundary line change, or platting shall not be in violation of the applicable subdivision and zoning regulations, and shall be subject to Section 2.1 above.

Section 10.10. Drainage, Water Wells and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves for itself and the Association a perpetual easement across the properties for the purpose of altering drainage and water flow. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot, except for wells maintained solely for irrigation purposes. All such irrigation wells must receive the prior written approval of the ACC.

Section 10.11. Antennas and Satellite Dishes. All exterior antennas, aerials or satellite dishes shall be subject to the prior written approval of the ACC.

Section 10.12. Flag Poles. All flag poles or other types of exterior poles shall be subject to the prior written approval of the ACC.

Section 10.13. Fences and Walls. No fences, walls or barriers of any kind shall be located or permitted between adjoining lot lines.

Section 10.14. Laws and Ordinances. Every Owner and its tenants, guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Development and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.
Section 10.15. Occupants Board. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, tenants, guests and lessees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Association and other Owners caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

Article XI

Rulemaking

Section 11.1. Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Buildings, and the Common Properties. Copies of such rules and regulations and amendments thereto shall be furnished to the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Developer, for so long as Developer owns any Lot.

Section 11.2. Authority and Enforcement.

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power, after fifteen (15) days written notice to Owner or Occupant of said violation, and failure by said Owner or Occupant to cure the violation:

(i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or Occupant who is guilty of such violation; and

(ii) to suspend an Owner's right to vote in the Association.

The Board shall have the power to impose one or both of these sanctions. An Owner or Occupant shall be subject to the foregoing sanctions in the event of such a violation by him or his tenants or guests. Any such suspension of rights may be for the duration of the Infraction and or any additional period thereafter, not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions
contained in the Articles of Incorporation and by-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Developer, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages, injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations, declaratory relief, the enforcement of any lien created by these covenants, restrictions, rules, or regulations, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Developer, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Developer or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

Article XII

General Provisions

Section 12.1. Control by Developer. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Developer hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association during the Class B Condo Period as provided by Section 4.2 of the Declarations. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Developer shall have the authority to appoint and remove directors of the Association in accordance with these provisions. Upon the expiration of the period of Developer's right to appoint and remove directors of the Association, such right shall pass to the Members of the Association, as more specifically set forth in the Declarations and Article III of the By-Laws. At such time, Developer shall deliver to the new Board of Directors all books, accounts, and records, if any, which Developer has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Developer has in its possession.

Section 12.2. Term. The covenants, easements and restrictions of this Declaration shall run with and bind the Development, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than eighty percent (80%) of the Percentage Interests of the Members has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.
Section 13.3. Amendment. Prior to the conveyance of the first Lot, Developer may unilaterally amend this Declaration. After such conveyance, the Developer may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) not material and the impact of such amendment, if any, would not be significant to this Declaration; (b) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (c) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (d) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots; (e) necessary to enable any governmental agency or reputable private insurance company to issue mortgage loans on the Lots, or (f) would not have a material adverse impact on any of the Lots sold to date; provided, however, any such amendment shall not adversely affect the title to any Lot or the use of such Lot unless the Owner shall consent thereto in writing. Additionally, the Developer may unilaterally amend this Declaration at any time, and from time to time, to remove portions of the property described in Exhibit "A" from the requirements of this Declaration; provided, however, (i) any such property removed shall be made subject to the same use restrictions of Article II and Article X contained herein; and (ii) the easements for access to and throughout the Development contained in Article III above shall be preserved.

Thereafter and otherwise, this Declaration may be amended (except where a different voting requirement is specified) only by the affirmative vote or written consent, or any combination thereof, of at least seventy-five percent (75%) of the Percentage Interests of the Members of the Association; provided, however, no such amendment shall be made without the unanimous consent of the Members and the Developer (to the extent the Developer still owns any property within the Development) if such amendment would (i) eliminate or change the easements for access to and throughout the Development contained in Article III above; (ii) would preclude or adversely affect the current or anticipated use of a Lot by an Owner; or (iii) would in any way change the user and requirements of any property owned by Developer within the Development. Any amendment to be effective must be recorded in the public records of Hamilton County, Indiana.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assent of such right or privilege.

Section 13.4. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorney fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment, made by them,
in good faith, on behalf of the Association and the Ass. Aion shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 12.5. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Developer or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records of Hamilton County, Indiana. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

Section 12.6. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to Owner or Occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Building to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 12.7. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75) percent of the Percentage Interests of the Members of the Association. However, this Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendments is made by the Developer or is approved by the Members, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 12.8. Use of the Name "Windermera". No Person shall use the word "Windermera" or any derivative thereof in any printed or promotional material without the prior written consent of the Developer. However, Owners may use the terms "Windermera" in printed or promotional material where such term is used solely to specify that particular property
is located within Windermere Village, and the Association shall be entitled to use the word "Windermere" in its respective name.

