

9022630

FIRST AMENDMENT TO DECLARATION  
OF COVENANTS AND RESTRICTIONS  
OF WINTERWOOD

Slain

This Amendment made this 27th day of August, 1990,  
by Winterwood Property Owners' Association, Inc. ("Corporation"), an  
Indiana not-for-profit corporation, witnesses the following:

WHEREAS, Klein, Bayley & Hoover Investment Company  
("Declarant"), an Indiana partnership, recorded the Declaration of  
Covenants and Restrictions of Winterwood on the 24th day of August,  
1982 in Miscellaneous Record 170, pages 586-644 as Instrument No.  
37164 in the Office of the Recorder of Hamilton County, Indiana;

WHEREAS, on the 24th day of August, 1982, Declarant recorded  
the Plat of Winterwood in Plat Book 9, pages 91-92, in the Office of  
the Recorder of Hamilton County, Indiana; and

WHEREAS, the Corporation and all of the owners of lots 7, 8, 9,  
10, 18, 19, 20, 24, 25, and 26 in Winterwood desire to amend Article  
IX of said Covenants, to withdraw the owners of lot 7 and include  
the owners of lot 10 among those lots in Winterwood receiving the  
benefit, use and enjoyment of Block "A."

NOW, THEREFORE, the Covenants are amended as follows:

Section 2 of Article IX regarding the declaration of a Common  
Area relating to Block "A" is amended to read as follows:

Section 2. Declaration as Common Area. Such portions  
or all of Block "A" as may be shown on any recorded sub-  
division plat of the Real Estate as such shall be, and the  
same are hereby declared to be, a part of the Common  
Areas. However, notwithstanding anything to the contrary  
contained herein, the benefit, use and enjoyment of Block  
"A" shall be limited to the Owners from time to time of  
Lots 8, 9, 10, 18, 19, 20, 24, 25 and 26 as shown on the  
Site Plan (said Lots being herein referred to as the  
"Designated Lots"), and shall not be for the benefit, use  
or enjoyment of any other Lots in the Real Estate. If at  
any time a majority of the Owners of the Designated Lots  
elect to terminate the character and status of Block "A"  
as Common Areas, they shall have the right to do so, which  
election shall be made by the delivery to the resident  
agent of the Corporation of a written statement to that  
effect signed by a majority of the Owners of the  
Designated Lots. Upon receipt of such written election,  
the Corporation shall convey to the respective Owners of  
each of Lots 18, 19, 20, 24, 25 and 26 the respective por-  
tions of Block "A" lying easterly of said Lots 18, 19, 20,  
24, 25 and 26, from the western boundaries of said last  
mentioned Lots to the eastern boundary of the Real Estate,  
which conveyances shall be made by quitclaim deeds. Upon  
the execution of such quitclaim deeds, Block "A" shall  
lose its status and character as Common Areas and shall no  
longer be deemed or considered Common Areas; the respec-  
tive portions of Block "A" shall thereafter be deemed and  
considered to be additions to and portions of the Lot to  
the Owner of which such conveyances of such portion has  
been made; all of such portions of Block "A" shall remain  
subject to any drainage easements and utility easements in  
existence immediately prior to such conveyances, but any  
access easements created solely for the purpose of pro-  
viding anyone with a means of access to Block "A" shall be  
deemed and considered vacated and abandoned upon such con-  
veyances being made; and, upon and after any such  
conveyances, the Owners of Lots 8, 9, and 10 shall have no  
further right, title and interest in or to, or the use,  
benefit or enjoyment of any part of, Block "A".

This Instrument Recorded 9-12 1990  
Sharon K. Cherry, Recorder, Hamilton County, IN

INSTR. # 9022630

IN WITNESS WHEREOF, the Corporation has executed this Amendment as of the date first above written.

WINTERWOOD PROPERTY OWNERS' ASSOCIATION, INC.

By: Joan Quillen  
JOAN QUILLEN, President

ATTEST:

Janice Yallies  
JANICE YALLIES, Secretary

STATE OF INDIANA )  
COUNTY OF Marion ) SS:

Before me, a Notary Public in and for such County and State, personally appeared JOAN QUILLEN and JANICE YALLIES, President and Secretary of Winterwood Property Owners' Association, Inc., who, having been duly sworn, acknowledged the execution of the forgoing Amendment to Declaration, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 2<sup>th</sup> day of August, 1990.

My Commission Expires:  
7-13-94

My County of Residence:  
Marion

Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)



RECEIVED  
FOR RECORD  
90 SEP 12 AM 10:43  
JERRY  
KROEMER  
HAMILTON CO. IN

This instrument was prepared by E. Davis Coats, with the law firm Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 8 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

John  
Nancy C Jordan

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Marian

Before me, a Notary Public in and for such County and State,  
personally appeared John & Nancy C Jordan,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:

7-13-94

My County of Residence:

Marian

Joey Sterlins  
Notary Public

JOEY STERLINS  
(Printed Name)



9022630

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Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 11 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

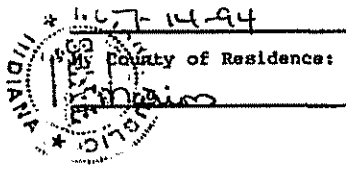
Deanne J. Bayley  
X

STATE OF INDIANA }  
COUNTY OF Martin } SS:

Before me, a Notary Public in and for such County and State,  
personally appeared Deanne J. Bayley,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:



Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

9022630

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Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.



CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 96 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

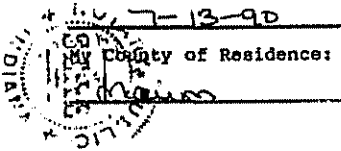
John A. Roberts Jr.  
Wm. C. Roberts

STATE OF INDIANA )  
COUNTY OF Madison ) SS:

Before me, a Notary Public in and for such County and State,  
personally appeared John A. Roberts Jr. + Wm. C. Roberts,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of August  
1990.

My Commission Expires:



Joey Sterling  
Notary Public

JOEY STERLING  
(Printed Name)

9022630

This instrument was prepared by E. Davis Coats, with the law firm  
Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 25 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

Greenburg

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Marian

Before me, a Notary Public in and for such County and State,  
personally appeared Greenburg,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:

7-13-90  
My County of Residence:  
Marian

Joey Sterling  
Notary Public

JOEY STERLING  
(Printed Name)

9022630

This instrument was prepared by E. Davis Coats, with the law firm  
Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 24 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

STATE OF INDIANA )  
COUNTY OF Mauw ) SS:

Before me, a Notary Public in and for such County and State,  
personally appeared Charles E. & Ann Y. [unclear],  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

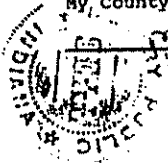
Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:

7-13-94

My County of Residence:

Mauw



Joey Sterling  
Notary Public

JOEY STERLING  
(Printed Name)

9022630

This instrument was prepared by E. Davis Coots, with the law firm  
Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.



CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 10 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

Anna Marie Breen  
Anna Marie Breen

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for such County and State,  
personally appeared Wendy + Anna Marie Breen,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:

7-13-94

My County of Residence:

Marion



Joey Sterling  
Notary Public

JOEY STERLING  
(Printed Name)

9022630

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Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 18 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

Robert & Mary Lou Klein

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Marian

Before me, a Notary Public in and for such County and State,  
personally appeared Robert & Mary Lou Klein,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

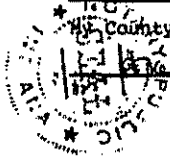
Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:

7-13-94

My County of Residence:

Marian



Joey Sterling  
Notary Public

JOEY STERLING  
(Printed Name)

9022630

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Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 20 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

*Royanna S. Grayton*  
*Ted S. Grayton*

STATE OF INDIANA )  
COUNTY OF Mauwun ) SS:

Before me, a Notary Public in and for such County and State,  
personally appeared Royanna S. + Ted S. Grayton  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

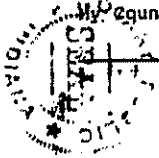
Witness my hand and Notarial Seal this 10<sup>th</sup> day of August  
1990.

My Commission Expires:

7-19-94

My County of Residence:

Mauwun



*Joey Sterling*  
Notary Public

JOEY STERLING  
(Printed Name)

9022630

This instrument was prepared by E. Davis Coats, with the law firm  
Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

CONSENT TO FIRST AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner of Lot 7 in  
Winterwood, hereby consents to the foregoing First Amendment to  
Declaration of Covenants and Restrictions of Winterwood.

*Philip C. Feigenbaum*  
*Philip C. Feigenbaum*

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for such County and State,  
personally appeared Philip C. Feigenbaum,  
who having been duly sworn, acknowledged the execution of the  
foregoing Consent to First Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of August,  
1990.

My Commission Expires:  
7-13-94  
My County of Residence:  
Marion

*Joey Sterling*  
Notary Public  
JOEY STERLING  
(Printed Name)



This instrument Recorded 9-12 1990  
Sharon K. Cherry, Recorder, Hamilton County, IN

90-2630

This instrument was prepared by E. Davis Coats, with the law firm  
Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, Indiana 46032.

9349187

SECOND AMENDMENT TO DECLARATION OF  
COVENANTS AND RESTRICTIONS OF WINTERWOOD

This Amendment is made on October 1, 1993, by Winterwood Property Owners' Association, Inc., ("Corporation"), an Indiana not-for-profit corporation, and witnesses the following:

WHEREAS, Klein, Bayley & Hoover Investment Company ("Declarant"), an Indiana partnership, recorded the Declaration of Covenants and Restrictions of Winterwood on August 24, 1982, in Miscellaneous Record 170, pages 586-644, as Instrument No. 37164 in the Hamilton County, Indiana, Recorder's Office;

WHEREAS, on August 24, 1982, Declarant recorded the Plat of Winterwood in Plat Book 9, pages 91-92, in the Hamilton County, Indiana, Recorder's Office;

WHEREAS, the Corporation recorded the First Amendment to Declaration of Covenants and Restrictions of Winterwood on September 12, 1990, as Instrument No. 90-22630, in the Hamilton County, Indiana, Recorder's Office;

WHEREAS the Corporation and all of the owners of lots 8, 9, 10, 18, 19, 20, 24, 25, and 26 in Winterwood except the owners of lot 20, desire to amend Article IX of the Covenants, in order to add an additional section defining the prescribed uses by such lot owners of the common area known as Block "A".

NOW, THEREOFRE, the Covenants are amended as follows:

There is hereby added to Article IX, Special Provisions Relating to Block "A", a Section 4 to read as follows:

Section 4. Prescribed Uses of Common Area. The following activities are designated as prescribed, permitted uses of Block "A" by the Owners of the Designated Lots:

- (a) Playing of recreational sports, such activities to include, but not necessarily be limited to football, baseball, soccer, volleyball, kite flying, croquet and frisbee throwing.
- (b) Nature hikes and the exercising of dogs, cats or other household pets.

This Instrument Recorded 10-12-1993  
Sharon K. Cherry, Recorder, Hamilton County, IN

RECORDED  
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OCT 12 1993  
HAMILTON COUNTY, IN

9349187

- (c) Social parties and events to include access to Block "A" by vehicle only by those specifically associated with that event. Clean up and any repairs to Block "A" would be the responsibility of the Owners of the Designated Lots hosting such an event.
- (d) Traffic for inspection and maintenance vehicles, including but not limited to lawn mowers as may be required for the proper care of Block "A".
- (e) Other uses consistent with the spirit and scope of the uses described in paragraphs (a) through (d) above. The preceding sentence is not intended to be an invitation to broaden the definition of permitted uses but to recognize the impossibility of expressing a comprehensive list of such uses. However under no circumstances shall the following uses be considered consistent with the spirit and scope of such permitted uses:

i) boarding nonhousehold animals (i.e. horses, cows, llamas, goats, pigs, etc.)

ii) traffic by motorized sport vehicles (i.e. go carts, minibikes, motorcycles, dirt bikes, all terrain vehicles, snowmobiles, etc.)

iii) construction of any permanent structure, recreational or otherwise (i.e. tennis courts, swimming pools, platform tennis, etc.)

iv) shooting of any type of firearms for any purpose.

