

**ARTICLES OF INCORPORATION
OF
WINDEMERE HOMEOWNERS ASSOCIATION
A Corporation Not-For-Profit**

The undersigned, desiring to form a corporation, not-for-profit, under Sections 1702.01 et seq. of the Ohio Revised Code, does hereby certify:

FIRST: The name of the Corporation shall be Windemere Homeowners Association.

SECOND: The place in Ohio where its principal office is to be located is 2291 Indian Ripple Road, Xenia, Greene County, Ohio.

THIRD: The purposes for which this corporation is being formed and organized is to exercise the powers and authority set forth in the Declaration of Subdivision Restrictive Covenants of all sections for the residential subdivision called Windemere, as will be recorded in the Records of Greene County, Ohio, as same may from time to time be amended or supplemented in accordance with the terms and provisions thereof, and the By-Laws of said Association incorporated herein as if set forth at length, and to have and to exercise all powers, rights, and authority granted to non-profit corporations under Chapter 1702 of the Revised Code of Ohio. The corporation shall exercise no such authority over any "cluster home" established or identified with said residential Subdivision, as will be further described in the Declaration of Subdivision Restrictive Covenants.

In furtherance of the foregoing, and subject to the terms and conditions of said By-Laws, the corporation may acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, manage, administer and dedicate for common or public use real and personal property, and may borrow money for any of the purposes of the corporation and in connection therewith, issue bonds, debentures, notes, or other obligations therefore, either without security or by securing the same by pledge or mortgage of the whole or any part of the property of the corporation.

FOURTH: The following persons, not less than three, shall serve said corporation as trustees until the first annual meeting or other meeting of members of the corporation called to elect trustees:

| <u>Name</u> | <u>Address</u> |
|---------------------|---|
| Marjorie J. Brenner | 2170 Indian Ripple Road Xenia, Ohio 45385 |
| Richard D. Brenner | 3418 Arlington Place Beavercreek, Ohio 45434 |
| John F. Brenner | 3136 Indian Ripple Road Dayton, Ohio 45440 |

FIFTH: The terms of office of the Initial Board of Trustees shall expire on the earlier to occur of (a) the sale of at least seventy-five percent (75%) of the total single family residential lots of Windemere development (exclusive of cluster lots) or (b) December 31, 2005. If any Trustee resigns or dies prior to that date, the remaining Trustees shall appoint a successor for the remainder of the term.

SIXTH: The initial membership of the Corporation shall consist of:

Marjorie J. Brenner
Richard D. Brenner
John F. Brenner.

SEVENTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third above. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the Corporation shall not participate in or intervene in (including the publication and distribution of statements) any political campaign on behalf of any candidate for public office.

EIGHTH: Upon dissolution of the Corporation, the Board of Trustees shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation in such manner or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as exempt from federal income taxes. Any of such assets not disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine which are organized and operated exclusively for such purposes.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 2000.

Marjorie J. Brenner
Sole Incorporator

ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being the sole Incorporator of WINDEMERE HOMEOWNERS ASSOCIATION hereby appoints MARJORIE J. BRENNER to be Statutory Agent, upon whom any process, notice or demand required or permitted by statute to be served upon the Corporation may be served.

The complete address of the agent is:

Marjorie J. Brenner
2170 Indian Ripple Road
Xenia, Ohio 45385

Date: _____, 2000

Marjorie J. Brenner, Sole Incorporator

The undersigned, MARJORIE J. BRENNER, hereby consents to be Statutory Agent of WINDEMERE HOMEOWNERS ASSOCIATION upon whom any process, notice or demand required or permitted by statute to be served upon the Corporation may be served.

Date: _____, 2000

Marjorie J. Brenner

ACCEPTANCE BY INITIAL TRUSTEES

The undersigned, as listed in the Articles of Incorporation, hereby accept appointment as the initial Trustees of this Corporation and acknowledge that they will serve as initial Trustees until their successors are duly appointed and qualified. They further understand the duties and obligations imposed under the Ohio Revised Code and the Articles of Incorporation.

MARJORIE J. BRENNER

RICHARD D. BRENNER

JOHN F. BRENNER

**ACTION BY WRITTEN CONSENT
OF THE
BOARD OF TRUSTEES
OF
WINDEMERE HOMEOWNERS ASSOCIATION**

Pursuant to the authority of Section 1702.25 of the Ohio Revised Code, the undersigned, being all of the members of the Board of Trustees of this Corporation, hereby take the following action and adopt the following resolutions, effective the ____ day of _____, 2000.

