

**NINTH AMENDMENT TO AND RESTATEMENT OF
DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP
WINDRIDGE HORIZONTAL PROPERTY REGIME**

This Ninth Amendment To And Restatement Of The Declaration Of Horizontal Property Ownership - Windridge Horizontal Property Regime, made as of the 1st day of June, 1994, by Windridge Co-Owners Association, Inc. (“Association”),

WITNESSETH THAT:

WHEREAS, Robert V. Welch, of Marion County, Indiana, executed the original “Declaration of Horizontal Property Ownership, Windridge Horizontal Property Regime,” dated October 5, 1975, and recorded on October 9, 1975, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 75-56011, to which were attached the Code of By-Laws of Windridge Co-Owners Association, Inc. (“By-Laws”), and further executed four amendments thereto, being the First Amendment to Declaration dated November 5, 1975, and recorded November 5, 1975, as Instrument No. 75-61531, further amended by the Second Amendment to Declaration dated November 10, 1975, and recorded November 17, 1975, as Instrument No. 75-64356, further amended by the Third Amendment to Declaration dated April 20, 1976, and recorded June 8, 1976, as Instrument No. 76-32532, further amended by the Fourth Amendment to Declaration dated October 21, 1980, and recorded October 23, 1980, as Instrument No. 80-67665, all in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the authority conferred upon it under the said Declaration, as amended, and by the Co-Owners, The Association has executed and recorded executed four amendments to the said Declaration, being that certain Fifth Amendment to Declaration recorded December 31, 1985, as Instrument No. 85-115399, that certain Sixth Amendment to Declaration recorded March 26, 1987, as Instrument No. 87-32259, that certain Seventh Amendment to Declaration recorded March 26, 1987, as Instrument No. 87-32285, and that certain Eighth Amendment to Declaration recorded April 25, 1989, as Instrument No. 89-37978, all in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, said “Declaration of Horizontal Property Ownership, Windridge Horizontal Property Regime,” as amended and supplemented, was assigned to Windridge Estates, Inc. as a new Declarant by that certain Warranty Deed dated and recorded August 12, 1982, as Instrument No. 82-44084, in the Office of the Recorder of Marion County, Indiana (which Declaration, as amended and supplemented by the instruments referenced herein, is referred to as the “Declaration”); and

WHEREAS, the original and second Declarants filed certain Supplemental Declarations with the Office of the Recorder of Marion County, Indiana, whereby said Declarants annexed additional phases to Windridge. The latest annexation was accomplished

through the Forty-First Supplemental Declaration recorded with the Office of the Recorder of Marion County, Indiana, as Instrument No. 92-120745; and

WHEREAS, by a Special Corporate Warranty Deed recorded with the Office of the Recorder of Marion County, Indiana, on October 7, 1992, as Instrument No. 92-0133836, and re-recorded on May 17, 1993, as Instrument No. 93-057504, the Declarant, Windridge Estates, Inc., assigned, set over and transferred to the Association all of its rights, privileges, and benefits arising under the Declaration, including, but not limited to, the right to annex the portions of the Additional Tract to Windridge which have not already been annexed; and

WHEREAS, pursuant to paragraph 23 of the Declaration, and pursuant to the action of the Board of Managers and the approval of more than 75% of the Percentage Vote of the Co-Owners, as required by said paragraph 23, the Association and its members wish to amend certain provisions of the Declaration as well as to restate the terms of the Declaration as amended, for the convenience of the Owners and residents; and

NOW THEREFORE, upon the authority vested in the Association under the Act, the Declaration and By-Laws, and upon the approval of the Co-Owners as aforesaid, the Association and Co-Owners hereby make this Ninth Amendment and Restatement as follows:

1. Definitions: The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
 - (a) "Act" means the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated hereby in reference.
 - (b) "Additional Tract" means the real estate referred to in paragraph 16, which may in part or in whole from time to time be annexed to and included within Windridge as provided in paragraph 16.
 - (c) "Association" or "Corporation" means the incorporated association of Co-Owners of Windridge more particularly described in paragraph 13.
 - (d) "Board of Managers" means the governing body of the Association elected by the Co-Owners in accordance with the By-Laws. The term "Board of Managers," as used herein, shall be synonymous with the term "Board of Directors" as used in the Act and the By-Laws.
 - (e) "Building," if and when used, shall mean and be the same as "Dwelling unit."

- (f) “By-Laws” means the By-Laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.
- (g) “Common Areas” means the Common Areas and Facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.
- (h) “Common Expenses” means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas, except as otherwise expressly provided in this Declaration or the By-Laws, and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.
- (i) “Co-Owners” means the Owners of all the Dwelling Units.
- (j) “Declarant” means the owner of the real estate described at the time of the filing of this Declaration, his successors and assigns to his interest herein, other than those persons who purchase units by deed from the Declarant, unless the conveyance indicates an intent that grantee become the Declarant. By a Special Corporate Warranty Deed recorded with the Marion County Recorder’s Office on October 7, 1992, as Instrument No. 920133836, and re-recorded on May 17, 1993, as Instrument No. 19930057504, the then Declarant, Windridge Estates, Inc. assigned, set over and transferred to Windridge Co-Owners Association, Inc. all of its rights, privileges and benefits arising under the Declaration, including the right to annex the portions of the Additional Tract to Windridge which have not already been annexed.
- (k) “Dwelling Unit” means one of the individual units constituting Windridge, each individual unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration.
- (l) “Formula” means the method set forth in paragraph 16 of this Declaration for computing the adjustment to be made to the Percentage Interest appertaining to each Dwelling Unit as each Phase is annexed to Windridge and as Dwelling Units are enlarged pursuant to paragraph 31 of the Declaration.
- (m) “Garage and Storage Areas” shall mean the garage, storage and closet areas intended and designed to serve and be used exclusively by the Owner of a particular Dwelling Unit as shown and designated on the Plans.