IN WITNESS WHEREOF, the Corporation has executed this

9349187

Second Amendment as of the date first written above.

WINTERWOOD PROPERTY OWNERS' ASSOCIATION, INC.

By: [Signature]  
President

ATTEST:  
L. N. Bayless  
Secretary

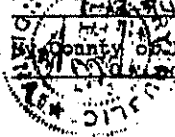
STATE OF INDIANA )  
COUNTY OF Hamilton ) SS:

Before me, a Notary Public in and for such County and State, personally appeared S. H. Bayless and Paul Steele, President and Secretary of Winterwood Property Owners' Association, Inc., who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 1st day of October, 1993.

My Commission Expires: \_\_\_\_\_

By County of Residence: \_\_\_\_\_



Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

htjc/baylal.b/826

CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner(s) of Lot 19 in Winterwood, acknowledges receipt of a copy of the Second Amendment to Declaration of Covenants and Restrictions of Winterwood and hereby consents to such amendment.

Cindy Stahl  
Paul M. Stahl

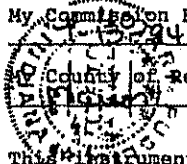
STATE OF INDIANA )  
COUNTY OF Hamilton ) SS:

Before me, a Notary Public in and for such County and State, personally appeared Cindy + Rick Stahl, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants and Restrictions of Winterwood, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 25<sup>th</sup> day of Sept., 1993.

My Commission Expires: \_\_\_\_\_

County of Residence: \_\_\_\_\_



Joey Sterling  
Notary Public

JOEY STERLINS  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of Coats, Herke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

h:tjc/baylal.a/826



CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner(s) of Lot 9 in Winterwood,  
acknowledges receipt of a copy of the Second Amendment to  
Declaration of Covenants and Restrictions of Winterwood and hereby  
consents to such amendment.

John Bayley  
Dianne J. Bayley

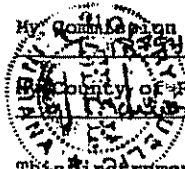
STATE OF INDIANA )  
COUNTY OF Hamilton ) SS:

Before me, a Notary Public in and for such County and State,  
personally appeared John + Dianne Bayley,  
who, having been duly sworn, acknowledged the execution of the  
foregoing Second Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 16<sup>th</sup> day of Sept,  
1993.

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_



Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of  
Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

htjc/baylal.a/826

9349187

**CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD**

The undersigned, being the owner(s) of Lot 26 in Winterwood, acknowledges receipt of a copy of the Second Amendment to Declaration of Covenants and Restrictions of Winterwood and hereby consents to such amendment.

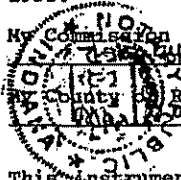
John A. Roberts Jr.  
Gillian E. Roberts

STATE OF INDIANA )  
COUNTY OF Madison ) SS:

Before me, a Notary Public in and for such County and State, personally appeared John A. Roberts Jr. + Gillian Roberts, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants and Restrictions of Winterwood, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 13<sup>th</sup> day of Sept., 1993.

My Commission Expires: \_\_\_\_\_  
County of \_\_\_\_\_ Residence: \_\_\_\_\_



Joeey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

h:tjc/baylal.a/826

9349187

CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner(s) of Lot 25 in Winterwood, acknowledges receipt of a copy of the Second Amendment to Declaration of Covenants and Restrictions of Winterwood and hereby consents to such amendment.

Janice Smulya

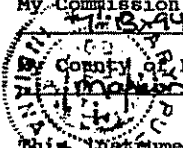
STATE OF INDIANA )  
COUNTY OF Harrison ) SS:

Before me, a Notary Public in and for such County and State, personally appeared Janice Smulya, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants and Restrictions of Winterwood, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 12<sup>th</sup> day of Sept., 1993.

My Commission Expires: 12-31-94

My County of Residence: Harrison



Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of Coats, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

h:tjc/baylal.a/826

9349187

CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner(s) of Lot 18 in Winterwood,  
acknowledges receipt of a copy of the Second Amendment to  
Declaration of Covenants and Restrictions of Winterwood and hereby  
consents to such amendment.

Wendy Himmels  
Wendy J. Himmels

STATE OF INDIANA )  
COUNTY OF Marion ) SS:

Before me, a Notary Public in and for such County and State,  
personally appeared Wendy J. Himmels,  
who, having been duly sworn, acknowledged the execution of the  
foregoing Second Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 13<sup>th</sup> day of Sept.,



Commission Expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of  
Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.  
h:tjc/baylal.a/826

CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner(s) of Lot 8 in Winterwood, acknowledges receipt of a copy of the Second Amendment to Declaration of Covenants and Restrictions of Winterwood and hereby consents to such amendment.

Lee's form  
Nancy Jordan

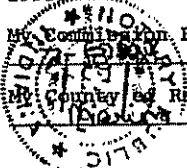
STATE OF INDIANA }  
COUNTY OF Marion } SS:

Before me, a Notary Public in and for such County and State, personally appeared Lee + Nancy Jordan, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants and Restrictions of Winterwood, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 14<sup>th</sup> day of Sept., 1993.

My Commission Expires:

My County of Residence:



Joey Sterlins  
Notary Public

JOEY STERLINS  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

h:tjc/baylal.a/826

9349187

CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

The undersigned, being the owner(s) of Lot 26 in Winterwood, acknowledges receipt of a copy of the Second Amendment to Declaration of Covenants and Restrictions of Winterwood and hereby consents to such amendment.

*Kathryn R. Miller*

STATE OF INDIANA )  
COUNTY OF Hamilton ) SS:

Before me, a Notary Public in and for such County and State, personally appeared Kathryn R. Miller, who, having been duly sworn, acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants and Restrictions of Winterwood, and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 16<sup>th</sup> day of Sept, 1993.

My Commission Expires:

11-13-94  
My County of Residence:

Hamilton

*Joey Sterling*  
Notary Public

JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of Coops, Danke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

hstjc/baylal.a/826

9349187

CONSENT TO SECOND AMENDMENT  
TO DECLARATION OF COVENANTS  
AND RESTRICTIONS OF WINTERWOOD

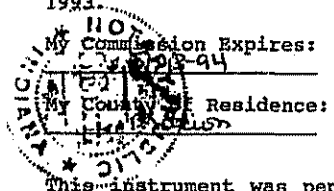
The undersigned, being the owner(s) of Lot 10 in Winterwood,  
acknowledges receipt of a copy of the Second Amendment to  
Declaration of Covenants and Restrictions of Winterwood and hereby  
consents to such amendment.

Anna Marie Breen  
[Signature]

STATE OF INDIANA }  
COUNTY OF Hamilton } SS:

Before me, a Notary Public in and for such County and State,  
personally appeared Anna Marie & Walt Breen,  
who, having been duly sworn, acknowledged the execution of the  
foregoing Second Amendment to Declaration of Covenants and  
Restrictions of Winterwood, and stated that the representations con-  
tained therein are true.

Witness my hand and Notarial Seal this 18th day of Sept.,  
1993.



Joey Sterling  
Notary Public  
JOEY STERLING  
(Printed Name)

This instrument was prepared by T. Jay Curts, with the law firm of  
Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel, IN 46032.

h:tjc/baylal.a/826





AGREEMENT MODIFYING COVENANTS  
AND RESTRICTIONS FOR WINTERWOOD

83 247

BOOK 173 PAGE 99

THIS AGREEMENT (hereinafter referred to as "the Agreement"), made as of the 30th day of December, 1982, by KLEIN, BAYLEY, HOOVER INVESTMENT CO., INC., an Indiana corporation (hereinafter referred to as "Declarant") and the other parties signatory hereto hereinafter defined and designated as "Other Signatories"),

WITNESSETH:

WHEREAS, the following facts are, or are deemed for all purposes of this Agreement to be, true:

- A. Klein, Bayley & Hoover Investment Company, an Indiana partnership (hereinafter referred to as the "Original Owner"), as the owner of the real estate in Hamilton County, Indiana, more particularly described as follows:

The West Half of the Southeast Quarter of Section 3, Township 17 North, Range 3 East, situated in Clay Township, Hamilton County, Indiana, containing 81.502 acres, more or less.

for the purpose of creating a residential community thereon, has heretofore executed and recorded the following instruments affecting said real estate:

- (1) Declaration of Covenants and Restrictions of Winterwood, dated August 19, 1982, and recorded August 24, 1982, in Miscellaneous Book 170, pages 586 through 644, inclusive, in the office of the Recorder of Hamilton County, Indiana (the "Declaration"); and
- (2) Plat of Winterwood Subdivision, an addition in Hamilton County, Indiana (the "Subdivision"), dated August 24, 1982, and recorded August 24, 1982, in Plat Book 9, pages 91 and 92, in the office of the Recorder of Hamilton County, Indiana (the "Plat").

- B. Original Owner has conveyed and transferred to Declarant (1) lots 1 through 39, both inclusive, in the Subdivision, as shown on the Plat, constituting all of the lots in the Subdivision, (2) Block "A" in the Subdivision, as shown on the Plat, (3) the private street in the Subdivision shown and identified on the Plat as "Winterwood", and (4) all of the rights of Original Owner as the "Declarant" under the Declaration and as the "Developer" and "Subdivider" under the Plat, by virtue of all of which Original Owner has no further ownership of or interest in any portion of the real estate described in paragraph A above.

This Instrument Recorded Jan 7 1983  
MARY L. CLARK, RECORDER, HAMILTON COUNTY, IND.

- C. Declarant has conveyed and transferred to Winterwood Property Owners Association, Inc., an Indiana not-for-profit corporation (the "Homeowners Association"), said Block "A" and said private street, and the Homeowners Association is now the owner of said Block "A" and said private street subject to no liens or encumbrances other than the lien of real estate taxes not yet due and payable and easements and restrictions or record.

RECEIVED  
FOR REC.  
JAN 7 2 50 PM '83  
MARY L. CLARK  
RECORDER  
HAMILTON CO., IND.

MISC. 173

99

D. Declarant is the owner of all of the lots in the Subdivision, except for lots 14, 19 and 25 therein (hereinafter referred to collectively as the "Conveyed Lots"), subject to no liens or encumbrances other than the lien of real estate taxes not yet due and payable, that certain Real Estate Mortgage from Original Owner, as mortgagor, to American Fletcher National Bank and Trust Company, as mortgagee, recorded March 11, 1982, in Mortgage Record 420, pages 795 and 796, in the office of the Recorder of Hamilton County, Indiana, and easements and restrictions of record.

E. The Conveyed Lots are now owned by the following persons (said persons, together with the Homeowners Association, being herein designated and referred to as the "Other Signatories"), subject to no liens or encumbrances other than the lien of real estate taxes not yet due and payable, easements and restrictions of record, and the respective mortgages or other encumbrances, if any, as noted, to-wit:

Lot 14 Owned by Ronald J. Kniess and Renee Kniess, Husband and Wife. Mortgage to Carmel Bank and Trust Company dated September 8, 1982, recorded September 14, 1982, in Mortgage Record 426, page 407, in the Hamilton County Recorder's office.

Lot 19 Equitably owned by Cindy Lee Steele, as purchaser under Conditional Sales Contract with Declarant as seller, dated November 22, 1982, recorded November 29, 1982, in Miscellaneous Record 171, page 713, in the Hamilton County Recorder's office.

Lot 25 Owned by Jeffrey H. Smulyan and Janine G. Smulyan, Husband and Wife. Mortgage to The Fidelity Bank of Indiana dated October 13, 1982, recorded October 18, 1982, in Mortgage Record 428, page 22, in the Hamilton County Recorder's office.