Section 12.2. Developer’s Right of Assignment. Any or all of the special rights and obligations of the Developer may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, that any such transfer the Class B Control Period shall expire unless such transfer is made to an affiliate of Developer of which Developer (or its Owners) are a part. No such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the public records of Hamilton County, Indiana.

Section 12.10. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferee shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Building, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

Section 12.11. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12.12. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 12.13. Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer and the Owners, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Developer, the Owner shall have the right to extend, modify, amend, or otherwise change the provision of this Declaration without the consent, permission, or approval of any adjoining Owner or third party.

See to 12.14. Notices. Notices required hereunder shall be in writing and shall be hand delivered or sent by United States Mail, postage prepaid. All notices to Owners shall be sent or delivered to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners, respective Lots or

9418292
Buildings. All notices to the Association shall be delivered or sent in care of Developer at the following address:

Windermer Partners
3665 Priority Way, South Drive
Suite 100
Indianapolis, Indiana 46240

or to such other address as the Association may from time to time notify the Owners. All notices to Developer shall be delivered or sent to Developer at the above address or such other address as Developer may from time to time notify the Association.

In Witness Whereof, duly authorized officers of the undersigned Developer has executed this Declaration this 19th day of April, 1994.

WINDERMERE PARTNERS an Indiana Partnership, by The Proceeding, Partner

By

Timothy C. Peterson

STATE OF INDIANA;
COUNTY OF

Before me, a Notary Public in and for the State of Indiana, on this 19th day of April, 1994, appeared Windermer Partners, represented by its Managing Partner, Timothy C. Peterson, and acknowledged the execution of the forgoing instrument on behalf of said partnership.

Given under my hand and official seal this 19th day of April, 1994

Notary Public

LYNNE R. RONEY
NOTARY PUBLIC
STATE OF INDIANA
MARION COUNTY
COMMISSION EXPIRES MAY 17, 1995

County of Residence:

My Commission Expires:

This instrument prepared by J. Randall Aikman, Attorney-at-Law.
Exhibit "A"

LEGAL DESCRIPTION

A Part of the Southwest Quarter of the Southeast Quarter of Section 8, Township 17 North, Range 5 East, of the Second Principal Meridian, in Fall Creek Township, Hamilton County, Indiana and more particularly described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of said Section 8; thence North 89 degrees 21 minutes 57 seconds East (as assumed bearing) along the South Line of the Southeast Quarter of said Section 8 a distance of 399.77 feet to the Southeast Corner of LAKESIDE GREEN SECTION 2, an addition in Hamilton County recorded as Instrument number 92-4966, Plat Cabinet No. 1, Slide No. 282 in the Office of the Recorder of Hamilton County, Indiana; said point also being the point of beginning; thence North 00 degrees 36 minutes 03 seconds West (the next 6 calls being along the East Boundary of said LAKESIDE GREEN SECTION 2) a distance of 40.00 feet; thence North 45 degrees 36 minutes 10 seconds West 49.50 feet; thence North 00 degrees 36 minutes 16 seconds West 197.00 feet; thence North 07 degrees 49 minutes 24 seconds West 79.25 feet; thence North 00 degrees 36 minutes 16 seconds West 648.66 feet to a tangent curve from which the radius point bears North 89 degrees 23 minutes 44 seconds East; thence Northeasternly along said curve an arc distance of 100.28 feet to a point from which the radius point bears South 81 degrees 11 minutes 08 seconds East, said curve having a radius of 610.00 feet; thence South 90 degrees 00 minutes 00 seconds East 435.27 feet; thence South 58 degrees 00 minutes 00 seconds East 592.81 feet; thence South 09 degrees 53 minutes 14 seconds East 40.00 feet to the East Line of the Southwest Quarter of the Southeast Quarter of said Section 8; thence South 00 degrees 05 minutes 46 seconds West along said East Line 774.59 feet to the Southeast Corner of said Southwest Quarter; thence South 82 degrees 23 minutes 37 seconds West along the South Line of said Southwest Quarter 928.24 feet to the point of beginning and containing 21.394 acres more or less.
BY-LAWS
OF
WINDERMERE VILLAGE OWNERS ASSOCIATION, INC.

ARTICLE I
Name, Principal Office and Definitions

Section 1.1. Name. The name of the Association shall be Windermere Village Owners
Association, Inc. (hereinafter referred to as the "Association").