- (n) "Windridge" means the name by which the Property and Horizontal Property Regime shall be known.
- (o) "Limited Areas" means the Limited Common Areas and Facilities as defined in paragraph 7 of this Declaration.
- (p) "Mortgagee" means the holder of any mortgage lien on a Dwelling Unit.
- (q) "Owner" or "Unit Owner" shall mean a Unit Owner, person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Dwelling Unit.
- (r) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the common Areas and Limited Areas appertaining to each Dwelling Unit as determined in accordance with paragraphs 8, 16 and 31 of this Declaration.
- (s) "Percentage Vote" means that percentage of the total vote accruing to all of the Dwelling Units which is appurtenant to each particular Dwelling Unit and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Dwelling Unit.
- (t) "Phase" means a part of the Tract upon which Dwelling Units are constructed and annexed to Windridge as provided in paragraph 16. Each particular Phase shall be identified by a Roman numeral designation corresponding to the chronological order of annexation.
- (u) "Plans" means the floor and building plans of the Buildings and Dwelling Units in Phase, I, Section 2, prepared by Browning, Pay, Pollak Associates, Registered Architects, under date of October 2, 1975, and a site plan, survey and elevation of the Tract and Buildings prepared by Mid-States Engineering Co., Inc., certified by Sol Miller, registered land surveyor and engineer, under date of October 2, 1975, all of which is incorporated herein by reference. "Plans" also shall include the Supplemental Plans which have been or shall be prepared, verified and filed with each Supplemental Declaration, depicting the layout, elevation, location, building numbers and Dwelling Unit numbers, and dimensions of the Dwelling Unit for the Dwelling Units which are constructed on the Phases of the Additional Tract when and if annexed to and made a part of Windridge. "Plans" also shall include the amended plans described in Paragraph 31 of this Declaration relative to the enlargement of Dwelling Units.

- (v) "Property" means the Tract and appurtenant easements, the Dwelling Units, the Buildings, improvements, and property of every kind and nature whatsoever, real, personal and mixed, and all replacements thereof, now or hereafter located upon the Tract and used in connection with the operation, use and enjoyment of Windridge.
- (w) "Square Footage" or Square Feet" means the square footage or square feet applicable to a particular Dwelling Unit as determined in accordance with the Formula contained in paragraph 16. The Square Footage for each Dwelling Unit in Phase I, Section 2, is shown on the plans attached to the original Declaration and the Square Footage for each Dwelling Unit in subsequent Phases has been or shall be designated by Declarant upon filing of the appropriate Supplemental Declaration and shall for all purposes remain as so designated even though actual measurement may reveal some deviation, except as provided in paragraph 31 of the Declaration pertaining to the enlargement of Dwelling Units.
- (x) "Tract" means the real estate described in Exhibit A attached to the original Declaration recorded on October 9, 1975, as Instrument No. 75-56011, and referred to as Phase I Section 2, together with the particular Phases of the Additional Tract when and if annexed to Windridge pursuant to the Supplemental Declaration and Supplemental Plans.

2. Declaration: Declarant expressly declared that the Property was established as and shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Dwelling Units: There were thirteen (13) Dwelling Units in Phase I, Section 2, as shown on the Plans. Said Dwelling Units were and are identified and referred to in the Plans and in the original Declaration as Dwelling Units numbered 52 through 60 and 65 through 68. The Dwelling Units in the Additional Tract, or Phases thereof, as and if annexed, shall be identified numerically, the exact number of Dwelling Units to be identified and referred to in the Supplemental Declaration and Supplemental Plans annexing such Phase or Phases to Windridge.

4. Identification of Dwelling Units: Each Dwelling Unit is identified by Arabic number of the Plans, the same referring to the individual Dwelling Unit. The legal description for each Dwelling Unit shall consist of the Arabic number designation of the particular Dwelling Unit.

5. Description of Dwelling Units:

- (a) Appurtenances. Each Dwelling Unit shall consist of all space within the boundaries thereof as hereinafter defined and all portions thereof situated

within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances, and structural components designated and intended solely and exclusively for the enjoyment, use and benefit of the Dwelling Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Dwelling Unit or which may be necessary for the safety, support, maintenance, use and operation of any of the Dwelling Units or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Dwelling Unit shall constitute a part of such Dwelling Unit, whether or not the same is located within or partly within or without the boundaries of such Dwelling Unit. The interior surface of all doors and windows in the perimeter walls of a Dwelling Unit, whether or not located within the boundaries of a Dwelling Unit, are considered part of the Dwelling Unit.

