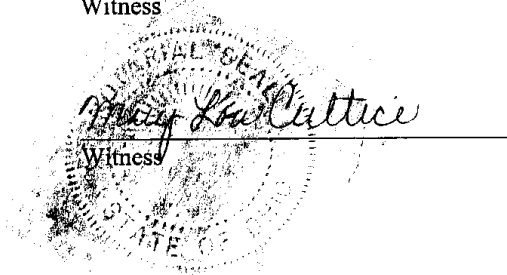


IN WITNESS WHEREOF, the undersigned have hereunto set their hand as of the 28th of June, 2000.

Signed and acknowledged
in the presence of:

R. Lorraine Hurley
Witness

Marjorie J. Brenner
Marjorie J. Brenner, Owner



John F. Brenner
Witness

John F. Brenner
John F. Brenner, Owner

STATE OF OHIO }
 } SS:
COUNTY OF GREENE }

The foregoing instrument was acknowledged before me this 29th day of June, 2000,
by Marjorie J. Brenner and John F. Brenner, Declarant.

R. Lorraine Hurley
Notary Public
R. LORRAINE HURLEY, Notary Public
In and for the State of Ohio
My Commission Expires August 1, 2000

Buyer Initials

PREPARED BY: PICKREL SCHAEFFER & EBELING

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KAREN J. WRIGHT
GREENE CO. RECORDER
XENIA, OHIO

**DECLARATION OF
SUBDIVISION RESTRICTIVE COVENANTS
FOR
WINDEMERE, [REDACTED]
GREENE COUNTY, OHIO**

VOL 1437 PG 136

(THE "DECLARANT"), BEING THE OWNER OF THE ABOVE DESCRIBED PROPERTY (THE "PROPERTY"):

does hereby make, declare and adopt the following covenants, restrictions and limitations (the "Declaration") upon the uses of the Property in furtherance of the following purposes:

- (I) The promotion of health, safety and welfare of all owners (the "Owners") and residents of the property;
- (ii) The preservation, beautification and maintenance of the Property and all structures thereon;
- (iii) The establishment for development of the Property relating to land use, architectural features and site planning;
- (iv) The preservation and promotion of environmental qualities; and
- (v) The compliance of all zoning and similar governmental regulations.

These restrictions and covenants are hereby declared to be covenants running with the land and shall be binding upon and inure to the benefit of any Owners of any lot within the Property. They are to be recorded as plat restrictions recorded in the Plat Book of Greene County and covering the subdivision.

It is hereby declared that irreparable harm will result to the undersigned and the beneficiaries of these restrictive covenants by reason of violation of the provision thereof or default in the observance thereof and therefore each beneficiary (including all Owners) as defined in Paragraph 24 of the Declaration, shall be entitled to relief by way of injunction or specific performance to enforce the provisions of these restrictive covenants as well as any other relief available at law or in equity, plus money damages to compensate for any harm resulting prior to obtaining relief by injunction or specific performance.

The following restrictions are hereby created, declared and established:

1. Purpose of Property

All lots comprising the Property shall be used exclusively for single-family, private residence purposes. Any such dwelling shall not exceed two and one-half (2-1/2) stories in height from the main level and have a garage of not more than four (4) cars unless otherwise granted a variance by the Declarant. Attached side entry garages are required.

2. Subdivision

No lots shall hereafter be subdivided into parcels for additional residential purposes. In addition, the Owner of any two or more adjacent lots may with the approval of the Declarant, at his sole cost and expense, combine such lots into a single lot. Such Owner shall be responsible for filing an amendment to the plat of Windemere, Section 1, reflecting the combination with the Greene County Recorder.

3. Approved Builders

Every Owner purchasing lots must build with an approved registered builder member of the Home Builders Association of Dayton and the Miami Valley, and said builder must be approved by the Declarant.

4. Permitted Structures

The living area of each dwelling house, exclusive of one-story garages, screened porches, and open porches and basements, shall contain not less than two thousand four hundred (2,400) square feet of finished living area for a single story home, and not less than two thousand, eight hundred (2,800) square feet of finished living area for a two-story home, except as approved by the Declarant. All outside exteriors must be at least ninety per cent (90%) masonry construction. Basements, finished or otherwise, porches, open or covered, and garages cannot be counted as living area and cannot be included in square footage.