F. Paragraph 20 of the Plat Covenants included in the Plat provided for the installation by "Developer"

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in the "Access Easement" crossing Lots 4, 5 and 6, as shown on the Plat, of a connecting access roadway to provide private driveway serving said Lots 4, 5 and 6 with access to the "Winterwood" private street, which installation might include a landscaped area or island. Such connecting access roadway and a landscaped island have now been so installed in such "Access Easement" crossing said Lots 4, 5 and 6 (said connecting access roadway, including concrete curbing, and landscaped island therein, as so improved, being herein referred to as the "Access Road Improvements").

- G. Declarant and the Other Signatories desire, as hereinafter provided, to modify, amend and supplement the Plat and the Declaration to the extent necessary to provide that the obligation and responsibility for the maintenance, upkeep and repair of the Access Road Improvements, as now existing or hereafter improved by the Homeowners Association, shall be that of the Homeowners Association rather than of the owners of said Lots 4, 5 and 6, and to provide that the cost of such maintenance, upkeep and repair shall be deemed to be a part of the Common Expenses (as defined and described in the Declaration) to be charged and assessed against and payable by the owners of all Lots in the Subdivision and not merely the owners of said Lots 4, 5 and 6.
- H. Paragraph 19 of the Plat Covenants included in the Plat provided, in part, for a "Maintenance Access Easement" across and adjacent to the common lot lines of lots 20, 21 and 24 as shown on the Plat, as an easement solely for the benefit and use of the Homeowners Association to provide it with a means of both vehicular and pedestrian access to Block "A" as shown on the Plat to permit the Homeowners Association to perform its maintenance obligations with respect to Block "A" as provided in the Declaration, which "Maintenance Access Easement" is located in the area shown shaded on Exhibit "A" attached hereto and hereby incorporated herein by reference and identified thereon as "Existing Maintenance Access Easement To Be Released And Abandoned" (said area being hereinafter referred to as the "Old Maintenance Access Easement Area").
- I. Declarant and the Other Signatories desire, as hereinafter provided, to modify, amend and supplement the Plat and the Declaration to the extent necessary to provide for relocation of such "Maintenance Access Easement" from the Old Maintenance Access Easement Area to the area affecting parts of lots 9, 10, 16, and 18 in the Subdivision as shown on the Plat, which area is shown shaded on the attached Exhibit "A" and identified thereon as "New Maintenance Access Easement" (hereinafter referred to as the "New Maintenance Access Easement Area"), and to release and abandon any rights in the "Maintenance Access Easement" over the Old Maintenance Access Easement Area.

NOW, THEREFORE, in consideration of the premises, and in consideration of the mutual benefits and advantages derived and to be derived by each of the parties hereto by reason of and on account of the imposition of the amended, modified and supplemented restrictions hereinafter set forth, the receipt and sufficiency of which consideration are hereby acknowledged by each party signatory hereto, Declarant and the Other Signatories hereby stipulate, covenant, agree and declare that all of the Lots in the Subdivision

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shall be, and the same are hereby made, subject to the following amended and supplemental restrictions, and each of them, each of which is declared to be a covenant running with the land, to be binding upon anyone at any time owning any part or portion of such land, to-wit:

1. Notwithstanding anything to the contrary contained in the Declaration or contained in or shown upon the Plat (including, but not limited to, paragraph 20 of the Plat Covenants included in the Plat and Article VII of the Declaration), the Access Road Improvements (as heretofore defined herein) and all portions of the "Access Easement" crossing Lots 4, 5 and 6 in the Subdivision as shown on the Plat which lie between (a) the southerly, southeasterly and southwesterly edges of the concrete curb of the connecting access roadway installed in such "Access Easement" (and which constitutes a part of the Access Road Improvements) and (b) the lot lines of said Lots 4, 5 and 6 which abut and are co-extensive with the right-of-way line of the Winterwood private street adjacent to said Lots (including but not limited to the landscaped island located therein), shall be maintained and kept in repair by the Homeowners Association as though the same were part of the "Common Area" (as defined in the Declaration), and the costs and expenses of such maintenance, upkeep and repair shall be assessed as part of the general assessment against the owners of all Lots in the Subdivision and such costs and expenses shall be considered part of the "Common Expenses" (as defined in the Declaration). The owner of each of said Lots 4, 5 and 6 shall maintain and keep in repair at his own expense and without contribution from the owner of any other Lot all such portions of such "Access Easement" which affect his Lot but which are located outside the portions thereof which are to be maintained by the Homeowners Association as hereinabove provided.
  
2. Notwithstanding anything to the contrary contained in the Declaration or contained in or shown upon the Plat (including, but not limited to, paragraph 19 of the Plat Covenants included in the Plat), Declarant and the Other Signatories (including the Homeowners Association) hereby agree that any and all references in the Declaration or in the Plat to a "Maintenance Access Easement" shall be deemed and construed to mean and refer solely to a "Maintenance Access Easement" over and across the New Maintenance Access Easement Area affecting lots 9, 10, 16 and 18 in the Subdivision, as shown shaded on Exhibit "A" hereto, and no other portion of the Subdivision. In furtherance of the foregoing, Declarant and the Other Signatories hereby grant to the Homeowners Association, as a "Maintenance Access Easement", an easement over and across the New Maintenance Access Easement Area solely for the benefit and use of the Homeowners Association to provide it with a means of both vehicular and pedestrian access to Block "A" to permit the Homeowners Association to perform its maintenance obligations with respect to Block "A" as provided in the Declaration. Further, Declarant and the Other Signatories (including the Homeowners Association) hereby release and abandon any "Maintenance Access Easement" over and across the Old Maintenance Access Easement Area affecting lots 20, 21 and 24 (or other lots or portions thereof) as shown shaded on Exhibit "A"; provided, however, that the foregoing release and abandonment relates solely

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to the "Maintenance Access Easement" over and across the Old Maintenance Access Easement Area, and shall not be deemed or construed to be a release or abandonment by the Homeowners Association or any other person or party of any other existing easements or rights in, to, across, through, under or affecting the Old Maintenance Access Easement Area, such as, but not limited to, drainage easements or utility easements.

3. Declarant represents, warrants and acknowledges that the statements set forth in the foregoing recital paragraphs A, B, C, D, F and H are true, accurate and correct, that the lots in the Subdivision owned by Declarant are subject to no liens or encumbrances except as noted in said recital paragraphs, and that the portions of the Subdivision owned by the Homeowners Association are subject to no liens or encumbrances except as noted in said recital paragraphs.
4. Each of the owners of the Conveyed Lots represents, warrants and acknowledges (but solely as to the Conveyed Lots indicated in the foregoing recital paragraph E to be owned by him) that the statements set forth in the foregoing recital paragraph E are true, accurate and correct, that he is the sole owner of said Conveyed Lots indicated therein to be owned by him, and that said Conveyed Lots are subject to no liens or encumbrances except as noted in said recital paragraph E.
5. The above and foregoing restrictions and the terms of this Agreement are imposed, not in substitution for, but as amendatory of and supplemental to the restrictions and terms heretofore imposed by the Plat and the Declaration, and both the restrictions and terms of this Agreement and those of the Plat and Declaration shall remain in full force and effect except only insofar as the restrictions and terms of this Agreement may be or are inconsistent with those of the Plat and Declaration, to which extent said prior restrictions of the Plat and Declaration are hereby declared to be amended and modified.
6. The terms, covenants and provisions of this Agreement shall run with and bind all land within the Subdivision so long as the Declaration and Plat Covenants contained in the Plat are in effect, and may only be amended, extended, modified, changed or terminated in the same manner as provided for in the Declaration and Plat. Any reference to the masculine, feminine or neuter gender herein shall be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.
7. Declarant and the Other Signatories (including the Homeowners Association) who have executed this Agreement have executed the same for the purpose of agreeing to all of the terms and provisions thereof and agreeing that the respective portions of the Subdivision owned by each of them are subject to all of the terms and provisions of the Declaration and Plat as amended, modified and supplemented by this Agreement. The Homeowners Association also executes this Agreement in accordance with the requirements of this Declaration.

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IN WITNESS WHEREOF, Declarant and the Other Signatories have executed this Agreement as of the day and year first hereinabove set forth.

ATTEST:  
[Signature]  
E. H. Bayley, Secretary

WINTERWOOD PROPERTY OWNERS  
ASSOCIATION, INC.  
By: [Signature]  
R. V. Klein, President

ATTEST:  
[Signature]  
L. H. Bayley, Secretary  
[Signature]  
Ronald J. Knies

KLEIN, BAYLEY, HOOVER  
INVESTMENT CO., INC.  
By: [Signature]  
R. V. Klein, President

[Signature]  
Renee Knies  
[Signature]  
Cindy Lee/Steale

[Signature]  
Jeffrey H. Smulyan

[Signature]  
Jahine G. Smulyan

COMMISSION'S CERTIFICATE

UNDER AUTHORITY PROVIDED BY PUBLIC LAW 309,  
ACTS OF 1981, ENACTED BY THE GENERAL ASSEMBLY  
OF THE STATE OF INDIANA, AND ALL ACTS AMENDATORY  
THEREUNTO, AND AN ORDINANCE ADOPTED BY THE COMMON  
COUNCIL OF THE CITY OF CARMEL, INDIANA, THE  
FOREGOING "AGREEMENT MODIFYING COVENANTS AND  
RESTRICTIONS FOR WINTERWOOD" WAS GIVEN APPROVAL  
BY THE CITY OF CARMEL, INDIANA, AS FOLLOWS:

Adopted by the Carmel City Plan Commission  
at a meeting held December 21, 1982.

CARMEL CITY PLAN  
COMMISSION

[Signature] Secretary      [Signature] President

This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

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STATE OF INDIANA )  
COUNTY OF ) SS:

BOOK 173 PAGE 105

Before me, a Notary Public in and for said County and State, personally appeared R. J. Klein and L. H. Bayley, the President and Secretary, respectively, of WINTERWOOD PROPERTY OWNERS ASSOCIATION, INC., an Indiana not-for-profit corporation, who acknowledged the execution of the foregoing instrument for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained made by said corporation are true.

Witness my hand and Notarial Seal this 30th day of December, 1982.

Debra L. Hodike  
Notary Public



My Commission Expires: June 28, 1986  
My County of Residence: Marion

STATE OF INDIANA )  
COUNTY OF ) SS:

Before me, a Notary Public in and for said County and State, personally appeared R. J. Klein and L. H. Bayley, the President and Secretary, respectively, of KLEIN, BAILEY, HOOVER INVESTMENT CO., INC., an Indiana corporation, who acknowledged the execution of the foregoing instrument for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained made by said corporation are true.

Witness my hand and Notarial Seal this 30th day of December, 1982.

Debra L. Hodike  
Notary Public

My Commission Expires: June 28, 1986  
My County of Residence: Marion



STATE OF INDIANA

COUNTY OF

} SS:

BOOK 173 PAGE 106

Before me, a Notary Public in and for said County and State, personally appeared RONALD J. KNISS and RENEE KNISS, Husband and Wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed, and who, having been duly sworn, stated that the representations therein contained made by them are true.

Witness my hand and Notarial Seal this 3rd day of ~~December, 1982~~ January, 1983.

NOTARY PUBLIC  
S.K.A.T.  
My Commission Expires: June 28, 1986  
My County of Residence: Marion

Debra L. Uodike  
Notary Public

STATE OF INDIANA

COUNTY OF

} SS:

Before me, a Notary Public in and for said County and State, personally appeared CINDY LEE STEELE, an adult, who acknowledged the execution of the foregoing instrument as her voluntary act and deed, and who, having been duly sworn, stated that the representations therein made by her are true.

Witness my hand and Notarial Seal this 3rd day of ~~December, 1982~~ January, 1983.

NOTARY PUBLIC  
S.K.A.T.  
My Commission Expires: June 28, 1986  
My County of Residence: Marion

Debra L. Uodike  
Notary Public

STATE OF INDIANA

COUNTY OF

} SS:

Before me, a Notary Public in and for said County and State, personally appeared JEFFREY H. SMULYAN and JANINE G. SMULYAN, Husband and Wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed, and who, having been duly sworn, stated that the representations therein contained made by them are true.