- (b) **Boundaries.** The boundaries of each Dwelling Unit shall be as shown on the Plans without regard to the existing construction measured between the upper surface of the floor joist or slabs to which the subfloor is attached, lower surface of the ceiling joist, and the interior surface of the wall studs in the perimeter walls to which the finished walls of each Dwelling Unit are attached. In the case of town house Dwelling Units or Dwelling Units consisting of two stories, the vertical boundaries shall run from the upper surface of the lowest floor joist or slab to the lower surface of the highest ceiling joist and except as otherwise provided in paragraph 5(a), shall include the ceilings and floors in between. In the event any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling of the Dwelling Unit because of inexactness of construction, settling after of construction, settling after construction, or for any other reasons, the boundary lines of each Dwelling Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall in favor of the Owner of each Dwelling Unit in and to such space lying outside of the actual boundary line of the Dwelling Unit, but within the appropriate wall, floor or ceiling of the Dwelling Unit.

6. Common Area and Facilities: Common Areas means and includes (1) the Tract, (2) the foundation, (3) the yards, gardens, sidewalks and driveways except for those driveways designed to serve particular individual garage units, (4) central electricity, gas, water, and sanitary sewer mains serving the Dwelling Units, (5) exterior lighting fixtures and electrical service lighting the exterior of the Dwelling Units except where separately metered to a particular Dwelling Unit, (6) pipes, ducts, electrical wiring and conduits, public utility lines and central television antenna wiring, (7) all facilities

and appurtenances located outside of the boundary lines of the Dwelling Units, except those areas and facilities expressly defined as Limited Areas, and (8) a certain clubhouse facility to be located at such location upon unimproved Common Areas as the Board of Managers shall determine, containing such furnishings, equipment and facilities and in accordance with such plans and specifications as are approved by the Board of Managers pursuant to Article IX of the By-Laws; provided, that the total cost of construction, furnishing and equipping such clubhouse facility shall be subject to the approval of the Co-Owners by a majority of the total Percentage Vote at any meeting duly called for such purpose.

7. Limited Common Area and Facilities: Limited Areas and those Dwelling Units to which use thereof is limited are as follows:

- (a) Garage and Storage Area Spaces. The Garage and Storage areas shall be limited to the exclusive use of a particular Dwelling Unit as designated on the Plans. The exclusive use of such Garage and Storage Areas shall pass with title to the Dwelling Unit for which such Area is designated, even though not expressly mentioned in the document passing title. The Garage and Storage Areas and use thereof shall be subject to such rules and regulations as the Board of Managers may deem appropriate and adopt. An Owner may grant a license to any other Owner to use all or part of his Garage and Storage areas, provided such license shall expire when the Owner granting the license ceases to be an Owner of the Dwelling Unit for which the Garage and Storage Areas are designated. Any such license agreement shall be in writing and an executed copy thereof shall be furnished to the Board of Managers and the licensee shall be bound by subject to all the obligations of the Owner and respect to such Garage and Storage Areas; provided, however, that the Owner granting such license shall not be relieved thereby from any of his obligations regarding such Garage and Storage Areas.
- (b) Exterior Surfaces. The exterior surface of doors and windows and the perimeter walls in each Dwelling Unit shall be limited to the exclusive use of the Dwelling Unit to which they appertain.
- (c) Porches and Entranceways. The porches, entranceways, hallways and stairs through which access to a Dwelling Unit is obtained are limited to the use of the Dwelling Unit or Dwelling Units served by such entranceway, porch, hallway and stairs, as designated on the Plans.
- (d) Patios and Balconies. The patios, balconies, courtyards and decorative walls and fences are limited to the use of the Dwelling Unit or Dwelling Units to which they are appurtenant as designated on the Plans.
- (e) Driveways. The driveways, walkways and similar areas used for access to particular individual Dwelling Units or the garage serving such Dwelling Units are limited to the use of the Dwelling Unit so served.

8. Ownership of Common Area and Percentage Interest: Each Owner shall have an undivided interest in Common Areas and Limited Areas as tenants in common with all other Owners equal to his Dwelling Unit's Percentage Interest. Each Dwelling Unit's Percentage interest in the Common Areas and Limited Areas shall be determined in accordance with the Formula set forth in paragraph 16 of this Declaration.

Each Dwelling Unit's Percentage Interest shall be that as the square footage of the same bears to the total Square Footage of all the Dwelling Units. If any Phase of the Additional Tract is annexed to Windridge, as permitted and contemplated by paragraph 16 of this Declaration, upon execution of the applicable Supplemental Declaration, the Percentage Interest of each Dwelling Unit in the Phase or Phases which are a part of Windridge prior to such annexation will automatically reduce in accordance with the Formula, and the balance of such Percentage Interest shall revert to the Declarant, his successors and assigns. The Owners of the Dwelling Units in the Phase or Phases which are a part of Windridge prior to such annexation shall be granted and receive a Percentage Interest in the Common Area of such Phases of the Additional Tract being annexed to Windridge, the precise Percentage Interest to be determined according to the Formula and designated in the Supplemental Declaration annexing such Phase or Phases. The method of determining the Percentage Interest as set forth in this paragraph 8 and paragraph 16 shall not be altered without the unanimous consent of all the Co-Owners except as provided in Section 31 hereof.