5. Approval of Permitted Structures

In addition to the minimum space requirements, no approval shall be granted unless the following have been fully complied with:

- A. No aluminum siding, vinyl siding or plastic siding of any nature may be incorporated into the construction. Ridge vents may not be used unless specifically approved by the Declarant.
- B. No processed, pressed or particle board materials shall be incorporated into the visible exterior of a structure. Only natural materials, no composite wood materials,

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shall be used on the exterior of any house. In no case shall any 4 X 8 sheathing of any kind be used on the exterior.

- C. Setbacks: Rear yard setbacks on all lots will be 70 feet minimum bordering Indian Ripple Rd., 50 feet minimum on all other external lots, and 40 feet minimum rear yard setback on all internal lots. The side yard setbacks are to be 25 feet total, with 10 feet minimum on one side. The front yard setback will be 40 feet minimum.
- D. No log cabins or log homes, tri-levels (front to back or otherwise), and no bi-levels are permitted.
- E. Every house shall have a carriage light and post at least six (6) feet in height at the right-of-way line. The carriage light shall remain lit during all hours of darkness.
- F. All residents shall have paved driveways. The type of paving, if other than concrete or paver brick must be specifically approved by the Declarant.
- G. All wood burning fireplace chimneys shall be of masonry or dryvit construction. In addition, only Majestic Traditional Chase Termination #TT200C caps or equivalent shall be used (when pre-fab fireplace units are incorporated into the home design).
- H. No outbuildings are permitted.
- I. Dog kennels shall be put to the rear of any dwelling and screened from adjoining properties.
- J. Roof coverings may be of wood shakes, slate, tile, fiberglass or asphalt. Dimensional shingles such as Certainteed, Hallmark, G.A.F., Timberline, Tamco, Heritage or the equivalent are permitted. Standing seam metal may be used if approved by the Declarant. No 3-tab standard shingles are permitted. The color of the shingles must be approved by the Declarant.
- K. All dwellings must have wood sash windows. Exterior maintenance-free cladding is permitted.
- L. Only low profile skylights are allowed where they are visible from the street. The location and type of skylight must be approved by the Declarant.
- M. Satellite dishes 22 inches or smaller are allowed; however, they must be in backyard and concealed from view.
- N. Fencing in rear yards only shall be permitted. The type of fence must be approved by the Declarant and no chain link fence of any kind may be used.

O. Architectural guidelines for Builders and Owners:

- (1) All Owners and/or Builders must submit final architectural plans and a to-scale site plan to the Declarant showing the location of the house and driveway in relationship to the street and the surrounding lots prior to starting any construction.
- (2) The Owner and/or Builder must then rough stake the house on the lot and mark any significant trees that have to be removed.
- (3) Declarant shall have thirty (30) days to review the plans. All plans not approved within thirty days shall be deemed rejected.
- (4) Basement foundation walls of the dwelling house shall consist of poured concrete and such foundation walls shall be stepped or such that not more than twelve (12) inches of concrete is above finished ground elevation. Concrete block may be used in conjunction with slabs, crawl spaces and garages. All exterior exposed block must be stuccoed to six (6) inches below grade.

P. Construction Conditions

- (1) The Owner and/or Builder must have in his possession a set of signed and approved plans, and a signed and approved site layout showing the exact location of the house, drive, and all other improvements as well as approval in writing by the Declarant..
- (2) A Port-O-John in accordance with OSHA requirements has to be on site during residential construction.
- (3) A dumpster of sufficient size to handle all of the debris so there is never any overflowing shall be on site during all residential construction.
- (4) No burning of construction material is permitted. Construction waste must be removed from the building site in a timely manner so as not to create an eyesore or present a hazard to other lot Owners.

Items P(1) through P(4) must be satisfied before residential construction can begin.

- (5) Maintenance of any storm water control facilities and ditches shall be the responsibility of the Owners of the lots on which these facilities or ditches are located. No improvements or modifications within the identified Storm Drainage Easement shall be allowed without approval of the Greene County Engineer.