Witness my hand and Notarial Seal this 6th day of ~~December, 1982~~ January, 1983.

NOTARY PUBLIC  
S.K.A.T.  
My Commission Expires: June 28, 1986  
My County of Residence: Marion  
\* This instrument was prepared by Dixon B. Dann, Attorney-at-Law.

Debra L. Uodike  
Notary Public

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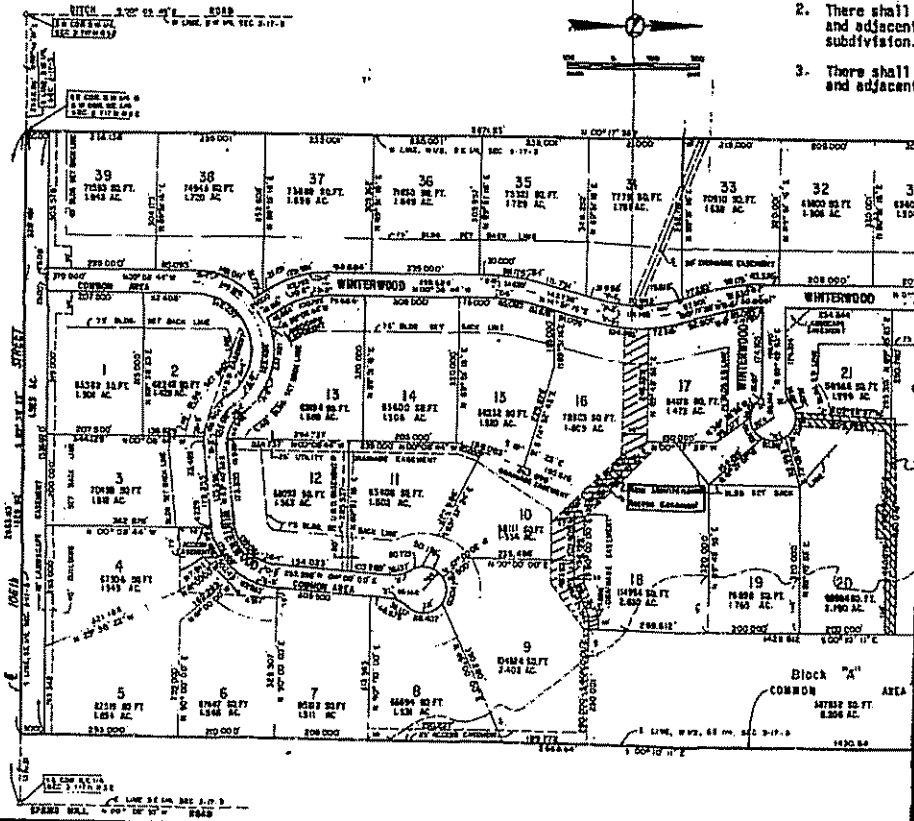
# WINTERWOOD SUBDIVISION

## EXHIBIT "A"

BOOK 173 PAGE 107

NOTE: In addition  
as follows:

1. There shall  
common lot  
from each lot  
lot line east  
which enclose
2. There shall  
and adjacent  
subdivision.
3. There shall  
and adjacent



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# WINTERWOOD SUBDIVISION

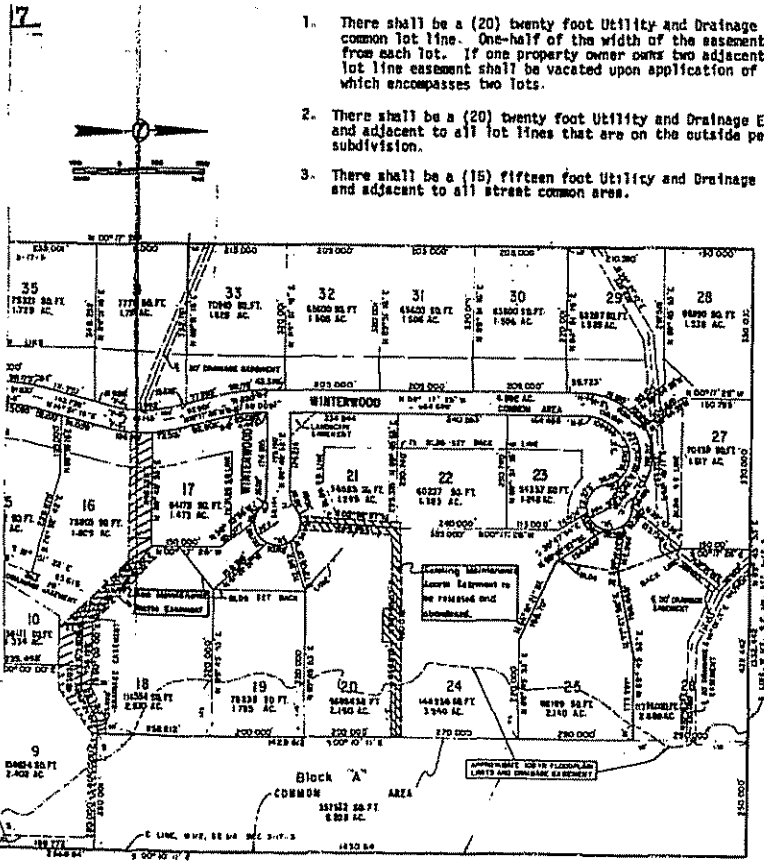
## EXHIBIT "A"

BOOK 173 PAGE 108

NOTE: In addition to the easements shown there shall be easements described as follows:

1. There shall be a (20) twenty foot Utility and Drainage Easement at every common lot line. One-half of the width of the easement shall be taken from each lot. If one property owner owns two adjacent lots, the common lot line easement shall be vacated upon application of a Building Permit which encompasses two lots.
2. There shall be a (20) twenty foot Utility and Drainage Easement inside and adjacent to all lot lines that are on the outside perimeter of the subdivision.
3. There shall be a (15) fifteen foot Utility and Drainage Easement outside and adjacent to all street common area.

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# WINTERWOOD SUBDIVISION

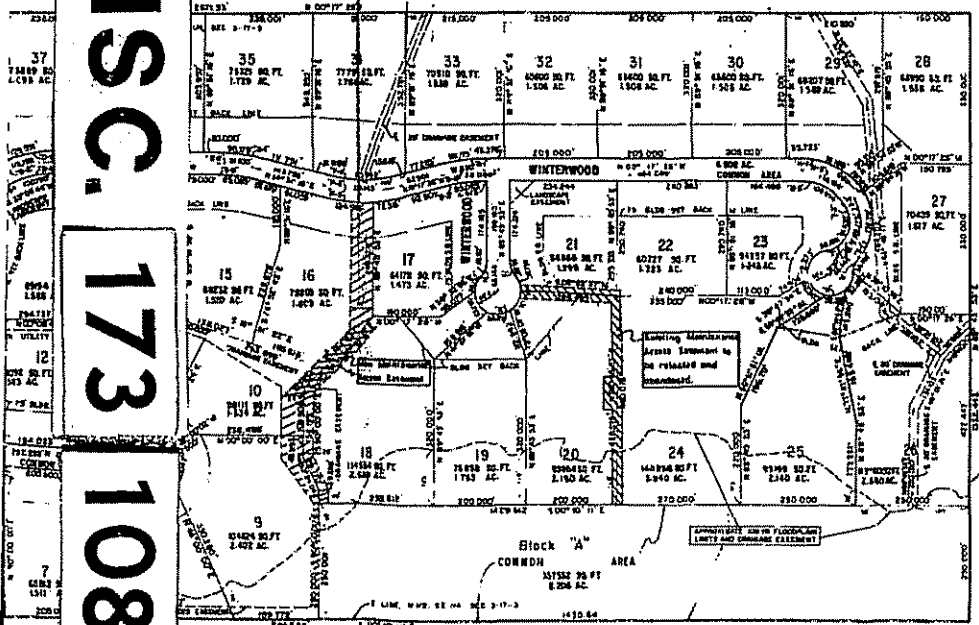
## EXHIBIT "A"

BOOK 173 PAGE 108

NOTE: In addition to the easements shown there shall be easements described as follows:

1. There shall be a (20) twenty foot Utility and Drainage Easement at every common lot line. One-half of the width of the easement shall be taken from each lot. If one property owner owns two adjacent lots, the common lot line easement shall be vacated upon application of a Building Permit which encompasses two lots.
2. There shall be a (20) twenty foot Utility and Drainage Easement inside and adjacent to all lot lines that are on the outside perimeter of the subdivision.
3. There shall be a (15) fifteen foot Utility and Drainage Easement outside and adjacent to all street common area.

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The undersigned, AMERICAN FLETCHER NATIONAL BANK AND TRUST COMPANY, a national banking association, being the holder of the following described Mortgage on the real estate owned by Klein, Bayley, Hoover Investment Co., Inc. described in the above and foregoing Agreement, to-wit:

Real Estate Mortgage from Klein, Bayley & Hoover Investment Company dated March 4, 1982, and recorded March 11, 1982, in Mortgage Record 420, pages 795 and 796, in the office of the Recorder of Hamilton County, Indiana,

hereby consents to the execution and recording of the above and foregoing Agreement Modifying Covenants and Restrictions for Winterwood ("Agreement"), and the undersigned further agrees that its Mortgage with respect to said real estate shall be subject to the terms and provisions of the Declaration and Plat referred to in the Agreement, as amended, modified and supplemented by said Agreement; provided, however, except and to the extent that said Mortgage is modified by this Consent, such Mortgage shall remain in full force and effect, unaltered and enforceable in accordance with its terms.

EXECUTED this 7th day of January, 1983  
~~December, 1982~~

AMERICAN FLETCHER NATIONAL BANK AND TRUST COMPANY

ATTEST:

Charles A. Kessler

Mack Newbold

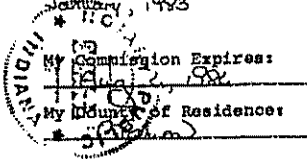
STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Mack Newbold and Charles A. Kessler, by me known, and by me known to be the Vice President and Vice President, respectively, of AMERICAN FLETCHER NATIONAL BANK AND TRUST COMPANY, a national banking association, who acknowledged the execution of the above and foregoing Consent for and on behalf of said association for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this 7th day of

~~December, 1982~~  
~~January, 1983~~

Mary E. Myers  
Mary E. Myers, Notary Public



This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

MISC. 173

109

The undersigned CARMEL BANK AND TRUST COMPANY, an Indiana corporation, being the holder of the following described Mortgage on Lot 14 in Winterwood, an addition in Hamilton County, Indiana, as per plat thereof recorded in Plat Book 9, pages 91 and 92, in the office of the Recorder of Hamilton County, Indiana, to-wit:

Real Estate Mortgage from Ronald J. Kniess and Renee Kniess dated Septamber 8, 1982, and recorded September 14, 1982, in Mortgage Record 426, pages 407-410, inclusive, in the office of the Recorder of Hamilton County, Indiana,

heraby consents to the execution and recording of the above and foregoing Agreement Modifying Covenant. and Restrictions for Winterwood ("Agreement"), and the undersigned further agrees that its Mortgage with respect to said real estate shall be subject to the terms and provisions of the Declaration and Plat referred to in the Agreement, as amended, modified and supplemented by said Agreement; provided, however, except and to the extent that said Mortgage is modified by this Consent, such Mortgage shall remain in full force and effect, unaltered and enforceable in accordance with its terms.

EXECUTED THIS 16<sup>th</sup> day of ~~December~~, <sup>January</sup>, 1983, 1982.

CARMEL BANK AND TRUST COMPANY

ATTEST:

Jane H. Zinn

By: J. Barnes, Pres.



STATE OF INDIANA )  
COUNTY OF HAMILTON ) SS:

Before me, a Notary Public in and for said County and State, personally appeared C. Jeffrey Barnes and \_\_\_\_\_, by me known, and by me known to be the President \_\_\_\_\_ and \_\_\_\_\_ respectively, of CARMEL BANK AND TRUST COMPANY, an Indiana corporation, who acknowledged the execution of the above and foregoing Consent for and on behalf of said corporation for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this 6<sup>th</sup> day of ~~December~~, <sup>January</sup>, 1983, 1982.