RESOLVED, that the By-Laws, as attached hereto, are hereby approved and adopted as the By-Laws of this Corporation.

FURTHER RESOLVED, that the following be, and they hereby are, elected as Officers of this Corporation, to serve as such until the next annual meeting of the Board of Trustees or until their successors are elected and qualified:

| | |
|-----------|---------------------|
| President | Marjorie J. Brenner |
| Secretary | Richard D. Brenner |
| Treasurer | John F. Brenner |

FURTHER RESOLVED, that the Treasurer of this Corporation be, and hereby is, authorized to reimburse the appropriate parties for all expenses incurred in the incorporation of this Corporation as a non-profit corporation, and that the Treasurer be authorized to pay on behalf of this Corporation all legal and other fees incurred in connection therewith.

FURTHER RESOLVED, that the Officers be, and they hereby are, authorized and directed to establish a regular corporate bank account and depository for this Corporation, authorizing the appropriate Officers to deposit and withdraw from such accounts and to borrow funds for and on behalf of this Corporation.

Marjorie J. Brenner, Trustee

Richard D. Brenner, Trustee

John F. Brenner, Trustee

**WINDEMERE HOMEOWNERS ASSOCIATION
BY-LAWS**

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Windemere Homeowners Association, a non-profit corporation organized and existing under the laws of the State of Ohio.

Section 2. "Declaration" shall mean and refer to the Declaration of Subdivision Restrictive Covenants (the "Declaration") for all sections of the residential subdivision called "Windemere" (the "Subdivision") to be recorded in the Records of Greene County, Ohio as the same may from time to time be amended or supplemented in accordance with the terms and provisions thereof, and these By-Laws.

Section 3. "Property" shall mean and refer to land described in the Declaration exclusive of any "Cluster Lots", as defined in the Declaration.

Section 4. "Declarant" shall mean and refer to the Grantor as defined in the Declaration.

**ARTICLE II
LOCATION**

The principal office of the Association shall be located at 2291 Indian Ripple Road, Xenia, Ohio.

**ARTICLE III
MEMBERSHIP, VOTING AND OTHER RIGHTS**

Prior to the turnover of the Association to the lot owners, Declarant and the initial Board of Trustees shall retain 100% of the voting rights of the memberships of this Association and shall be the only voting members of the Association. After turnover, the membership of this Association shall consist of every person or entity who is a record owner of a fee simple interest in any single family lot within the Subdivision; however, persons or entities who hold an interest merely as security for the performance of an obligation shall not be members of the Association. Membership shall be appurtenant to and shall not be separated from ownership of a lot. Upon a member's sale or other disposition of his or her lot, the member's membership shall terminate and the new owner shall automatically become a member of the Association. Voting rights of members shall be as set forth in the By-Laws of the Association adopted by the members (the "By-Laws").

The right of a Member to vote and be eligible to participate in business meetings shall cease on the termination of his membership.

ARTICLE IV BOARD OF TRUSTEES

Section 1. Creation and Election. There shall be three (3) members of the Board of Trustees. Upon expiration of the respective terms of the members of the Initial Board of Trustees, as specified in the Articles of Incorporation of the Association, their respective successors shall be elected to serve an initial term of one, two, and three years. Nominations as provided for herein will identify which initial term (1, 2, or 3 years) for which an individual is being nominated. Thereafter, all successive terms for any Trustee shall be three (3) years. The intent of this provision is to stagger the terms of the trustees to elect at least one (1) new trustee each year. The Trustees shall each be elected by a majority vote of the members of the Association present in person or by proxy at the annual meeting of said members at which such election shall be held. Nominations may be by a nominating committee appointed by the Board of Trustees and may also be made from the floor. Vacancies in the Board of Trustees shall be filled by the remaining Trustees, any such appointed Trustee to hold office for the remainder of the term of the Trustee whose office shall have become vacant. Members of the Board of Trustees must be members of the Association.

Section 2. Powers. The Board of Trustees shall manage the affairs of the Association and shall have such powers as are given to it by law and by the Articles of Incorporation including but not limited to, the power:

- (a) to call special meetings of the members whenever it deems necessary;
- (b) to appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, and require of them such security or fidelity bond as it may deem expedient.
- (c) to establish, levy and assess, and collect all the various assessments, charges, or membership fees which under the terms and provisions of the Declaration the Association is empowered or required to establish, levy, assess or collect. The Board of Trustees may designate and retain a collecting agent to collect assessments or charges;
- (d) to exercise for the Association all powers, duties and authority vested in or delegated to this Association.
- (e) to appoint committees to assist it in the performance of its powers and duties, the purpose and membership of which shall be at the sole discretion of the Trustees.