- (6) Owners or builders in violation of these regulations will be orally notified. If any situation is not corrected immediately, they will receive written notice by certified mail, personal delivery, or facsimile from the job superintendent of the development pointing out the specific problems. If these are not cured within four (4) working days, the Declarant shall have the right to fine the builder One Thousand Dollars (\$1,000.00), payable to the Declarant. If the builder fails to pay the fine within ten (10) days of original written notification, the Declarant shall have the right to file a lien on the Property. The builder shall be responsible for repaying the Declarant the cost of filing such lien.
- (7) Any damage that is done by Lot Owner, his Builder, or his Contractors to any improvements (i.e., curb, street, utilities, etc.) that have been made by the Declarant are the Lot Owner's responsibility to repair or replace in a most expeditious manner.
- Q. All the mailboxes in the subdivision shall be approved by the Declarant.
- R. All roof pitches shall be at a minimum 7/12.
- S. All of the culverts must have stone headwalls and endwalls as depicted in Exhibit A., and any culvert pipe must be recessed from view.

6. The Plan Review Committee

- A. The Plan Review Committee ("Committee") shall be initially appointed by the Declarant. The Declarant, his successors, assigns, or attorney-in-fact, shall have the authority to remove and appoint Plan Review Committee members.
- B. No residence, building, fence, wall, hedge, walk or other structure and no grading or general landscaping shall be commenced, erected or permitted to remain on any lot unless the plans and specifications therefor, showing the nature, kind, shape, height, material, color scheme, and location of such structure and landscaping design have been submitted to and approved in writing, by the Plan Review Committee, its successors or assigns. In so passing upon such plans, specifications and other requirements, the Committee may take into consideration the suitability of the proposed house and the materials of which it is to be constructed and the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the house as planned on the outlook from the lots of other Owners of Windemere, Section 1.
- C. The Committee shall have the authority to grant reasonable variances from the above requirements. No variance shall materially adversely affect any other part of Windemere. No variance granted pursuant to this authority constitutes a waiver of any other provision of the Declaration as applied to any other party or any other lot.

All provisions of the Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the lot for which the variance is granted.

7. Children's Swing Sets, Climbing Structures, Etc.

All swing sets and other structures left permanently outside must be constructed of wood. The wood shall be left in its natural state or painted in a subdued earth tone color. Any structures not conforming to these standards must be totally shielded from the public view.

8. Prohibited Activity

No noxious, or offensive activity shall be carried on upon any lot, nor shall anything be done, placed or stored thereon which may be or may become an annoyance or nuisance to the neighborhood, or occasion any noise or offensive odor which might disturb the peace, comfort, or serenity of the occupants of neighboring lots. In addition, no house trailers, cabins, tents, metal storage sheds, or other outbuildings are permitted on any lot, other than those permitted by Paragraph 5 hereof, nor is any basement, garage or outbuilding of any kind to be used as a temporary or permanent residence.

9. Rubbish

The lot and all improvements thereon shall be kept in good order and repair, in a safe, clean and attractive condition, and maintained in a first class manner. No accumulations of garbage, trash or other debris shall be permitted outside for more than four (4) days.

10. Containment of Rubbish

No lot shall be used or maintained as a dumping ground for refuse or garbage or the like.

11. Vehicles, Etc.

No worn out, discarded automobiles, machinery, or vehicles, or parts thereof shall be stored on any lot and no part thereof shall be used for automobile junk piles or the storage of any kind of junk or waste material. Boats, trailers, motorcycles, recreation vehicles, vans, vehicles to be restored, or other similar items must be kept free from public view and must be parked within a garage.

12. Swimming Pools

No above ground swimming pools shall be constructed on any lot. A swimming pool of any kind must be in-ground.

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13. Animals, Pets

No animals, livestock or poultry of any type shall be kept, except dogs, cats and other domestic household pets provided they are not kept, bred, boarded or maintained for any commercial purpose. Owners shall take such measures as are necessary to prevent their pets from straying onto other Owners' property.

14. Signs

The following signs shall be permitted:

One (1) L-shaped wood sign, green in color with white lettering identifying the Builder, his telephone number and if requested, his Realtor and telephone number. A sold caption may be added to this sign. The sign cost is approximately \$100.00 and will be ordered through the Declarant. No other signs except open house signs will be permitted. Open house sign will remain only during open house hours.

15. Alterations of Easements

Any lot area designated for the natural flow of surface water shall be at all times kept free from any obstruction to such natural flow of surface water. In addition, Owners shall be responsible for the maintenance of the easement area on their lot. Any improvements made on or under any easement shall be made at the risk of the Owner of the lot on which such improvements are made, and in no case shall any improvements, alteration or construction upon such easement be made without the approval of the Engineer of Greene County, Ohio.