The Percentage Interest appertaining to each Dwelling Unit as determined by paragraph 16 also shall be the Percentage Vote allocable to the Owner thereof in all matters with respect to Windridge and the Association upon which the Co-Owners are entitled to vote, including but not limited to the election of the Board of Managers. (Subsequent Note: The final calculated Percentage Interest of each Dwelling Unit in Windridge is listed on "Schedule I" attached to the Forty-Third Supplemental Declaration to the Declaration of Horizontal Property Regime, dated February 24, 1999, and recorded June 9, 1999 as Instrument No. 1999-0112330 in the office of the Recorder of Marion County, Indiana.)

9. Encroachments and Easements for common Area: If, by reason of the location, construction settling, or shifting of a Dwelling Unit, a Common Area or Limited Area now encroaches or shall hereafter encroach upon any Dwelling Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Dwelling Units, Common Areas or Limited Common Areas and serving his Dwelling Unit.

10. Real Estate Taxes: Real Estate taxes are to be separately taxed to each Dwelling Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Dwelling Unit, but are assessed and taxed on the Tract and Additional Tract, or a part thereof, as whole, then each Owner shall pay his proportionate share of the real estate taxes. Each Owner's proportionate share will be determined as follows:

- (a) With respect to the real estate taxes assessed against the land, the amount of such taxes shall be multiplied by a fraction, the numerator of which is the total acreage constituting Windridge not separately assessed and the denominator of which is the total acreage which is assessed as a whole.
- (b) With respect to the real estate taxes assessed against the improvements, the amount of such taxes shall be multiplied by a fraction, the numerator of which is the total Square Footage of all Dwelling Units which are a part of Windridge at the time of such assessment and are not separately assessed and the denominator of which is the total Square Footage of all Dwelling Units which are assessed as a whole.
- (c) Each individual Owner's proportionate share then shall be determined by multiplying the sum of the products obtained in (a) and (b) above by a fraction, the numerator of which is the square footage of each Owner's Dwelling Unit not separately assessed and the denominator of which is the total Square Footage of all Dwelling Units not separately assessed.

11. Utilities: Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses.

12. Easement for Utilities and Public and Quasi-Public Vehicles: All public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets, Common Areas and Limited Areas of Windridge in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephones and electricity on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved the Board of Managers. By virtue of this easement the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Buildings.

13. Association of Owners: In order to provide for the maintenance, repair, replacement, administration and operation of the property and in compliance with the provisions of the Act, there is hereby created an association of the Co-Owners of the Dwelling Units in Windridge to be known as the Windridge Co-Owners Association, Inc. Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Managers annually in accordance with and as prescribed by the By-Laws. The Co-Owners shall be entitled to cast their Percentage Vote for the election of the Board of Managers.

The Board of Managers shall be the governing body of the Association, representing all of the Co-Owners in providing for the management, maintenance, repair, replacement and upkeep of the property.

14. Maintenance, Decoration, Repairs and Replacements: Each Owner shall at his expense, be responsible for the maintenance, repairs, decoration and replacement within the interior of his own Dwelling Unit, Garage and Storage Areas, basement, and the heating, air conditioning and other equipment serving his Dwelling Unit unless otherwise provided in the By-Laws. The Board of Managers reserves the exclusive right to determine the décor of each unit inclusive, but not exclusive of, color of paint, all outside décor, inside draperies and all décor appurtenant to the of each individual unit. Exclusive of those aesthetics that are visible from outside the Dwelling Units. Each Owner shall control and reserve the right of décor of his Dwelling Unit on the inside. Each Owner shall repair any defect occurring in his Dwelling Unit which, if not repaired might adversely affect any Dwelling Unit, Common Area or Limited Area. Maintenance, repairs, replacements and upkeep of the Common Areas and, except as otherwise provided, Limited Areas, shall be furnished by the Association as part of the Common Expenses.

The Board of Managers shall adopt such rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate.

The Board of Managers or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into each individual Dwelling Unit for the purposes of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of the same.

15. Alterations, Additions and Improvements: No Owner shall make any alterations or additions to the Common Areas or Limited Areas without the prior written approval of the Board of Managers, not shall any Owner make any alterations to his

respective Dwelling Unit and within the boundaries thereof which would affect the safety or structural portion of the Dwelling Units.

16. Annexation of Additional Tract: The Association, as Declarant's successor in interest with respect to the Declarant's reserved rights to annex additional property to Windridge, anticipates that it may, but is not obligated to, cause to be constructed, additional Dwelling Units on the Additional Tracts, all or part of which may be annexed to Windridge in the manner hereinafter set forth. Such Additional Tract or Tracts are included in the legal description on Exhibit "B" attached to the original Declaration which was recorded on October 9, 1975, as Instrument No. 75-56011, with the Marion County Recorder's Office. Said Exhibit "B" also includes property previously annexed by the prior Declarants.

At any time prior to October 4, 1995, the Association, at its option may, but is not obligated to, cause all or part of the portions of the Additional Tract, which have not already been annexed, to be annexed to Windridge in Phases, subject to the following conditions:

- (a) Another Phase may be annexed if the Dwelling Units to be constructed in such Phase have been substantially completed and the Supplemental Plans to be filed with the Supplemental Declaration are completed, certified to by the engineer or architect as fully and accurately depicting the layout, location and dimensions of the Dwelling Units as built. The Association, as the Declarant's successor in interest with respect to the Declarant's reserved rights to annex additional property to Windridge, shall reserve the right to determine the developmental standards of each future Phase.
- (b) The Dwelling Units on any Phase to be annexed shall be constructed with labor and material of comparable quality to the Dwelling Units previously constructed on the Tract, although not necessarily of similar type floor plan, design, or exterior.
- (c) The Association, as the Declarant's successor in interest with respect to the Declarant's reserved rights to annex additional property to Windridge, shall be the sole owner of the fee simple title to the Phase to be annexed.