My Commission Expires: 2-28-86 Jean Vonsh Notary Public  
Hamilton County

My County of Residence: Hamilton

This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

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The undersigned, THE FIDELITY BANK OF INDIANA, CARMEL, INDIANA, a national banking association, being the holder of the following described Mortgage on Lot 25 in Winterwood, an addition in Hamilton County, Indiana, as per plat thereof recorded in Plat Book 9, pages 91 and 92, in the office of the Recorder of Hamilton County, Indiana, to-wit:

Real Estate Mortgage from Jeffrey H. Smulyan and Janine G. Smulyan, dated October 13, 1982, and recorded October 18, 1982, in Mortgage Record 428, pages 22-24, inclusive, in the office of the Recorder of Hamilton County, Indiana,

hereby consents to the execution and recording of the above and foregoing Agreement Modifying Covenants and Restrictions for Winterwood ("Agreement"), and the undersigned further agrees that its Mortgage with respect to said real estate shall be subject to the terms and provisions of the Declaration and Plat referred to in the Agreement, as amended, modified and supplemented by said Agreement; provided, however, except and to the extent that said Mortgage is modified by this Consent, such Mortgage shall remain in full force and effect, unaltered and enforceable in accordance with its terms.

EXECUTED THIS 10th day of ~~December, 1982~~ <sup>January, 1983</sup>

THE FIDELITY BANK OF INDIANA, CARMEL, INDIANA

ATTEST:

Helen H. Weesner  
HELEN H. WEESNER

By: Carl R. Tuttle II  
Carl R. Tuttle, II

STATE OF INDIANA  
COUNTY OF HAMILTON

} SS: This instrument recorded Jan 7 1983  
MARY L. CLARK, RECORDER/HAMILTON COUNTY, IND.

Before me, a Notary Public in and for said County and State, personally appeared Carl R. Tuttle, II and ~~the President of the Fidelity Bank~~ <sup>by me known</sup>, and by me known to be the Vice President and Loan Officer, respectively, of THE FIDELITY BANK OF INDIANA, CARMEL, INDIANA, a national banking association, who acknowledged the execution of the above and foregoing Consent for and on behalf of said association for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this 10th day of ~~December, 1982~~ <sup>January, 1983</sup>

Cheryl Lynn Wellner  
Cheryl Lynn Wellner, Notary Public

My Commission Expires: August 30, 1986  
My County of Residence: Hamilton

This instrument was prepared by Dixon B. Dann, Attorney-at-Law.

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DECLARATION OF COVENANTS AND RESTRICTIONS OF WINTERWOOD

This Declaration (hereinafter referred to as "the Declaration" or "this Declaration"), made this 19 day of August, 1982, by KLEIN, BAYLEY & HOOVER INVESTMENT COMPANY, an Indiana partnership (hereinafter referred to as "Declarant"),

1st Amend. See 9022630 Rec 9-12-90

For agreement modifying Covenants & Restrictions See Book 173 Page 99-111 Recorded 1-7-83

WITNESSETH:

WHEREAS, Declarant is the owner of the real estate in Hamilton County, State of Indiana, more particularly described as follows:

This Instrument Recorded August 24 1982 MARY L. CLARK, RECORDER, HAMILTON COUNTY, IND.

The West Half of the Southeast Quarter of Section 3, Township 17 North, Range 3 East, situated in Clay Township, Hamilton County, Indiana, the perimeter of said half-quarter-section being described as follows:

Beginning at the Southwest corner of said half-quarter-section; thence North 00°17'26" West along the West line thereof 2671.53 feet to the Northwest corner thereof; thence North 89°45'53" East along the North line thereof 1332.44 feet to the Northeast corner of said half-quarter-section; thence South 00°10'11" East along the East line thereof 2668.64 feet to the Southeast corner thereof; thence South 89°38'23" West along the South line thereof 1326.82 feet to the point of beginning, containing 81.502 acres.

Subject to all legal highways and rights-of-way, and to all easements, covenants, conditions, restrictions, limitations and other matters of record

(hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with private streets, specifically designated landscaped areas, open spaces, fences and other common areas and amenities for the benefit of such residential community, to be known as "WINTERWOOD"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

This document referred to in Document No.

9349187

Rec. 10-12-93

WHEREAS, Declarant deems ~~it desirable~~, for the efficient preservation of the ~~values and amenities~~ <sup>as to Declarant's</sup> in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Winterwood Property Owners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

#### ARTICLE I.

##### Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended;



- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- (d) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration;
- (e) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;
- (f) "Committee" shall mean and refer to the "Winterwood Development Control Committee", the same being the committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (g) "Common Areas" shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not Lots (and which are not dedicated to the public), whether such plat is heretofore or hereafter recorded, (ii) to the extent hereinafter established, such portions of the Real Estate as are herein declared to be Common Areas even though located on or constituting part of one or more Lots, (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots or portions of the Real Estate which are not Lots, or both; PROVIDED, HOWEVER, that the street shown, or to be shown, on a subdivision plat of the Real Estate as "Winterwood", and all of the several parts thereof, and noted, or to be noted, on such plat as "Common Area" shall, for all purposes, be considered a part of the Common Areas;
- (h) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (i) "Corporation" shall mean and refer to Winterwood Property Owners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;
- (j) "Declarant" shall mean and refer to Klein, Bayley & Hoover Investment Company, an Indiana partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

- (k) " Dwelling Unit " shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family;
- (l) " Lot " shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit, as designated by Declarant by its deed of the same to another Person. A Lot will not necessarily be the same as any single numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, a " Lot " may be (i) any single numbered parcel of land identified as a lot on such a subdivision plat, (ii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iii) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the Real Estate constitutes a " Lot " for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Dwelling Unit;
- (m) " Mortgagee " shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (n) " Owner " shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;
- (o) " Person " shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (p) " The Real Estate " shall mean and refer to the parcel of real estate in Hamilton County, Indiana described in the first recital clause of this Declaration, and defined therein as the Real Estate;
- (q) " Restrictions " shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time;
- (r) " Site Plan " shall mean and refer to the preliminary plan reflecting Declarant's proposed development of the Real Estate, a copy of which is attached hereto as Exhibit " A " and hereby incorporated herein by reference.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

Declaration; Common Areas and Rights Therein

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Committee and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the Committee, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas (except for such portions of the Common Areas as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Lots to the exclusion of other Lots), subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. Without limiting the generality of the foregoing, each Owner, his tenants, invitees

and guests, shall have, and is hereby granted, a non-exclusive easement and right of ingress to, egress from and access between his Lot and 106th Street, for pedestrian and vehicular traffic, upon, over and across the private street shown, or to be shown, on a subdivision plat of the Real Estate as "Winterwood", and the several parts thereof, the approximate location of which private street is shown on the Site Plan (herein referred to as the "Street"). It is intended that the Street shall be a private street and not for public use; provided, however, the Street may be dedicated to the public by the Corporation if the Street is acceptable to the public authority receiving the same without improvement thereof by the Owners or the Corporation and such dedication is approved in writing in advance by at least two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) and Owners other than Declarant; provided, further, that improvements to the Street for the purposes of dedication and making the same acceptable to such public authority, and the assessment of the cost thereof to the Owners, shall be subject to and require the approval of the Owners of two-thirds (2/3) of the Lots. In addition to the Owners, their tenants, invitees and guests, all public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, post office vehicles and privately owned delivery vehicles shall have the right to enter upon and use the Street for ingress to, egress from and access between the Lots and 106th Street in the performance of their duties.

### ARTICLE III

#### Obligations of Declarant as to Common Areas

##### Section 1. Construction and Conveyance of Street.

Declarant has constructed, or will construct, the Street at the approximate locations shown on the Site Plan, and, prior to the

conveyance of any Lot, Declarant covenants that it will convey the Street to the Corporation by a special warranty deed free and clear of all liens and encumbrances except the lien of current real estate taxes and assessments, legal highways and rights-of-way, all easements, covenants, conditions, restrictions and other matters of record, and any rights, interests and easements therein referred to herein or in any subdivision plat of the Real Estate.

Section 2. Agreement to Construct and Convey Other Common Areas. Declarant has constructed or provided for, or will construct or provide for, Common Areas (in addition to the Street) consisting of the following items:

- (a) a storm drainage system for the Real Estate, which may include inlet pipes, open ditches, swales, pipes and other structures and drainage courses;
- (b) the installation, in the areas shown on the Site Plan as "Landscape Easements" and in any islands, cul-de-sac or cul-de-loop areas within the right-of-way of the Street, of fences, walls, landscaping, other screening material, street directories and street signs; and
- (c) the provision of the area shown and depicted on the Site Plan as "Block 'A'" (and herein referred to as "Block 'A'") as open space.

Upon final construction or provision of the Common Areas described in this Section 2, Declarant covenants to convey all of his right, title and interest in and to said Common Areas to the Corporation and all such right, title and interest in and to said items (whether owned in fee, by leasehold or in the nature of an easement or license) shall then be the property of the Corporation (subject to the possible divestiture of ownership of Block "A" as hereinafter provided), whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Areas located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein, as described in Article II, Section 2 of this Declaration.

Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

- (a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B member shall be entitled to five (5) votes for each Lot of which it is the Owner and five (5) votes for each single numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Corporation, (ii) the date Declarant no longer owns any Lots nor any portion of any single numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or (iii) December 31, 1988 (the applicable date being herein referred to as the "Applicable Date").

Section 3. Functions. The Corporation has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration.

#### ARTICLE V

##### Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: R.J. Klein, L.H. Bayley and Robert M. Hoover, Jr. (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined

as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. Subject to the provisions of Section 2 of this Article V, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for



a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date,

the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (b) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided directly to Owners by utility companies) and snow removal from the Street;
- (c) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Areas;
- (d) surfacing, paving and maintaining the Street;
- (e) assessment and collection from the Owners of the Owners' respective share of the Common Expenses;
- (f) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (i) procuring and maintaining for the benefit of the Corporation, the Owners and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (j) paying taxes assessed against and payable with respect to the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas.

Section 7. Powers of the Board of Directors. The

Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties.

These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas;
- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and
- (h) to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more utility easements shown upon and identified as utility easements on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

Section 8. Limitation on Board Action. After the

Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- (c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action,

suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 13. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant

shall have, and Declarant hereby reserves to itself, the exclusive right to manage the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date.

#### ARTICLE VI

##### Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

#### ARTICLE VII

##### Maintenance, Repairs and Replacements

Section 1. By Owners. Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly

perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 2. By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

- (a) those portions of the Real Estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Corporation shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside any perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate; and
- (b) landscaping and other items installed in the areas of the "Landscape Easements" and in the right-of-way of the Street.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Areas (or items

deemed Common Areas for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purposes.

#### ARTICLE VIII

##### WINTERWOOD DEVELOPMENT CONTROL COMMITTEE

Section 1. Creation. There shall be, and hereby is, created and established the "Winterwood Development Control Committee" (the "Committee") to perform the functions provided to be performed by it hereunder or under any subdivision plat of the Real Estate. Until the Applicable Date, the Declarant, or not more than three (3) persons designated by it, shall constitute the Committee. After the Applicable Date, the Committee shall be a standing committee of the Corporation consisting of three (3) or more Persons as may, from time to



time, be provided in the By-Laws. If the By-Laws do not, at any time, provide for the Committee, then the Board shall be and constitute the Committee.

Section 2. Character of the Real Estate.

A. In General. Every Lot in the Real Estate, unless it is otherwise designated by the Declarant, is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house and such outbuildings as are usually accessory to a single family dwelling house.