Section 1.2. Principal Office. The principal office of the Association in the State of
Indiana shall be located at such place in Marion County, Indiana, or Hamilton County, Indiana,
as the Board of Directors of the Association shall determine from time to time.

Section 1.3. Definitions. The capitalized terms used in these By-Laws shall have the
same meaning as set forth in that Declaration of Covenants, Conditions, Restrictions and
Easements for Windermere Village (said Declaration, as amended, renewed, or extended from
time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall
prohibit.

ARTICLE II
Association: Membership, Meetings, Quorum, Voting, Praxis

Section 2.1. Membership. The Association shall have two (2) classes of membership,
Class A and Class B Members, as more fully set forth in the Declaration, the terms of which
pertaining to membership are specifically incorporated herein by reference.

Section 2.2. Place of Meetings. Meetings of the Association shall be held at the
principal office of the Association or at such other suitable place convenient to the Members as
may be designated by the Board of Directors either within the Property or as convenient thereto
as possible and practical.

Section 2.3. Annual Meetings. The first meeting of the Association, whether a regular
or special meeting, shall be held within one (1) year from the date of incorporation of the
Association. Meetings shall be of the Members of the Association. Subsequent regular annual
meetings shall be set by the Board so as to occur at least thirty (30) days before but not more
than ninety (90) days after the close of the Association's fiscal year on a date and at a time set
by the Board of Directors.

EXHIBIT "B"
Section 2.4. **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by a petition signed by at least forty percent (40%) of the Percentage Interest of the Members of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 2.5. **Notice of Meeting.** Written or printed notice stating the place, day, and hour of any meeting of the Members of the Association shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the address as it appears on the records of the Association, with postage thereon prepaid.

Section 2.6. **Waiver of Notice.** Waiver of notice of a meeting of the Members of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting either before or after such meeting. Attendance at a meeting by a Member of the Association shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereafter unless objection is made to the call or convening of the meeting, or which proper notice has not been given, is raised before the business is put to a vote.

Section 2.7. **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Section 2.8. **Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 2.9. **Proxies.** Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting.

Section 2.10. **Quorum.** There shall be no express quorum requirement for meetings of the Members in that all decisions of the Members of the Association must be approved by the required Percentage Interest of the Members as specified in the Declaration.
Section 2.11. **Conduct of Meetings.** The President shall preside over all meetings of the 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 at the meeting.

Section 2.12. **Action Without a Meeting.** Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken by written ballot without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. A written ballot must (i) set forth each proposed action and (ii) provide an opportunity to vote for or against each proposed action. A solicitation for votes by written ballot must do the following: (i) indicate the number of responses needed to meet the voting percentage requirements of the particular matter to be voted upon; and (ii) specify the time by which a ballot must be received by the Association to be counted.

**ARTICLE III**

Board of Directors: Number, Powers, Meetings

A. Composition and Selection

Section 3.1. **Governance Body: Composition.** The ongoing affairs of the Association shall be governed by a Board of Directors.

Section 3.2. **Directors During Class B Control Period.** Subject to the provisions below, the directors shall be selected by the Class B Member acting in its sole discretion and shall serve at the pleasure of the Class B Member during the Class B Control Period as defined in Section 4.2(b) of the Declarations. During the Class B Control Period each director shall have one (1) vote.

Section 3.3. **Number and Selection of Directors.** During the Class B Control Period the Board of Directors shall consist of three (3) members, each of whom shall be selected by the Class B Member. After the Class B Control Period the Board of Directors shall be expanded so that there are always as many directors as there are Members and each Member shall have the right to appoint one (1) director.

Section 3.4. **Term of Office and Removal.** Directors appointed by the Developer shall be elected for a term of one (1) year each. Directors elected by a Member after the Class B Control Period shall be elected for a term of the lesser of two (2) years or the amount of time specified in writing by the Member electing that director which notification shall be delivered to the Secretary of the Association. A Member may remove the director it has appointed at any time, and for any reason, by a notice given to the Secretary of the Association specifying the date of removal of that director and the name of a replacement.
B. Meetings

Section 3.5. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by written notice signed by Members holding at least forty percent (40%) of the Percentage Interest of the Association.