The Association, as the Declarant's successor in interest with respect to the Declarant's reserved rights to annex additional property to Windridge, expressly reserves the right not to annex to Windridge any or all of the Additional Tract which has not been annexed previously. No Owner shall acquire any rights whatsoever in the Additional Tract except as to those Phases which are annexed to and made a part of Windridge.

The Percentage Interest appurtenant to each Dwelling Unit shall be based on the ratio that the Square Footage in each Dwelling Unit bears to the total Square Footage of all the

Dwelling Units now or hereafter annexed to Windridge, and as provided in paragraph 31 of this Declaration. As all of the Dwelling Units shall be constructed with labor and materials of comparable quality, the comparable Square Footage of each Dwelling Unit shall be conclusively deemed to be the relative value of each Dwelling Unit with relation to the Property as a whole. The Square Footage applicable to each Dwelling Unit shall be the sum of:

- (a) The first 1,000 square feet of Area applicable to a particular Dwelling unit, plus;
- (b) 75% of the second 1,000 square feet of such Area, plus;
- (c) 50% of all the remaining square feet of such Area.

“Area” applicable to Dwelling Unit as that term is used above means the area within the perimeter walls of a Dwelling Unit, including basement area and the Garage and Storage Area appurtenant to the Dwelling Unit, but excluding the appurtenant patio, balcony, and courtyard areas.

For example, a given Dwelling Unit contains 3,731 actual square feet of living area within its perimeter walls, including basement; plus Garage and Storage Areas containing 615 square feet. The Square Footage of such Dwelling Unit would be determined as follows:

1,000 plus 750 (.75 times 1,000), plus 1173.0 (.5 times 2346 equals 2923.0.
Thus, the Square Footage of such Dwelling Unit as the term is used in this Declaration and the By-Laws is 2,923.

The Percentage Interest appurtenant to each Dwelling Unit shall be computed and, upon the annexation of an additional Phase, or section thereof, re-computed, as set forth in the following Formula:

The Square Footage of each Dwelling Unit shall be divided by the total Square Footage of all the Dwelling Units in Windridge. The resulting quotient multiplied by 100 shall be the Percentage Interest of such Dwelling Unit. Upon annexation of an additional Phase, the same method shall be utilized to recalculate the Percentage Interest of each Dwelling Unit, using as the divisor the total of the Square Footage of all Dwelling Units. The quotient shall be rounded off to the fourth decimal place with minor adjustments thereof to be made by Declarant so that the resulting total of all Percentage Interests shall always be exactly 100%.

As each future Phase is developed, the Association, as Declarant’s successor in interest, shall record a Supplemental Declaration annexing and adding such Phase to this Declaration and making it a part of Windridge. The Association, as Declarant’s

successor in interest, reserves the right to annex additional Phases or sections thereof that are not necessarily in numerical order shown on the plans. Such Supplemental Declaration shall contain the following:

- (a) A description of the real estate to be annexed;
- (b) A description of the Dwelling Units described in a manner consistent with this Declaration;
- (c) The Percentage Interest of all Dwelling Units in Windridge upon annexation, computed in accordance with the Formula.

Each Owner, by acceptance of a deed to a Dwelling Unit, acknowledges, consents and agrees that the following rights and conditions shall be applicable upon the recording of each Supplemental Declaration:

- (a) The Phase described in each Supplemental Declaration shall be governed in all applicable respects by the provisions of this Declaration.
- (b) The Percentage Interest appurtenant to each dwelling Unit shall be automatically reallocated in accordance with the schedule set forth in such Supplemental Declaration which shall be based upon the Formula. On recording of each Supplemental Declaration, the amount by which the Percentage Interest of a Dwelling Unit is reduced thereby shall be deemed to release and divest that amount from such Dwelling Unit Owner and revert to the Declarant, its successors and assigns. In no event, however, shall the entire regime consist of more than 228 units.
- (c) Each deed, mortgage or other instrument affecting a Dwelling Unit shall be deemed given subject to the limitation that the Percentage Interest appurtenant to each Dwelling Unit shall be, upon the recording of each Supplemental Declaration, altered in accordance with the Supplemental Declaration, based upon the Formula.
- (d) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Dwelling Unit shall be deemed to include any additional Common Areas Limited Areas annexed hereto by a Supplemental Declaration, which Supplemental Declaration shall grant and convey to the Owners the appropriate Percentage Interest, and each deed, mortgage or other instrument affecting a Dwelling Unit shall be deemed to include such additional Common Areas and Limited Areas, and the ownership of any Dwelling Unit and lien of any mortgage shall automatically include and attach to such additional Common Area and Limited Area upon recording of such Supplemental Declaration.