Prior to issuance of an Improvement Location Permit, a delineation of the building area for each Lot shall be submitted to the Committee for approval by the Committee, and all trees outside the building, driving and parking areas shall be designated by type and size and shall not be removed unless approved by the Committee upon proof of unusual hardship in the practical utilization of the Lot and such removal shall not cause a material adverse effect upon the aesthetic values of adjoining lands and rights-of-way. Trees inside the building area shall not be destroyed, but shall be moved to other areas of the Lot, unless they exceed 12" in diameter and cannot be moved.

Unpermitted removal or destruction of trees by an Owner or his successors in title, other than by acts of God or circumstances beyond the Owner's control, shall, within ninety (90) days after notice in writing from the Committee, be replaced by a tree of a type and size established by the Committee, and upon failure to do so, the Committee shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the Lot collectable in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For purposes of executing this covenant, an easement for ingress and egress shall be and hereby is reserved on each Lot for the performance thereof.

Adequate physical barriers, such as straw bales or snow fence, shall be provided by builders to protect trees to be

preserved from damage by construction equipment or otherwise in the erection of building improvements. Pruning of trees outside the building line shall be permitted subject to the review and approval of the Committee and shall be undertaken only by qualified persons having adequate equipment to properly protect and preserve such trees.

In addition to individual site plan restrictions and tree preservation administered by the Committee, platted building lines, minimum distances between buildings and minimum front, side and rear building lines shall be as established on any plat of the Real Estate. Since the entire perimeter of the Real Estate is heavily wooded, additional ornamental plantings or other landscape devices should be minimal with primary emphasis being placed upon preservation of natural amenities, and enforced by the Committee as herein stated.

B. Residential Use of Accessory Outbuildings Prohibited.

No accessory outbuildings shall be erected on any of the Lots prior to the erection thereon of a single family dwelling house, and in no event shall any such accessory outbuilding or any temporary structure which may be constructed upon a Lot subject to these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of same design and materials as the primary structure.

C. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

Section 3. Restrictions Concerning Size, Placement and Maintenance of Dwelling Houses and Other Structures.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on the Lots shall be as specified in the recorded plat of the Real Estate.

B. Residential Size and Set-Back Requirements. Lot

size and set-back requirements shall be as set forth on the recorded plat of the Real Estate.

C. Mailboxes. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Real Estate, any mailbox must be approved by the Committee as to size, location, height, and composition before it is installed. A standard mailbox design will be prepared by the Committee, and such design shall be the standard for all mailboxes.

D. Exterior Construction. The finished exterior of every building constructed or placed on any Lot shall be of material other than aluminum siding, rollbrick siding or any other similar artificial material. All driveways must be paved from their point of connection with the abutting street or road to a point of connection with the garage apron.

E. Heating Plants and Garages. Every house in the Real Estate must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Real Estate must have at least a two-car garage, attached or detached, and of the same architectural design and materials as the house.

F. Diligence in Construction. Every building whose construction or placement on any Lot is begun shall be completed within eighteen (18) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

G. Prohibition of Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

H. Maintenance of Lots and Improvements. The Owner of any Lot shall at all times maintain the Lot and any improvements

situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iv) Cut down and remove dead trees;
- (v) Where applicable, prevent debris and foreign material from entering drainage areas;
- (vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
- (vii) Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.

I. Declarant's and the Corporation's Right to Perform Certain Maintenance. In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Declarant, until the Applicable Date, and, thereafter, the Corporation shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof to the Declarant or the Corporation shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Corporation, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

Section 4. Provisions Respecting Disposal of Sanitary Waste.

A., Nuisances. No outside toilets shall be permitted on any Lot (except during a period of construction and then only

with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

B. Construction of Sewage Lines. All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of Hamilton County.

Section 5. General Prohibitions.

A. In General. No noxious or offensive activities shall be carried on on any Lot, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot.

B. Signs. Except as otherwise permitted by any plat of the Real Estate or the Committee, no signs or advertisements shall be displayed or placed on any Lot or structures without the prior written approval of the Committee.

C. Animals. No animals shall be kept or maintained on any Lot except the usual household pets, and, in such cases, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be screened in such a manner that it is enclosed in a garage.

E. Garbage, Trash and Other Refuse. No Owner of a Lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph F below. All houses shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Real Estate at any time, except at the times when refuse collections are being made.

G. Model Homes. No Owner of any Lot shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot, nor shall any overnight camping be permitted on any Lot.

I. Ditches and Swales. It shall be the duty of every Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subparagraph I.

J. Utility Services. Utility services shall, to the greatest extent possible, be installed underground and in or adjacent to public rights-of-way to minimize removal of trees.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots, nor shall any septic tanks be installed on any of the Lots, without the approval of the Committee.

Section 6. Committee's Functions.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions, and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. For these purposes, the Committee may, from time to time and at any time, make, amend and modify such rules, regulations and guidelines as it may deem necessary or desirable to guide Owners as to the terms, conditions, procedures and requirements of the Committee for the submission and approval of items to it. Such rules, regulations and guidelines may, in addition, set forth additional specifications to those set forth herein or in any subdivision plat of the Real Estate, so long as the same are not inconsistent with this

Declaration or any such subdivision plat. Attached hereto as Exhibit "B" and hereby incorporated herein by reference are the initial "Guidelines For Architectural Control" adopted by Declarant as the initial Committee.

- (i) Generally. No dwelling, building, structure or improvement of any type or kind shall be constructed or placed on any Lot without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4"=1' and all plot plans shall be drawn to a scale of 1"=30', or to such other scale as the Committee shall require. There shall also be submitted, where applicable, such other permits or reports as may be required under this Declaration. The following drawings shall be considered minimum for approval study:
- (a) Site plan which includes complete topographic study, location of all trees, proposed structures, drives, septic location, utility service, terraces and all landscape details (including size of all plantings and type); and
  - (b) Foundation plan, floor plans, cross-sections, exterior elevations, interior elevations, electrical drawings, interior details, and complete specifications for all materials to be used both inside and outside the house, building, structure or other improvement.
- (ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:
- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions or any rules, regulations or guidelines adopted by the Committee;
  - (b) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

- (c) the proposed improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other Owners.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within 30 days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor.

C. Liability of Committee. Neither the Committee, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

Section 7. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit.



Special Provisions Relating to Block "A"

Section 1. In General. It is Declarant's present intention that Block "A", as shown on the Site Plan, will be included in Declarant's development of the Real Estate as open space, to be maintained in its natural unimproved state. As noted on the Site Plan, substantially all of Block "A" lies within the flood plain and a drainage easement which is a part of the storm drainage system for the Real Estate.

Section 2. Declaration as Common Area. Such portions or all of Block "A" as may be shown on any recorded subdivision plat of the Real Estate as such shall be, and the same are hereby declared to be, a part of the Common Areas. However, notwithstanding anything to the contrary contained herein, the benefit, use and enjoyment of Block "A" shall be limited to the Owners from time to time of Lots 7, 8, 9, 18, 19, 20, 24, 25 and 26 as shown on the Site Plan (said Lots being herein referred to as the "Designated Lots"), and shall not be for the benefit, use or enjoyment of any other Lots in the Real Estate. If at any time a majority of the Owners of the Designated Lots elect to terminate the character and status of Block "A" as Common Areas, they shall have the right to do so, which election shall be made by the delivery to the resident agent of the Corporation of a written statement to that effect signed by a majority of the Owners of the Designated Lots. Upon receipt of such written election, the Corporation shall convey to the respective Owners of each of Lots 18, 19, 20, 24, 25 and 26 the respective portions of Block "A" lying easterly of said Lots 18, 19, 20, 24, 25 and 26, from the western boundaries of said last mentioned Lots to the eastern boundary of the Real Estate, which conveyances shall be made by quitclaim deeds. Upon the execution of such quitclaim deeds, Block "A" shall lose its status and character as Common Areas and shall no longer be deemed or considered Common Areas; the respective portions of Block "A" shall thereafter be deemed and considered to be additions

to and portions of the Lot to the Owner of which such conveyances of such portion has been made; all of such portions of Block "A" shall remain subject to any drainage easements and utility easements in existence immediately prior to such conveyances, but any access easements created solely for the purpose of providing anyone with a means of access to Block "A" shall be deemed and considered vacated and abandoned upon such conveyances being made; and, upon and after any such conveyances, the Owners of Lots 7, 8 and 9 shall have no further right, title or interest in or to, or the use, benefit or enjoyment of any part of, Block "A".

Section 3. Maintenance of Block "A" and Assessment for the Cost Thereof. If, and so long as, Block "A" is part of the Common Areas, the Corporation shall have the same rights, powers, duties and obligations with respect thereto as it has with respect to Common Areas in general, including, but not limited to, matters of maintenance of the same for the purposes for which it is designed and insurance covering the same. However, and notwithstanding anything to the contrary contained herein, all portions of the Common Expenses attributable to Block "A" shall be assessed solely against the Owners of the Designated Lots and, for such purposes, any budgets or assessments made or imposed by the Corporation shall segregate all costs and expenses attributable to Block "A", including an appropriate portion of any costs and expenses which relate to both Block "A" and other portions of the Common Areas, and the same shall be included in assessments of the Common Expenses to the Owners of the Designated Lots only.

#### ARTICLE X

##### Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public

accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton County or Marion County, Indiana selected from time to time by the

Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot except to the extent portions of the Common Expenses are to be assessed against the Designated Lots only in accordance with Article IX hereof. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of

the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annually or quarterly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest

therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (subject to the requirements of Article IX hereof) (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on

behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being charged by American Fletcher National Bank & Trust Company to its largest and best corporate customers (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board).

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments



and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Corporation against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

#### ARTICLE XI

##### Mortgages

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws

or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

Section 2. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article X hereof.

## ARTICLE XII

### Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the

amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which

may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas (including Block "A" if and so long as it is Common Areas) and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance

companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and

for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XIII

Casualty and Restoration

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares (subject to the requirements of Article IX hereof). Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as

good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

#### ARTICLE XIV

##### Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Areas shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Committee unless otherwise expressly authorized herein, or in any recorded subdivision plat, or by the rules, regulations and guidelines of the Committee.
- (e) No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.
- (f) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.
- (h) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.
- (i) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board.
- (j) Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited



to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real estate at any time.

Section 2. Non-applicability to Corporation. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in Section 1 of this Article XIV shall not apply to or be binding upon the Corporation in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Corporation in the performance of its duties, obligations and responsibilities as to the Common Areas.

#### ARTICLE XV

##### Amendment of Declaration

Section 1. Generally. Except as otherwise provided

in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XII of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Article XIII of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.
- (f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation,

the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, or (e) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

ARTICLE XVI

Acceptance and Ratification

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All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVII

Negligence

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay

the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

ARTICLE XVIII

Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Hamilton County, Indiana and expiring December 31, 2007, after which time they shall be automatically extended for successive periods of ten (10) years each, unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Corporation, the Owners, the Committee, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XIX

Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.


Section 3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, KLEIN, BAYLEY & HOOVER INVESTMENT COMPANY, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

KLEIN, BAYLEY & HOOVER INVESTMENT  
COMPANY

By:   
R.J. Klein, Partner

And By:   
L.H. Bayley, Partner

This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

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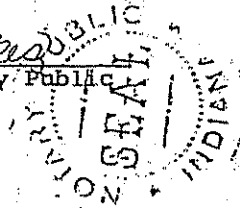
Before me, a Notary Public in and for said County and State, personally appeared R.J. Klein and L.H. Bayley, partners of KLEIN, BAYLEY & HOOVER INVESTMENT COMPANY, an Indiana partnership, who acknowledged the execution of the above and foregoing instrument as their voluntary act and deed as such partners for and on behalf of said partnership for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 19th day of August, 1982.