Section 3.6. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 3.7. Quorum of Board of Directors During Class B Control Period. At all meetings of the Board of Directors during the Class B Control Period, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

Section 3.8. Quorum and Voting Requirements After the Class B Control Period. There shall be no quorum requirements for the Board of Directors after the Class B Control Period as to any matters specified in the Declarations that would require a specific percentage approval of the Percentage Interests of the Members or Board of Directors. As to all other matters upon which the Board of Directors is entitled to vote and for which there is not a specified voting requirement, the presence in person, or by proxy, of directors representing at least forty percent (40%) of the Percentage Interests of the Members shall constitute a quorum for the transaction of such business, and the vote of sixty percent (60%) of the Percentage Interests represented by those directors present shall constitute the decision of the Board of Directors.

Section 3.9. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by seventy-five percent (75%) of the Percentage Interests of the Members of the Association at a regular or special meeting of the Association, provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of the other directors.

Section 3.10. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 3.11. Open Meetings. Subject to the provisions of Section 3.12 of this Article, all meetings of the Board shall be open to all Members of the Association, but the Members
other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature, including but not limited to such matters as pending or threatened litigation or personnel matters.

Section 3.12. A Meeting Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

Section 3.13. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members of the Association.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, by way of explanation, but not limitation:

(a) preparation and adoption, in accordance with Article VIII of the Declaration, of annual budgets in which there shall be established the contribution by each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and method of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Lot’s proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of Access Roads, Landscape Easement Areas, Boulevard Area, any Common Properties, and any other area as required by the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the areas described in sub-section (c) above and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
(c) collecting the assessments, depositing the proceeds thereof in a bank
depository which it shall approve, and using the proceeds to operate the Association;
provided, any reserve fund may be deposited, in the directors' best business judgment,
in depositories other than banks;

(l) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the
signatories required;

(h) making or contracting for the making of repairs, additions, and improvements
to or alterations of any area after damage or destruction by fire or other casualty as may
be required by the Declaration;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws,
and the rules and regulations adopted by it and bringing any proceedings which may be
instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided
in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and
not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting
the Association and its administration, specifying the maintenance and repair expenses
and any other expenses incurred;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot,
any first Mortgagor, and the holders, insurers, and guarantors of a first Mortgage on any
Lot, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules
governing the Lot and all other books, records, and financial statements of the
Association.

Section 3.14. Management. The Board of Directors may, in accordance with the
Declaration, employ for the Association a professional management agent or agents at a
compensation established by the Board of Directors to perform such duties and services as the
Board of Directors shall authorize. The Board of Directors may delegate to the managing agent
or manager, subject to the Board’s supervision, all of the powers granted to the Board of
Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g),
and (i) of Section 3.13 of this Article. The Developer, or an affiliate of the Developer, may be
employed as managing agent or manager.

Section 3.15. Accounting and Reports. The following management standards of
performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles,
shall be employed;
(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) commencing at the end of the year in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remains delinquent (any assessment or installment thereof shall be considered to be delinquent on the fifteenth [15th] day following the due date unless otherwise determined by the Board of Directors); and

(e) an annual report containing at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of change in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent certified public accountant.

Section 3.16. Borrowing. The Board of Directors shall have no power to borrow money on behalf of the Association except in accordance with the Declaration and with the required approval of the Members.

Section 3.17. Enforcement. The Board of Directors shall have the rights and power of enforcement of the Declaration and these By-Laws as specified in the Declaration.

Article IV

Officers

Section 4.1. Officers. The officers of the Association shall be a President, Secretary and Treasurer, to be elected from among the Board of Directors. The Board of Directors may
appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 4.3. Removal. An officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.6. Agreements, Contracts, Deeds, Leases, Checks. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors, provided, however, during the Class B Control Period the Developer shall have the right to require only one (1) such signature.

Article V

Committees

Section 5.1. General. There shall be no committees created by the Association with the exception of the Architectural Control Committee established by the Declaration.

Article VI

Miscellaneous

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Section 6.1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert’s Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 6.3. Conflicts. If there are conflicts between the provisions of Indiana law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, Articles of Incorporation, and any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, Member of the Association, or by the duly appointed representative of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Lot at the office of the Association or at such other place within the Property as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 6.5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class, postage prepaid.
(a) if to a Member of the Association, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been substituted, at the address of the Lot of such Member, or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as may be designated by notice in writing to the Members pursuant to this Section.

Section 6.6. Amendment. Prior to the conveyance of the first Lot, Developer may unilaterally amend these By-Laws. After such conveyance, the By-Laws may only be amended in the same manner as provided for the amendment of the Declaration as specified in Section 12.3 of the Declaration.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Windermere Village Owners Association, Inc., an Indiana corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the _____ day of April, 1994.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of ______, 1994.

________________________
Secretary

APR 19 1994

The instrument recorded;
Sharon K. Cheny, Recorder, Hamilton County, IN