

**AMENDED AND RESTATED
DECLARATION OF
SUBDIVISION RESTRICTIVE COVENANTS
FOR
WINDEMERE,
GREENE COUNTY, OHIO**

THESE AMENDED AND RESTATED DECLARATION OF SUBDIVISION RESTRICTIVE COVENANTS FOR WINDEMERE, GREENE COUNTY, OHIO are made under the following circumstances:

A. John F. Brenner and Marjorie J. Brenner adopted a Declaration of Restrictive Covenants dated June 28, 2000 and recorded at Official Record Volume 1437, Page 136 of the Greene County, Ohio Records (the "Restrictions") to govern the development of the real property known as Windemere, being more fully described in Exhibit A attached to this Amendment (the "Property").

B. Brenner Holdings, LLC ("Declarant") is the current owner of the Property pursuant to a _____ deed recorded at Official Record Volume _____, Page _____ of the Greene County, Ohio Records and is successor to the original Declarant under the Restrictions.

C. Pursuant to Section 22 of the Restrictions, the Restrictions may be amended by written instrument executed by a majority of the then current owners of the lots within the Property.

D. There are 76 lots in the Property and Declarant owns 67 of the lots.

E. Declarant is the majority owner of the lots in the Property.

F. Declarant desires to amend and restate the Restrictions as hereinafter provided.

NOW, THEREFORE, Declarant amends and restates the Restrictions as set forth below.

BRENNER HOLDINGS, LLC, an Ohio limited liability company (the "Declarant"), being the owner of 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 "Owner") 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 of the Property.

It is hereby declared that irreparable harm will result to the Declarant and the Owner by reason of violation of the provision thereof or default in the observance thereof and therefore all Owners, and the "Association," as defined in Paragraph 23 of this Declaration, shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration 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 purpose. Any residence constructed on a lot 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 approved by the Declarant or the "Committee", as defined in Paragraph 6A of this Declaration. 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 of the lots with the Greene County Recorder.

3. Approved Builders

Every Owner purchasing a lot must build with a builder approved by the Declarant ("Builder").

4. Permitted Structures

The living area of each residence, 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. 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 of proposed building plans 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 of the residence. Ridge vents may be used but must be covered with roofing shingles.
- B. No processed, pressed or particle board materials shall be incorporated into the visible exterior of a structure. Natural wood materials, stone, brick, innerseal lap siding, concrete, or dryvit may be used on the exterior of any residence. In no case shall any 4x8 sheathing of any kind be used on the exterior of the residence.
- C. Setbacks: Rear yard setbacks on all lots will be 70 feet minimum bordering Indian Ripple Road, 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 are permitted. Tri-level or bi-level construction styles are not permitted but other multi-level building designs may be submitted to the Committee for review.
- E. Every residence 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. The style of lighting fixture must be approved by the Committee.
- F. All residence 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. 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. All roof pitches shall be at a minimum 7/12.
- J. All residences must have wood sash windows. Exterior maintenance-free cladding is permitted.
- K. Only low profile skylights are allowed and they are not to be visible from the street. The location and type of skylight must be approved by the Declarant.
- L. Satellite dishes 22 inches or smaller are allowed; however, they must be sufficiently screened from public view or located at the rear of the residence.
- M. Fencing in rear yards only shall be permitted. The type of fence must be approved by the Declarant. No chain link fence of any kind may be used.
- N. 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 residence and driveway in relationship to the street and the surrounding lots prior to starting any construction. A fee of One Hundred and 00/100 Dollars (\$100.00) for building plan review must be submitted with the plans. Submissions for architectural review shall be directed to Atelier Design, Attn: Roger Guillickson, 1045 Centerville-Station Road, Centerville, Ohio 45459.
 - (2) The Owner and/or Builder must rough stake the residence on the lot and mark any significant trees that have to be removed.
 - (3) Declarant shall have seven (7) days to review the plans. All plans not approved within seven (7) days shall be deemed rejected.

- (4) Basement foundation walls of the residence 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.

O. 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 residence, 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 overflow shall be on site during all residential construction.
- (4) No burning of construction material is permitted. Construction waste must be removed from the lot in a timely manner so as not to create an eyesore or present a hazard to other lot Owners.

Items O(1) and O(2) must be satisfied before residential construction can begin. Item O(3) must be on site immediately after the foundation has been installed.

- (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 this Declaration and the construction conditions will be orally notified. If any violation is not corrected immediately, written notice, by certified mail, personal delivery, or facsimile, from the job superintendent of the development will be given outlining the specific problems. If these violations 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 lot. The

Builder shall be responsible for repaying the Declarant the cost of filing such lien.

(7) If a lot Owner, Builder or subcontractor damages any improvements (i.e., curb, street, utilities, etc.) that have been made by the Declarant, the lot Owner shall, at his or her cost repair or replace promptly.

P. All the mailboxes in the subdivision shall conform to the details and specifications outlined on Exhibit B attached hereto and made a part hereof. The brick type and color used in mailbox construction must be approved by the Declarant.

6. The Plan Review Committee

A. The Plan Review Committee (the "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 for as long as the Declarant owns any lots.