- (e) The recording of a Supplemental Declaration shall not alter the amount of the lien for Common Expenses assessed to a Dwelling Unit in a Phase already a part of Windridge prior to such recording. The lien for the pro rata share of Common Expenses for the Phases annexed upon such recording shall be assessed and paid as provided in the By-Laws.
- (f) Each Owner agrees for himself and all those claiming under him, including Mortgagees, that this Declaration and each Supplemental Declaration is and shall be deemed to be in accordance with the Act and for the purpose of this Declaration and the Act, any changes in Percentage Interest as set forth in any Supplemental Declaration which is in accordance with the Formula expressed herein shall be deemed to be made by agreement of all Owners.
- (g) Each Owner agrees to execute and deliver such documents as are necessary or desirable to accomplish the annexation of the Phases in the Additional Tract in accordance with the provisions and intent of this paragraph 16.
- (h) Each Owner, by acceptance of a deed to a Dwelling Unit, shall thereby appoint Declarant or its nominee (including the Association as the Declarant's successor in interest) as such Owner's attorney-in-fact for the purpose of reallocating from time to time the Percentage Interest appurtenant to such Owner's Dwelling Unit in accordance with the provisions of this paragraph 16, and, to the extent required by law to carry out the intent of this paragraph 16, on behalf of such Owner to consent to or vote in favor of the amendment of this Declaration. The appointment of Declarant or its nominee (including the Association as the Declarant's successor in interest) as such attorney-in-fact and the granting of such special power to Declarant or its nominee (including the Association as the Declarant's successor in interest) shall be deemed to be coupled with an interest, shall be irrevocable and binding upon the heirs, successors and assigns of such Owner, but shall expire when all remaining portions of the Additional Tract have been annexed to Windridge, or when the option and right to annex the remaining portions of the Additional Tract shall expire as provided herein, whichever first occurs.

In the event the Association, as the Declarant's successor in interest, does not elect to annex to Windridge the currently unannexed portions of the Additional Tract or any parts thereof, as permitted by this paragraph 16, the Association may file a Supplemental Declaration which shall permanently remove that part of the Additional Tract that has not been annexed from any right to be made a part of Windridge; provided, however, any Phase for which a Supplemental Declaration has not been filed by October 4, 1995, shall be automatically removed from the possibility of becoming a part of Windridge in the manner provided in this Declaration. Upon the filing of such Supplemental Declaration removing a part of the Additional Tract from the possibility of becoming a part of

Windridge in accordance with this declaration, or October 4, 1995, whichever comes first, the Percentage Interest designated in the Declaration or Supplemental Declaration last filed shall not be altered without the unanimous consent of all Owners and Mortgagees except as provided in Section 31 hereof.

17. Easements To and From Additional Tract: In the event all or any part of the Additional Tract is not annexed to Windridge, Declarant reserves unto himself, his successors and assigns (including the Association as the Declarant's successor in interest) for the use and benefit of that part of the Additional Tract not annexed, the right and easement to enter upon the streets and Common Areas of Windridge to provide ingress and egress to the Additional Tract. It is the purpose and intent of the easements herein granted or reserved to provide free and unrestricted use and access across the roadways and sidewalks of the Tract for the Owners and residents of the Additional Tract, their guests, invitees and all public and quasi-public vehicles.

The easements granted and reserved in this paragraph 17 shall be easements and covenants running with the land and accruing to the benefit of the Additional Tract.

18. Insurance: The Association, acting through its Board of Managers, shall obtain all reasonable insurance coverage inclusive but no exclusive of fire, extended coverage and flood insurance, if necessary, insuring the Units and property in an amount equal to the full replacement cost thereof as determined by a qualified appraiser, the amount determined at the time of renewal. The cost of any appraisal shall be a Common Expense. Such insurance shall:

- (a) Provide 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 Owners do not elect to restore pursuant to paragraph 19, and
- (b) Contain a "Replacement Cost Endorsement. Such insurance Coverage shall be for the benefit of the Association, each Owner, and, if applicable, the Owner's Mortgagee. The proceeds shall be payable to the Association who shall hold such proceeds as trustee for the individual Owners and Mortgagees as their interests appear. The proceeds shall be used or disbursed only in accordance with the provisions of this paragraph 18 and paragraph 19 of the Declaration, as applicable, and any surety bond or bonds obtained by the Board covering the officers of Windridge as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The Association also shall obtain comprehensive public liability insurance in such limits as the Board of Managers shall deem appropriate, together with Worker's Compensation Insurance and other liability insurance, if deemed necessary or appropriate by the Board

of Managers. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Managers, and any Managing Agent or Company acting on behalf of the Association. The owners, as well as the lessees, if any, shall be able to recover losses insured where applicable. The premiums for all such insurance shall be paid by the Association as part of the common expenses.

Each Owner shall have the right to purchase additional insurance as he may deem necessary, and each Owner shall be solely responsible for loss or damage to the contents of his own Dwelling Unit, however caused, including all floor and wall coverings, and fixtures and betterments installed by the Owners, and his personal property stored elsewhere on the Property, and the Association shall have no liability to any Owner for loss or damage to the contents of any Dwelling Unit. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk include, but not limited to, living expenses.