Section 3. Duties. It shall be the duty of the Board of Trustees:

- (a) to cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting.

- (b) to supervise all officers, agents and employees of the Association, and see their duties are properly performed.
- (c) to carry out all of the obligations and duties imposed upon the Board of Trustees by Declaration.
- (d) to maintain, engineer, replace, care for and manage the Amenities as defined in the Declaration. In performing any part or all of these duties of the Trustees, the Trustees may employ professional managers. No Trustee shall have a direct or indirect ownership interest in any professional manager hired by the trustees, nor shall any Trustee be a director, officer, or employee of the professional manager. No professional manager's contract shall be for a term longer than one (1) year unless approved by a majority of the members present in person or by proxy at a duly called meeting to consider the same at which a quorum of the members is present.
- (e) to coordinate with any other Homeowners Association that shall have obligations and duties imposed by the same Declaration to carry out said obligations and duties.

Section 4. Compensation. The Trustees shall be paid no compensation for their services, but shall be reimbursed for their actual expenses incurred.

ARTICLE V TRUSTEES' MEETINGS

Section 1. Annual Meetings.

- (a) Prior to turnover of the Association by Declarant to Homeowners of Windemere Section I, annual meetings shall be held at the discretion of the Board of Trustees.
- (b) After turnover, Annual meetings of the Board of Trustees shall be held at the principal office of the Association on the second Wednesday at the hour of 8:00 p.m. Eastern Standard Time in each year beginning one month after turnover of the Association by the Declarant to Windemere Homeowners, as provided for under Article Fifth of the Association's Articles of Incorporation.
- (c) Notice of such annual and other regular meetings is hereby dispensed with. If the day for any such meeting shall fall upon a holiday, the meetings shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

Section 2. Special Meetings. Special meetings of the Board of Trustees shall be held when called by the President of the Association or by any two (2) Trustees after not less than three (3) days notice to each Trustee. Notice may be waived.

Section 3. Conduct of Business.

- (a) The transaction of any business at any meeting of the Board of Trustees, however, called or wherever held, shall be as valid as though made at a meeting duly held after regular call; and notice, if a quorum is present and if, either before or after the meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made part of the minutes of the meeting.
- (b) The majority of the Board of Trustees shall constitute a quorum thereof. In the event less than a quorum is present at any meeting, the majority of the trustees present can adjourn the meeting from time to time without further notice.
- (c) Any action which may be taken at a meeting of the Board of Trustees may be taken without a meeting by means of a consent in writing setting forth the action so taken, signed by all the Trustees.

**ARTICLE VI
MEMBERS' MEETINGS**

Section 1. Regular Meetings. The regular annual meeting of the members shall be held at a place designated by the Board of Trustees on the third Wednesday at 8:00 p.m. Eastern Standard Time beginning one month after turnover of the Association by the Declarant to the homeowners within the Subdivision, as provided for in the Association's Articles of Incorporation and the Declarations.

Section 2. Special Meetings. Special meetings of the members for any purpose may be called at any time by the President, the Secretary, or the Treasurer, or by any two (2) members of the Board of Trustees, or upon written requests of the members who have a right to vote one-fourth (1/4) of all the votes of the entire membership.

Section 3. Notice. Notice of annual and special meetings shall be given in writing to the members by the Secretary. Notice may be given to the voting member either personally or by sending a copy of the notice through the mail, postage thereon fully prepaid, to the address of the member appearing on the books of the corporation. Each voting member shall register an address with the Secretary, and notice of meeting shall be mailed to such address. Notice of any meeting, regular or special, shall be given, or sent no less than five (5) days or more than thirty (30) days in advance of the meeting and shall set forth in general the nature of the business to be transacted.

Section 4. Conduct of Business.

- (a) **Quorum.** The presence at the meeting of voting members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes of the total voting membership shall constitute a quorum for any action governed by these By-Laws. Any action governed by the Articles of Incorporation or by the Declaration

applicable to the property shall require a quorum as therein provided. In the event less than a quorum is present, the majority of the voting members present may adjourn the meeting from time to time without further notice.

- (b) Unanimous Consent. Any action which may be taken at a meeting of members may be taken without a meeting by means of a consent in writing setting forth the action so taken and signed by all of the members entitled to vote thereon.
- (c) Proxies. At all Association meetings of members, each voting member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the member of his Lot.

ARTICLE VII OFFICERS

Section 1. Titles. The principal officers of the Association shall consist of a President, Secretary, Treasurer and other officers and agents as the Board of Trustees may from time to time determine. Any two or more offices may be held by the same persons, except the offices of President and Secretary.