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 Committee. In so passing upon such plans, specifications and other requirements, the Committee may take into consideration the suitability of the proposed residence 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 residence 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 requirements of this Declaration. No variance shall materially adversely affect any other part of Windemere or any other lot Owner. No variance granted pursuant to this authority constitutes a waiver of any other provision of this Declaration as applied to any other party or any other lot.

All provisions of this 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 play 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.

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 other lot Owners or occasion any noise or offensive odor which might disturb the peace, comfort, or serenity of the other lot Owners. In addition, no house trailers, cabins, tents, metal storage sheds, or other outbuildings are permitted on any lot, 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. No lot shall be used or maintained as a dumping ground for refuse or garbage or the like.

10. 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.

11. Swimming Pools

No above ground swimming pools shall be constructed on any lot. Only in ground pool are permitted with approval of the Committee of the plans.

12. Animals, Pets

No animals, livestock or poultry of any type shall be kept on any lot, 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 Owner's property.

13. Signs

The following signs shall be permitted on vacant lots:

- (1) Temporary signs installed by the Declarant at the main entryways;

- (2) Temporary signs installed by the Declarant identifying the approved Builders;
- (3) Build to Suit signs on a vacant lot owned or under the control of a Builder;

For Sale signs are permitted on lots being sold by the lot Owner. No other signs except open house signs will be permitted. Open house signs will remain on the lot only during open house hours. No "Sold" sign can remain in front of any newly constructed residence for more than sixty (60) days after an occupancy permit is issued for the residence

14. Alterations

Any lot area designated for the natural flow of surface water shall be at all times kept free from any obstruction to such natural 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.

15. Construction Period

- A. Within two (2) years of the date of purchase of any lot, construction must begin unless the Owner receives written approval to the contrary from the Declarant.

Once construction has begun, the residence must be ready for occupancy within ten (10) months unless an extension has been granted by the Declarant.

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

16. Cutting of Grass

All lot Owners shall be responsible for the cutting of their own grass 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 be paid by the lot Owner. If, after being notified of the bill, the Owner does not pay the bill within thirty (30) days, the Declarant shall have the right to file a lien on the lot for the costs. The lot Owner shall be responsible for all legal costs of filing and releasing the lien.

17. Spring Preservation

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

18. 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.

19. 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 area by the front foundations of the residence landscaped. In cases where the lots are 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.

20. Remedies

The breach of this Declaration may be enjoined or remedied by appropriate proceedings by the Owner of any other lot or the Declarant.

No delay or omission on the part of the Owners or the Declarant in exercising any rights, power, or remedy herein provided, or in the event any breach of this Declaration shall be construed as a waiver thereof or acquiescence therein

21. Duration of Covenants, Amendments

This Declaration 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 this Declaration shall be automatically renewed unless the then majority of Owners of lots within the subdivision of the Property elect to not have them renewed. If that happens, this Declaration shall terminate and thereafter be of no further legal or equitable effect on the Property or any Owner. Any part of this Declaration, except for Paragraph 2 ("Subdivision"), Paragraph 14 ("Alterations"), or Paragraph 22 ("Easements") may be amended, in whole or in part, or terminated by written instrument, executed by a majority of the then current Owners of lots. Notwithstanding the foregoing, no amendment to this Declaration shall cause: 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 residence or garage. The 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 the 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 the Declarant), for a period of five (5) years from the date hereof, to amend this Declaration, and to execute any and all documents deemed necessary or desirable by the Declarant to conform to requirements of any lending institution or lending authority, or to correct errors or inconsistent provisions herein.

22. Easements

The Declarant reserves for the benefits of the 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. The 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.

23. Homeowner's Association

The Declarant shall cause the formation of a Homeowners Association as a non-profit corporation (the "Association"). The Association shall be controlled by the Declarant until at least seventy-five percent (75%) of all of the lots have been sold, at which time the Owners shall assume full responsibility for the Association, the enforcement of all provisions of this Declaration, and the appointment of committees provided for under this Declaration. Prior to the Owners assuming control of the Association, the Declarant shall collect dues initially of \$90 per year will be paid by each Owner and will be due upon the closing of the lot. The Declarant reserves the right to increase the dues to cover costs of the Association and common area maintenance, if any, of the Property. The purpose of the Association shall be to promote and serve the common good and welfare of this development. The responsibilities of the 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 Owner of a lot shall be a member of the Association and shall share equally in costs verified for the above.

24. The 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 this Declaration 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 Association shall be reimbursed to the Association by such Owners upon the Association's demand.

The special individual lot assessment, together with interest and costs, shall be a charge on the lot shall be a continuing lien upon the lot 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 at the time the assessment was made. 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 Association may designate and retain a collecting agency to collect such assessments.

Each Owner of any lot within the Property, 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 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 this Declaration, the 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 Association shall have the right and option to enter upon the lot and to perform the necessary or appropriate work. In such event, the 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 Association, or by making such other arrangements as the 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 Association. The Association may levy a special lot assessment to recover its administrative expense, 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 this Paragraph 24 shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

Should the Declarant or Association incur legal fees in enforcing this Declaration, the Owner will be responsible for all legal fees of the Declarant or the Association

This Instrument Prepared By:

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