19. Casualty and Restoration: In the event of damage or destruction of the Property by fire or other casualty, the following provisions shall be applicable:

- (a) **Partial Destruction.** In the event that less than two thirds of the Dwelling Units are destroyed by the occurrence of fire or other casualty, then the Association shall cause the property to be promptly repaired and restored. The proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of reconstruction or in the event there are no proceeds, each individual Owner shall have there responsibility for restoring his own Dwelling Unit at his own expense and the insurance proceeds, if any, shall be equitably divided among the Owners of the damaged Dwelling Units to be used and dispersed only for restoration. The division of such proceeds shall be determined by the Board of Managers of the Association, and when so determined in good faith, shall be binding upon all Owners and Mortgagees.

If any Owner, or Owners, refuses or fails to restore his Dwelling Unit, the other Owners (or the Association, if such other Owners fail) shall complete the restoration and pay the cost hereof, and the costs attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Managers shall become a lien on such defaulting Owners' Dwelling Units and may be foreclosed in the same manner as provided for the lien for Common Expenses.

- (b) **Restoration in the event of Two-Thirds Destruction.** In the event that more than two-thirds of the Dwelling Units are destroyed by fire or other casualty, then restoration of the Dwelling Units must be approved within one hundred twenty (120) days from the date of damage or destruction by unanimous

vote of the Owners. If such approval is not obtained, the Property shall be deemed owned in common by all of the Owners and the provisions of Section 21 of the Act shall apply.

- (c) Restoration, for purposes of subparagraphs (a) and (b) above, shall mean construction or rebuilding of the Dwelling Units to the same condition as they existed immediately prior to the destruction and with a similar type of architecture, subject to current applicable building and fire codes.
- (d) In the event restoration of Dwelling Units is necessary, the insurance funds for such restoration shall be disbursed by the Mortgagee, if any (and if it elects to do so), that holds mortgages on 51% of the Dwelling Units that need to be restored, otherwise by the Association. Such distribution and payment of funds shall be in the manner and in accordance with the procedure normally used when disbursing funds for initial construction.

20. Lease of Dwelling Unit by Owner: For the purpose of maintaining the congenial and residential character of Windridge, and for the protection of the Co-Owners with regard to financially responsible residents, the lease of a Dwelling Unit by an Owner other than Declarant who, through his agents or assigns, specifically reserves the mode and method of lease until the last unit in subsequent Phases hereof is sold, for which power each Owner grants to Declarant a special power of attorney to do all things in such Owner's behalf necessary to effect such lease which power shall terminate upon the sale of the last Unit in each particular Phase, shall terminate upon the sale of the last Unit in each particular Phase, shall be subject to the following conditions and restrictions:

- (a) Lease. It is the best interest of all the Owners that those person residing in Windridge have similar proprietary interests in their Dwelling Units and be Owners. Accordingly, no Owner shall lease his Dwelling Unit or enter into any other rental or letting arrangement for his Dwelling Unit without the prior written consent of the Board of Managers. Such consent shall not be unreasonably withheld. Any Owner desiring to enter into a lease for his Dwelling Unit shall make written application to the Board of Managers, which application shall state the reasons why the applicant wishes to lease the dwelling Unit, the name of the proposed tenant, and financial references of the proposed tenant. Within ten (10) days following the receipt of the application, the Board of Managers shall issue its written approval or disapproval to the Owner. In the event the Board fails to issue written approval or disapproval within such period, the application for all purposes shall be deemed approved.

Additionally, all leases shall be for a minimum initial term of one (1) year. All leases shall state that the tenant will be bound by all terms and conditions set forth in the Declaration, the By-Laws, and any rules and

regulations promulgated by the Board of Managers, all as the same may be amended from time to time, and that any violation by the tenant or other persons residing in such Dwelling Unit of the same shall constitute a default under the lease. Prior to execution of the lease, the Owner shall provide the prospective tenant copies of all such legal documents. Within seven (7) days after execution of the lease, the Owner shall provide the Board of Managers with a conformed copy of said Lease.

- (b) Limitations to Mortgagee. With respect to a Mortgagee that is a bank, life insurance company, savings and loan association, or any other in institutional investor, the provisions of subparagraph (a) of this paragraph 20 shall be limited in their application as follows:
 - (1) The provisions of subparagraph (a) shall not be applicable to such Mortgagee if such Mortgagee acquires possession of a Dwelling Unit during the period while a foreclosure proceeding is pending or to such Mortgagee who obtains title to a Dwelling Unit as a result of foreclosure of its mortgage or conveyance in lieu thereof. The provisions of subparagraph (a) shall be finding upon any other person obtaining title to the Dwelling Unit from such Mortgagee or at any foreclosure or other judicial sale.
 - (2) The provisions of this subparagraph (b) may not be amended without the consent of all of such Mortgagees.

21. Membership in Windridge Co-Owners Association, Inc.: The Tract is subject to the covenants and restrictions contained herein. For the purpose of this Declaration, upon the recording of this Declaration and any subsequent Supplemental Declaration, all the rights and obligations accruing to a Dwelling Unit shall accrue to each Dwelling Unit contained within the Tract including but not limited to the obligation to pay the monthly assessments as provided in such Declaration, which monthly assessments are a lien on each Dwelling Units, and the mandatory and automatic membership in Windridge Co-Owners Association, Inc. upon acceptance of a deed for a Dwelling Unit and to have a vote for each Dwelling Unit owned, pursuant to the formula heretofore set out.