16. Construction Period

- A. Within four (4) months of the date of purchase of any lot, construction must begin unless Owner receives written approval to the contrary from the Declarant.

If construction has not begun and approval by the Declarant for an extension has not been given, then the Owner of said lot shall pay a fee to the Declarant of One Thousand Dollars (\$1,000.00) per month until construction begins.

Once construction has begun, the dwelling must be ready for occupancy within ten (10) months unless an extension has been granted by the Declarant. If the dwelling is not ready for occupancy within ten (10) months, and no extension has been granted, a fee of One Thousand Dollars (\$1,000.00) per month shall be paid by the Owner to the Declarant.

- B. Should Declarant have to resort to legal action to enforce the aforementioned requirements, the Owner shall be responsible for all legal fees incurred by the Declarant.

17. Cutting of Grass

All lot Owners shall be responsible for the cutting of their own grass all the way to the edge of the blacktopped road or curb. Any lots that are not cut and kept in a neat appearance on a regular basis shall be cut by a commercial operation retained by the Declarant and the resulting bill shall become the responsibility of the lot Owner. If, after being notified of the bill, the Owner does not pay within thirty (30) days, the Declarant shall have the right to file a lien on the Property. The lot Owner shall be responsible for all legal costs of filing and releasing the lien.

18. Spring Preservation

No lot Owner that has a natural spring on his Property shall dam, alter, pollute or in any way change its present configuration or flow.

19. Access

No driveway access onto Indian Ripple Road shall be permitted. No lots in Windemere, Section 1 subdivision shall be used for access to adjoining grounds by vehicular traffic. Access by farm machinery and/or garden equipment shall be allowed for agricultural purposes only.

20. Landscaping Requirements

At a minimum, all lots will be required to have three (3) two inch (2") caliper trees planted in the front yards and have the front foundations of the home landscaped. In cases where the lots are totally wooded, other types of landscaping may be substituted for the tree planting upon approval by the Declarant. All lots that are not totally wooded must be sodded in the front yard areas and side yard areas. Rear yards may be seeded. When lots are seeded, at least eight (8) pounds of perennial grass seed must be used per one thousand (1,000) square feet and the ground fully covered.

21. Remedies

These covenants, restrictions and limitations shall be covenants running with the land. The breach thereof or the continuance of any such breach may be enjoined or remedied by appropriate proceedings by the Owner of any other lot or the Declarant.

The breach of any of the foregoing covenants, restrictions and limitations shall not affect or render invalid the lien of any mortgage made in good faith for value as to any lot or lots or portions of lots, but these covenants, restrictions and limitations shall be binding upon and effective against any such mortgagee or Owner.

No delay or omission on the part of the Owners of other lots or the Declarant in exercising any rights, power, or remedy herein provided , or in the event of any breach of the covenants, restrictions and limitations herein contained, shall be construed as a waiver thereof or acquiescence therein, except as expressly provided herein.

22. Duration of Covenants, Amendments

All of the foregoing covenants, conditions, reservations and restrictions shall continue and remain in full force and effect at all times and against the Owner of any lot, regardless of how he acquired title, until January 1, 2030, on which date these covenants, conditions, reservations, or restrictions shall be automatically renewed unless the then majority of Owners of lots within the entire single family residential lots subdivision of which the Property is a part elect to not have them renewed. If that happens, the restrictions shall terminate and thereafter be of no further legal or equitable effect on such premises or any Owner of a lot within the entire single family residential lots subdivision of which the Property is a part. Any or all of these restrictions except for Paragraph 2 ("Subdivision") and Paragraph 15 ("Alterations of Easements"), may be amended, in whole or in part, or terminated by written instrument, executed by a majority of the then current Owners within the entire single family residential lots subdivision of which the Property is a part; notwithstanding the foregoing, no amendment to the covenants, conditions, reservations, or restrictions shall cause: (i) any lot to be unbuildable under general residential building practices then in effect in the community; or (ii) any provision as presently set forth in Paragraph 5 hereof to be amended as to square footage of size of house or garage. Declarant hereby reserves the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Lot and is irrevocable (except by Declarant), for a period of five (5) years from the date hereof, to amend this Declaration, to execute any and all documents deemed necessary or desirable by Declarant to conform to requirements of any lending institution or lending authority, or to correct errors or inconsistent provisions herein.