Section 2. Appointment. The officers shall be chosen by majority vote of the Trustees.

Section 3. Term. All officers shall hold office during the pleasure of the Board of Trustees for terms not exceeding two (2) years.

Section 4. Duties.

- (a) The President shall preside at all meetings of the Board of Trustees, shall see that orders and resolutions of the Board of Trustees are carried out and perform such other duties as from time to time may be assigned to him by the Board of Trustees.
- (b) The Secretary shall be ex-officio the Secretary of the Board of Trustees, shall record the votes and keep the minutes of all the proceedings in a book to be kept for that purpose. The Secretary shall sign all certificates of membership. The Secretary shall record in a book kept for that purpose the names of all members of the Association, together with their addresses as registered by such members. The Secretary shall also perform such other duties from time to time may be assigned to the Secretary by the President or the Board of Trustees.
- (c) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees, provided, however, that a resolution of the Board of Trustees shall not be necessary for disbursements made in the ordinary course of business. The Treasurer

shall sign all checks and notes of the Association, provided that such checks and notes may be signed by the President, or the Vice President in the absence of the Treasurer and the Assistant Treasurer, if any. The Treasurer shall also perform such other duties as from time to time may be assigned to the Treasurer by the President or the Board of Trustees.

- (d) The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made at the completion of each fiscal year. The Treasurer shall prepare an annual budget and an annual balance sheet statement and the budget and balance sheet statement shall be presented to the membership at its regular annual meeting. The Treasurer shall also perform such other duties from time to time may be assigned to the Treasurer by the President or the Board of Trustees.

ARTICLE VIII THE BUSINESS MANAGEMENT

Section 1. Contracts. The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Trustees. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents, of the Association and in such manner as shall from time to time be determined by the Board of Trustees.

Section 4. Deposits. Upon turnover of the Association by the Declarant to the Subdivision, all funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Trustees may select.

Section 5. Books and Papers. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection by any members, or their first mortgages, for any proper purpose.

Section 6. In carrying out the provisions of this Article or any other Article of these By-Laws or any of the rules and regulations adopted and promulgated pursuant to the provisions hereof, a Standards and Planning Committee and/or the Grantor, or their respective agents, employees, successors and assigns, may come upon any Lot during reasonable hours for the purpose of enforcing and administering those provisions or rule and regulations. No one entering any such Lot for these purposes shall be deemed to have committed a trespass or wrongful or illegal act by reason of any

such entry or inspection. This Committee may be assigned such other duties as the Board of Trustees may deem proper to delegate concerning the approvals as provided in the Declaration.

ARTICLE IX INDEMNIFICATION

Each trustee, officer, or employee, or former trustee, officer or employee, of the Association, and each person who is serving or has served at the request of the Association as a trustee, officer, or employee of another corporation, shall be indemnified by the Association against all expenses actually and reasonably incurred, judgments, decrees, fines, penalties, or amounts paid in settlement in connection with the defense of any pending or threatened action, suits, or proceeding, criminal or civil, to which he is or may be made a party by reason of being or having been such trustee, officer or employee was not and has not been adjudicated to have been guilty of, or liable for, criminal acts, or willful misconduct adversely affecting the corporation of which he is a trustee, officer, or employee.

Expenses incurred in defending any such civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such trustee, officer or employee, to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which such trustee, officer or employee may be entitled under any agreement, any insurance purchased by the Association, vote of the members, or otherwise; shall continue as to a person who has ceased to be such manager, officer, or employee; and shall inure to the benefit of the heirs, executors and administrators of such person. The provisions of this paragraph shall be deemed to be a contract between the Association and each person who serves as trustee, officer or employee at any time while this paragraph is in effect.

It is not intended that the provisions of this Article shall be applicable to matters as to which indemnification would be contravention of the laws of the United States of America, or of the State of Ohio, whether as a matter of public policy or pursuant to statutory provision; and to such an end they shall be construed as severable.

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was such trustee, officer or employee against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, except where he is adjudged guilty of, or liable for, willful misconduct, gross neglect of duty, or criminal acts.

ARTICLE X
CONFLICTS WITH DECLARATION - AMENDMENTS

Section 1. In the case of any conflict between the provisions of the Declarations and these By-Laws, the Declaration shall control.

Section 2. Subject to the provisions of Section 1 of this Article, these By-Laws may be altered, amended or repealed and new By-Laws may be adopted at any meeting of the members of the Association by a two-thirds (2/3) majority vote of the voting members present at the meeting, in person or by proxy.

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