22. Covenants and Restrictions: The covenants and restrictions applicable to the use and enjoyment of the Dwelling Units are set forth in the Code of By-Laws of Windridge Co-Owners Association, Inc. These 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, the Co-Owners or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

23. Amendment of Declaration: 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 the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Managers or the Owners of at least a majority of the total Percentage Vote.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly 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 two-thirds (2/3) in the aggregate of the Percentage Vote. In the event any Dwelling Unit is subject to a 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 Managers in accordance with the provisions of the By-Laws.
- (e) Special Amendments. No amendments to this Declaration shall be adopted which changes:
 - (1) the Percentage Interest with respect to any Dwelling Unit or the applicable share of an Owner's liability for the common expense without the approval of one hundred percent (100%) of the Co-Owners and Mortgagees, except as otherwise provided in paragraphs 8 and 16 relating to annexation of the Additional Tract and in paragraph 31 relating to the enlargement of dwelling Units; or
 - (2) the provisions of paragraph 19 of this declaration with respect to reconstruction or repair in the event of fire or casualty, without the unanimous approval of all Mortgagees whose mortgage interest have been made known to the Board of Managers in accordance with the provisions of the By-Laws, or
 - (3) the provisions of paragraph 16 of this Declaration except by Declarant in the manner provided therein, or
 - (4) the provisions of paragraph 17 of this Declaration without the consent of the Declarant.
- (f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the

Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

24. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Managers as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Supplemental Declarations, the Act, the By-Laws and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupancy, 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 Dwelling Unit or the property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Each Owner agrees to execute and deliver such other documents, if any, as may be necessary or desirable to comply with the Act as it may be amended from time to time. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit or Dwelling Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

25. 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 or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his dwelling Unit or its appurtenances or of the common Areas of Limited Areas.

26. Reservation of Rights. Declarant reserves the right to determine the mode and method of sale of the Dwelling Units until the last such unit in each respective Phase is initially sold.

27. Costs and Attorney's Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys fees incurred in connection with such default or failure.

28. 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 Limited Areas or by abandonment of his Dwelling Unit.

29. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

30. Floor Plans. The Plans, as described in paragraph 1(u) of this Declaration, are incorporated into this declaration by reference, and have been filed in the Office of the Recorder of Marion County, Indiana as of October 9, 1975.

31. Enlargement of Dwelling Units Made Prior to October 4, 1995. During the period prior to October 4, 1995, any Co-Owner may enlarge his or her Dwelling Unit by the construction of additional enclosed space(s) upon Common Area or Limited Common Area and connected to such Dwelling, provided, that the following requirements and conditions of this paragraph 31 are met:

- (a) No such enlargement of any Dwelling Unit shall encroach upon or in any way impair access to or use of any other Dwelling Unit or any Limited Common Area serving any other Dwelling Unit;
- (b) All plans and specifications for such enlargement shall be submitted to and approved by the Board of Managers of the Association prior to commencement of any construction or alteration work in relation to such Dwelling Unit; provided, that prior approval shall not be required for those enlargements already in existence on the date hereof, inasmuch as the consents of the Co-Owners for such enlargements have been obtained;
- (c) All construction work shall be completed substantially in accordance with the plans and specifications so approved by the Board of Managers; and
- (d) The Owner of any Dwelling Unit being enlarged shall pay all costs and expenses associated with such enlargement, including without limitation any and all legal, engineering, architectural and recording fees relating to the review, preparation and recording of the plans and documents necessary legally to make such enlargement a part of the Dwelling Unit under this Paragraph 31.

Upon the completion of any enlargement in accordance with the foregoing requirements, the Association shall execute and execute and record a Supplemental Declaration and shall cause to be prepared, certified and recorded (at the Owner's expense) a set of amended plans for the Dwelling Unit in question, showing the additional enclosed spaces as constructed and prepared in accordance with the requirements set forth in I.C. 32-1-6-13. The interior square footage of such additional enclosed space(s) shall be added to the existing square footage of the Dwelling Unit to which such spaces are added, and the new aggregate square footage of the Dwelling Unit shall form the basis on which the

Percentage Interest and Percentage Vote are computed, based upon the Formula set forth in this Declaration. The Supplemental Declaration recorded in connection with such enlargement shall contain a verified statement that the requirements of this paragraph 31 have been met (which statement shall be conclusive of such facts) and shall set forth the adjustments in the Percentage Interests and Percentage Vote for all Dwelling Units as a result of such enlargement, based upon the Formula.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

WINDRIDGE CO-OWNERS ASSOCIATION, INC.

By: (s) Grant McBroom

Grant McBroom, President

Attest:

(s) Genevieve M. Healy

Genevieve M. Healy, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Grant McBroom and Genevieve M. Healy, the President and Secretary respectively, of Windridge Co-Owners Association, Inc., who acknowledged execution of the foregoing Ninth Amended and Restated Declaration of Windridge Co-Owners Association, Inc. for and on behalf of said Corporation and the Co-Owners, and who being duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal this 20th day of May, 1994.

(s) Sarah J. Reinert

Notary Public

Sarah J. Reinert

Printed

Residence County: Marion

My Commission Expires:
June 13, 1997

This instrument prepared by and should be returned to P. Thomas Murray, Jr., Attorney at Law, P.O. Box 501040, Indianapolis, IN 46250 (310) 842-8550.