23. Easements

Declarant reserves for the benefit of Declarant, and all Owners, and occupants of lots, easements for street monuments and any other monuments or markers installed for the use and benefit of Owners and occupants of lots, which such easements shall be more particularly described and located in subsequent amendments to this Declaration. No improvement may be placed on any part of any lot that will materially impede the free and normal use of those easements. Declarant reserves the right and easement for itself, its successors and assigns, to enter upon the easement areas in order to install, maintain, repair use and/or replace such monuments and markers.

The easements and rights granted and/or reserved in this Declaration are easements appurtenant, running with the land, perpetually in full force and effect.

24. The Declarant shall cause the formation of a Homeowners Association as a non-profit corporation. The Homeowners Association shall be controlled by the Declarant until at least seventy-five percent (75%) of all of the single family lots have been sold, at which time the Homeowners shall accept full responsibility for the Homeowners Association, the enforcement of all provisions of the Declaration, and the appointment of committees provided for under the Declaration. During the Declarant's tenure a fee of \$90 per year will be paid by each homeowner and will be due upon the closing of the lot. The purpose of the Homeowners Association shall be to promote and serve the common good and welfare of this development and adjacent areas. The responsibilities of the Homeowners Association shall include the preservation and maintenance of water detention/retention areas, common areas, the entrance and boulevard landscaping, common area irrigation, and utility systems, walking paths or common area parks or playgrounds. Each member in this Association shall share equally in costs verified for the above. The Homeowners Association shall not be responsible for the area within the development improved by "cluster housing." Such cluster housing areas shall be governed by its own homeowner's association, but will contribute to the maintenance, preservation, and repair of the water detention/retention areas, common areas, the entrance and boulevard landscaping, common area irrigation, and utility systems, walking paths or common area parks or playgrounds.
25. The Homeowners Association may levy a special individual lot assessment against any lot or lots and the Owner thereof, including any builder thereon, to recover any cost or expense chargeable to such lot or lots on account of any item or maintenance and/or repair and/or any violation of these restrictions, covenants and reservations, or any matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission related to such lot, including penalties and costs incurred to enforce the same. All such costs shall be borne by the lot or lots and charged to the Owners and/or builders thereof, not by the Association, and if paid by the Homeowners Association shall be reimbursed to the Homeowners Association by such Owners and/or Homeowners upon the Homeowners Association's demand.

The special individual lot assessment, together with interest and costs, shall be a charge on the lot or dwelling unit and shall be a continuing lien upon the lot or dwelling unit against which assessment is made. Such assessments, together with interest and costs, shall be the personal obligation of the person who was the Owner of such lot or dwelling unit at the time the assessment came due. Special individual assessments shall be due and payable by the Owner and/or builder within ten (10) days of receipt of written notice of such assessment. The Homeowners Association may designate and retain a collecting agent to collect such assessments.

Each Owner of any lot and/or dwelling unit within the subdivision, by acceptance of the deed thereby, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Homeowners Association any such special individual lot assessment.

If an Owner or builder fails to perform the maintenance and repair obligations or violates any of the other provisions of the Declaration, the Homeowners Association shall have the

right to give the Owner or builder written notice that, if the violation is not cured within seven (7) days of the date of the notice, the Homeowners Association shall have the right and option to enter upon the lot and to perform the necessary or appropriate work. In such event the Homeowners Association shall have an easement over the lot for maintenance and repair purposes and may delegate such right and easement to its employees, subcontractors and agents for such purpose.

The Owner or builder may cure any such violation by performing the work to the satisfaction of and within the time specified by the Homeowners Association, or by making such other arrangements as the Homeowners Association, in its sole discretion, may deem reasonable, provided such notice and/or arrangements are made within the time frame specified in the notice to the Owner from the Homeowners Association. The Homeowners Association may levy a special lot assessment to recover its administrative expenses, including reasonable attorney's fees, arising out of the necessity to issue a certified notice to the Owner concerning a violation of these restrictions, covenants and reservations.

The lien of the assessments provided for in Section 25 shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any tax lien foreclosure, shall extinguish the lien of such assessments as to payment which became due prior to such sale.

26. Should Declarant or Homeowners Association incur legal fees in enforcing these covenants, the builder and/or purchaser involved in the particular scenario will be responsible for all legal fees.

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