My Commission Expires:  
12/30/85

*Deborah L. Stokes*  
Deborah L. Stokes, Notary Public

My County of Residence:  
Hendricks



This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

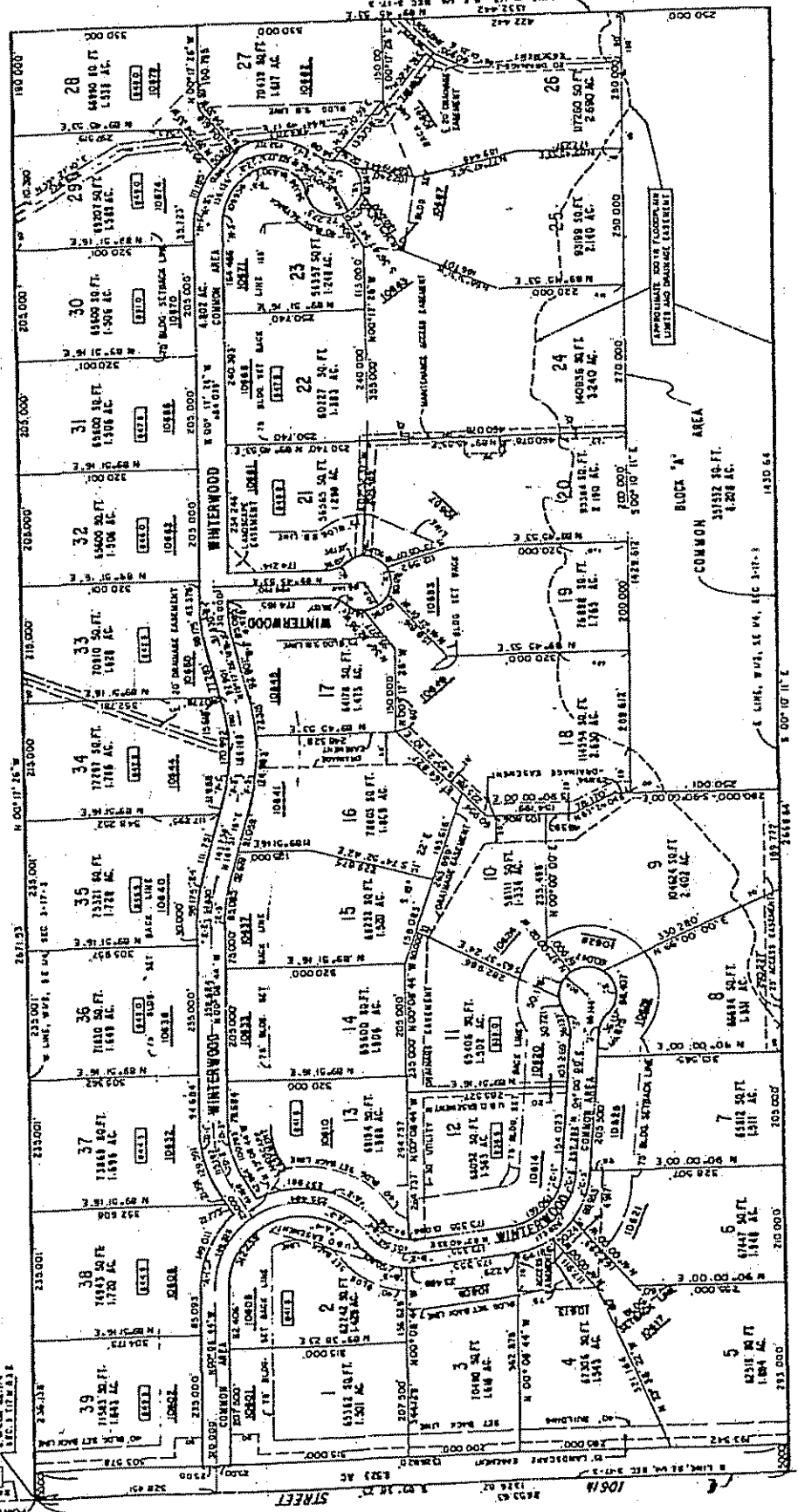
WINTERWOOD COMMON AREA

Exhibit A



QUICK 1.000' 05.45' ROAD  
1.000' 05.45' W. LINE, S.W. 1/4, SEC. 3-17-1

SEC. 3-17-1  
1.000' 05.45' W. LINE, S.W. 1/4, SEC. 3-17-1





Pursuant to the Declaration of Covenants and Restrictions of Winterwood (herein referred to as the "Declaration"), the Winterwood Development Control Committee (herein referred to as the "Committee") is charged with the responsibility of preserving and enhancing the values of properties subject to the Declaration and to maintain a harmonious relationship among structures and the natural vegetation and topography of said properties. For these purposes, the Committee has the right to promulgate and enforce rules, regulations and guidelines to regulate the external design, appearance, use, location and maintenance of lands and improvements thereon subject to the Declaration. In order to satisfy this responsibility, the Committee has the right to take the following action:

- a. Approve or disapprove plans and specifications for all proposed new construction on land subject to the Declaration.
- b. Approve or disapprove plans and specifications for all improvements of property on land subject to the Declaration.

The following guidelines for all construction on and improvement of the land subject to the Declaration are hereby adopted by the Committee for guidance to property owners in preparing and submitting plans and specifications to the Committee for its considerations. These guidelines may be changed, modified and amended by the Committee at any time, and from time to time, on a prospective basis; provided, however, that no such change, modification or amendment of these guidelines shall be applied by the Committee retroactively as to any construction theretofore completed nor as to the construction of any improvement which has previously been formally approved by the Committee if such construction has been commenced or is commenced within ninety (90) days after such change, modification or amendment of these guidelines is effective. Any change, modification or amendment of these guidelines shall be set forth in a written instrument and recorded in the office of the Recorder of Hamilton County, Indiana, and shall be effective upon recording.

NOTE: NO NEW CONSTRUCTION OR IMPROVEMENT TO AN EXISTING STRUCTURE MAY BE INITIATED WITHOUT PRIOR WRITTEN APPROVAL FROM THE COMMITTEE.

While the Declaration provides that the Committee shall have up to 30 days for the approval or rejection of submitted plans, the Committee will make every effort to complete its review process in a shorter period when necessary to accommodate the needs of property owners.

#### I. NEW CONSTRUCTION APPROVAL

In order to create and maintain a high quality residential development on the subject property, certain criteria for all new construction has been established by the Committee.

##### 1. GENERAL REQUIREMENTS FOR NEW CONSTRUCTION

While detailed construction requirements may vary by specific areas or sections of the property, the general requirements are set forth below.

- a. Square Footage. All sections or areas for single family residences have minimum square footage requirements which are or will be specified on the record plat of the property. The square footage of a residence as referred to on such plat shall not include porches, terraces, garages, carports, accessory buildings or basements.
- b. Tree Preservation. The Declaration provides that no tree outside of the building, driveways and parking areas of a lot shall be removed without the prior written approval of the Committee and such approval shall only be granted upon proof of unusual hardship in the practical utilization of the lot. Accordingly, all plot plans submitted to the Committee for approval shall designate thereon all trees outside of the building and

parking areas. The removal or destruction of any such trees without the consent of the Committee shall result in liability of the owner of such lot to replace said trees with trees of like kind, quality and size.

- c. Colors and Materials of Homes. Colors of homes and improvements are, generally, to be subdued, earthen tones or white and compatible with other structures in the immediate area. The Committee discourages the use of aluminum siding on homes, as well as all fake stone and brick substitutes, and reserves the right to reject the same.
- d. Front Yards. By applicable zoning ordinance, the "front yard" of a lot is considered to be that area between the public street frontage and the house regardless of how the house is faced. For purposes of these guidelines and the Declaration, where access to a lot is by means of a private (rather than public) street, "front yard" shall be considered to be the area between such private street frontage and the house.
- e. Erosion Control and Tree Protection Measures. During periods of construction of a home or improvements on a lot, the builder shall provide adequate physical barriers such as straw bales or snow fencing in order to protect trees from damage by construction equipment and related activities. In addition, builders shall be required to exercise erosion control measures to prevent silt transportation to the main drainage ways. Builders shall provide appropriate temporary seeding of disturbed earth areas and temporary wood or straw bale dams to restrict silt-sediment transportation. The owner or owners of a lot shall be responsible for the performance of all requirements of these guidelines by builders and contractors employed or engaged by or through such owner or owners.

## 2. PLANS AND SPECIFICATIONS TO BE SUBMITTED TO COMMITTEE

In order to properly review proposed construction, and to aid owners in obtaining an Improvement Location Permit, the Committee has established the following minimum specifications. All plans and specifications must be submitted for approval IN DUPLICATE.

- a. All plans, drawings and blueprints of proposed homes are to be of professional quality and drawn to a scale of not less than  $1/4" = 1'$ . All plot plans shall be drawn to a scale of not less than  $1" = 30'$ . The following drawings shall be considered minimum for approval study by the Committee:
  - (1) Site plan which includes complete topographic study, location of all trees, proposed structures, drives, septic location, utility service, terraces and all landscape details (including size and type of all plantings).
  - (2) Foundation plan, floor plans, cross-sections, exterior elevations, interior elevations, electrical drawings, interior details, and complete specifications for all materials to be used both inside and outside the house.
- b. The following plans are to be submitted for each element of new construction: front elevation, rear elevation, side elevations, floor plan of each floor, foundation plan, and interior details and elevations and sections.
- c. Specifications of or for all major building material, i.e., brick, stone, wood, etc., shall be shown on or submitted with the plans.
- d. The site plan shall show and identify the following items: proposed location of house and driveway on lot; location of any easements; location of proposed fences, screening, walkways, walls and complete landscape details showing type and size of all plantings, existing and proposed grades, location of all trees outside of the building and parking areas; and the type of trees designated on the plot plan. NOTE: A sample plot plan is available for review by contacting the Committee.

## 3. METHOD OF APPROVAL OR DISAPPROVAL

The Committee shall review plans and specifications submitted to it by reference to a "Checklist of Compliance", a copy of the form of which is attached to these Guidelines. Upon approving a set of plans, the Committee shall stamp both sets of plans: "Approved, Winterwood Development Control Committee, By \_\_\_\_\_, Date: \_\_\_\_\_" and keep one set of plans for

its files. The second set of plans bearing such approval will be returned to the lot owner who will need the same, together with the Checklist as approved by the Committee in order to obtain an Improvement Location Permit (Building Permit) for the construction of a home or improvements. If the Committee disapproves the plans, written notice of such fact shall be given to the lot owner and shall specify the reason or reasons for such disapproval.

## II. ARCHITECTURAL GUIDELINES

As noted previously, any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Committee before any work is undertaken. The Committee has established the following guidelines for specific types of construction and improvements on land subject to the Declaration. Any addition, exterior alteration or change to an existing building shall be compatible with the design character of the original building. Any new detached structures (if permitted) shall be compatible with the existing structure.

### 1. FENCES, WALLS AND SCREENING

It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Committee when reviewing fences for approval. Except for decorative fences, fences shall not be nearer to the front of a home than the rear foundation line of a home. The Committee discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review.

a. Height restriction. The Committee is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve fences up to 4 feet in height which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where the rear line of a lot abuts a major arterial roadway or other clearly unique circumstances exist. The use of 6 foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area will be permitted. The specific fence height restrictions are as follows:

- (1) Property fencing and walls above grade shall not exceed 4 feet above grade unless otherwise approved by the Committee.
- (2) The Committee will not ordinarily approve any proposed fence which exceeds 4 feet in height unless the rear line of that lot abuts a major arterial roadway or offers some other circumstance clearly unique to that lot.
- (3) Patio screens/privacy fences shall not exceed 6 feet in height.

b. Materials and finish.

- (1) Wood fencing or screening will be approved if the design is in conformity with the architectural design of the community.
- (2) The Committee will not approve an application for the installation of a chain link or other galvanized metal fencing unless it is vinyl coated or covered with similar coated material.
- (3) All fencing or screening should preferably have finished material on both sides. If only one side has finished materials, that side must face the public side or adjoining property.
- (4) Walls above grade should be constructed of natural stone masonry or attractive timber.

## 2. LANDSCAPING AND PLANTINGS

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Landscape improvements are considered by the Committee to be terraces, retaining walls, unusual vegetation coverings, walks, bank treatment, detached patios, and cabanas. With respect to these improvements the applicant shall submit:

- a. Two copies of plot plan showing location of the proposed improvements on the lot, existing grades at the nearest property line with proposed finished grades as applicable to the improvement.
- b. Two copies of such additional plans as may in the Committee's opinion be required in order to evaluate the appearance of the improvement and type of construction including the type of material used, the color of the finished improvement and the type of vegetation, if any.

As noted previously, the removal of any tree located outside a building, driveway or parking area of a lot requires the prior written approval of the Committee. The intent and purpose of this restriction is to preserve the natural environmental quality of the land to as great an extent as possible.

Trees, hedges and shrubs which restrict sight lines for vehicular traffic shall be cut back or removed. Special landscaping beyond that normally associated with a single family residence must be approved by the Committee prior to installation. The owner of each lot shall establish a satisfactory lawn by seeding or sodding the lot as soon as possible following completion of a home, weather conditions permitting.

## 3. EXTERIOR ANTENNAS

Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any lot owner on the exterior of a house or on a lot. The Committee believes that inside attic antennas are technically sufficient to serve homes to be built on the property.

## 4. SWIMMING POOLS

Swimming pools must have the approval of the Committee before any work is undertaken. Permanent backyard pools will be approved by the Committee only after careful consideration of the potential effect of such a pool on neighboring properties.

An application for the construction of a swimming pool will not be considered unless the application is accompanied by an application for an acceptable fence design. The design shall conform to county or municipal regulations for such fencing. Use of plantings in the vicinity of the proposed pool will be required to soften the effect of sound on adjacent property.

## 5. TENNIS COURTS, RACQUETBALL COURTS, PADDLE BALL COURTS, ETC.

Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities will be approved by the Committee only after thorough consideration of the potential effect of such a structure or use on neighboring properties. The Committee will not approve non-baffled lighted courts or facilities. An application for the construction of any such facility will not be considered unless the application is accompanied by an application for an acceptable fence design. It is recommended by the Committee that any fencing be of a wood composition in order to blend in with the surrounding properties and soften the effect on adjacent property.

## 6. DRIVEWAYS AND PATIOS

All driveways must be paved with asphalt or concrete. Extensions, widening, or rerouting of existing driveways must have the approval of the Committee prior to construction.

## 7. RETAINING WALLS AND BANK TREATMENTS

Any retaining wall must be approved by the Committee before installation is initiated. Retaining walls which divert ground water onto adjoining properties or which otherwise substantially change the existing drainage pattern will not be approved.

8. SOLAR HEATING SYSTEMS

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The Committee acknowledges the increased use of residential solar heating systems which utilize solar heating panels and related equipment. The Committee will carefully review solar heating plans to insure that their use and location have a minimum detrimental effect on adjoining properties.

9. PLAY EQUIPMENT

Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Committee provided such equipment is not more than six feet high, maintained by the lot owner in good repair (including painting) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view. Equipment higher than six feet shall require approval of the design, location, color, material and use by the Committee.

10. MAILBOX UNIFORM DESIGN

In order to preserve the overall aesthetic appearance of the properties subject to the Declaration, any mailbox must be approved by the Committee as to size, location, height and composition before it may be installed. The specifications for the type of mailbox that will be approved by the Committee can be obtained by contacting the Committee.

11. MISCELLANEOUS

All exterior lighting shall be directed in such a manner so as not to create annoyance to adjacent properties.

Trash and garbage containers shall not be permitted to remain conspicuous except on days of trash collection.

Lot owners shall keep garage doors closed at all times except during times of actual use of the garage facility. All garage doors must have automatic closing devices.

Collapsible and removable clothes lines will be permitted by the Committee, but permanent clothes lines will not be approved by the Committee.

III. ADDITIONAL STANDARDS

1. All lot owners will be required to furnish and install dusk-to-dawn light fixtures at all driveway entrances to their lots, the style and type of which will be selected by the Committee and shall be the standard for the entire property subject to the Declaration. The fixtures shall disperse low ground light for the drive entrances and shall feature the address number of the house the drives serve.
2. All roofing of structures on the property shall be shake shingle, tile or a minimum of 300#/square asphalt shingle.
3. All interior trim shall be of custom design, of architectural merit, as no standard lumber yard mouldings will be accepted.
4. All construction lumber shall be kiln dried, construction grade. All sub-floors shall be 3/4" tongue and groove (T&G) plywood with waterproof adhesive applied to each joist or 1" x 6" solid boards or approved equal.
5. All insulation shall comply with Indianapolis Power & Light Company minimum requirements for electrically heated homes.
6. All windows will be weatherstripped and thermopane or double glazed.
7. All homes shall have a minimum water service line of 1" cooper, but larger homes shall be sized to represent the number of bathrooms and utilities being served.
8. Minimum standards for hardware would be Sledge Georgian series. All doors must be supplied with three hinges. All exterior doors shall be weatherstripped with metal weatherstripping.

9. All basements shall have a minimum 1/8" coating of waterproofing material, reinforced by fiberglass netting, and shall be constructed with total perimeter drains and interior drains connected to either gravity drains or sump pumps. Should sump pumps be required, there shall be two required and they shall be staged so that the second one will activate should the primary one fail. All crawl space walls shall require the application of at least a single layer of waterproofing material of not less than 1/16" in thickness.

10. All construction trades performing work on any structure or other improvement on any lot in the property subject to the Declaration will be expected to do their work in a professional manner, and in accordance with all standards published by the recognized trade councils of their respective industries, and it shall be understood that all work performed in such property shall be of the highest quality. It is not the duty or the responsibility of the Committee to supervise or inspect the quality of construction performed by the construction trades, but should the Committee discover what it considers "low quality work" or work being performed which is not in accordance with the plans approved by the Committee, the holder of the building permit for the work in question shall be notified and the work shall be corrected to a professional standard and made to conform to the approved plans.

Should the decision of the Committee be challenged by the holder of the building permit, such challenge shall be in writing and served upon the Committee accompanied by a certified letter from an Architect registered to practice in the State of Indiana and bearing his signed seal stating that, in his professional opinion, the work is considered "acceptable".

Should the Committee still disagree and feel the work is substandard, a panel of three architects will be chosen to review the work and their majority vote shall constitute the final determination as to what, if any, action is required. Should such panel of architects rule the work substandard, then the work shall be re-executed to professional standards within thirty days or the building permit may be voided or suspended and a stop work order issued by the appropriate authority. In any case in which such a panel of architects is to make a determination hereunder, one such architect shall be selected by the Committee, one by the holder of the building permit, and the third by the two so selected. If either party fails to select its architect and advise the other of such selection within five (5) days after the date upon which the Committee notifies the holder of the building permit that it still feels the work is substandard, then the single architect selected by one of the parties shall serve alone as the panel of architects to make such final determination. Neither the developer of the property subject to the Declaration nor any member of the Committee shall at any time have any liability whatsoever to the owner of any lot in such property or to any holder of a building permit for any improvements to be located thereon nor to any other person for any determination or decision made by the Committee in the exercise of its duties and responsibilities or for any actions taken or attempts made by the developer or the Committee to enforce quality construction practices in the subject property.

11. The manufacturer's printed instruction and directions for the application or installation of their products shall always constitute the minimum standard for the application or installation of that product.

\* \* \* \* \*

**CHECKLIST OF COMPLIANCE  
WINTERWOOD ADDITION**

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**1. General Information:**

- (A) Lot No.: \_\_\_\_\_
- (B) Complete name(s) of owner(s) of record: \_\_\_\_\_
- (C) Size of House to be constructed on Lot:
  - (1) Number of Stories: \_\_\_\_\_
  - (2)(a) 1st Floor square footage: \_\_\_\_\_ square feet. \_\_\_\_\_
  - (b) 2nd Floor square footage: \_\_\_\_\_ square feet. \_\_\_\_\_
  - (c) Total square footage: \_\_\_\_\_ square feet. \_\_\_\_\_

**2. Site Plan:**

- (A) Prepared by: \_\_\_\_\_
- (B) Latest revision date: \_\_\_\_\_
- (C) Required information:
  - (1) Topography. \_\_\_\_\_
  - (2) Trees shown. \_\_\_\_\_
  - (3) House location. \_\_\_\_\_
  - (4) Septic. \_\_\_\_\_
  - (5) Utilities. \_\_\_\_\_
  - (6) Landscaping. \_\_\_\_\_
  - (7) Driveway and Sidewalk Plan. \_\_\_\_\_
  - (8) Fences. \_\_\_\_\_
  - (9) Miscellaneous (other): \_\_\_\_\_

**3. Construction (Working) Drawings:**

(A) Type of Plan/Drawing:	(B) Prepared By:	(C) Latest Revision Date
(1) Foundation Plan	_____	_____
(2) Floor Plan	_____	_____
(3) Cross Sections	_____	_____
(4) Four (4) Elevations	_____	_____
(5) Interior Details	_____	_____
(6) Specifications	_____	_____
(7) Electrical Plans	_____	_____
(8) Roof Plan	_____	_____
(9) Drainage Plan	_____	_____
(10) Materials Shown	_____	_____
(11) Trim Details	_____	_____
(12) Miscellaneous (other):	_____	_____

**4. Architectural Design:** \_\_\_\_\_

**5. Owner's Request For Approval:** The undersigned, owner or owners of the Lot in the Winterwood Addition Identified above (collectively, "Owner"), as an inducement to the Winterwood Development Control Committee ("Committee") to consider the approvals herein requested, hereby states and certifies (A) that he is the sole owner of said Lot, (B) that the information set forth in Items 1, 2 and 3 above is true and correct, and (C) that the plans and drawings identified above and submitted herewith to the Committee are the only plans and drawings being considered for approval by the Committee. The undersigned represents, warrants and agrees that all construction upon and improvement of the subject Lot will be performed in accordance with such plans and drawings as finally approved by the Committee. The undersigned acknowledges and understands that any changes in plans and drawings, after the approval of those submitted to the Committee, must be re-submitted to the Committee for its consideration and ultimate approval. The undersigned further agrees to abide by all of the terms, provisions and requirements of the Declaration of Covenants and Restrictions of Winterwood, the subdivision plat of Winterwood, the Guidelines For Architectural Control governing Winterwood and the requirements of Winterwood Property Owners Association, Inc. and the Committee. The undersigned hereby requests approval by the

Committee of the plans and drawings identified above and submitted herewith to the Committee.

Dated: \_\_\_\_\_, 198\_\_.

Witness: \_\_\_\_\_ Owner(s): \_\_\_\_\_

(Note: All owners of record must sign the Request for Approval.)

\* \* \* \* \*

6. Action by Committee:

(A) Date this Checklist and all plans and drawings referred to herein were received by the Committee: \_\_\_\_\_, 198\_\_.

(B) Plans and drawings are:

(1) Disapproved since they are incomplete in the following respects: \_\_\_\_\_

(2) Disapproved for the following reasons: \_\_\_\_\_

(3) Approved as submitted and the Committee hereby authorizes the issuance by the Building Commissioner, in his discretion, of an improvement location permit and a building permit for the construction reflected on the plans and drawings approved by the Committee, each page of which bears the "Approved" stamp of the Committee, subject, however, to revocation of any such permits in accordance with the provisions of the Declaration of Covenants and Restrictions of Winterwood.

(C) Date of action by the Committee: \_\_\_\_\_, 198\_\_.

(D) The foregoing action by the Committee is valid only when this Checklist is executed by the Committee and the seal of the Committee is impressed hereon:

{Seal}

WINTERWOOD DEVELOPMENT CONTROL COMMITTEE

By: \_\_\_\_\_

\* \* \* \* \*

Instructions:

The applicant for approval of any construction upon or improvement of a Lot (that is, the owner or owners of such Lot) must complete this Checklist by supplying all information required under Items 1, 2 and 3 hereof. The applicant must then date and execute the Request for Approval (Item 5), have his signature witnessed, and submit this Checklist in duplicate, together with two (2) copies of all plans and drawings referred to herein, to the Committee for its action.

\* \* \* \* \*