

DECLARATION ESTABLISHING A PLAN
OF CONDOMINIUM PROPERTY OWNERSHIP
OF THE VILLAGE OF WATERFORD PATIO HOME CONDOMINIUMS

MICHAEL A. YOUNG, INC., a Kentucky Corporation, 9310 New LaGrange Road,

Louisville, KY 40222. ("Developer") declares this as its plan of ownership in condominium of certain property located in Clark County, Indiana (the "Declaration").

WITNESSETH

Developer submits the following described real property and improvements now or hereafter constructed on such real property ("Land") to a horizontal [condominium] property Scheme (the "Scheme") under the Indiana Condominium Law, I.C. 32-25-1-1 et. seq. and the Indiana Horizontal Property Law, (the "Act"):

A part of Grant #45 of the Illinois Grant, Jeffersonville Township, Clark County, Indiana, also being part of lands described in Roy DD 13-11861 and 13-3658 described as follows:

Beginning at the East corner of grant #45, ²⁶⁵¹⁹⁶
Thence N 35° 47' 17" E, a distance of 1453.39 feet along the grant line dividing grants #45 and #46,
Thence S 55° 06' 21" W, a distance of 815.00 feet to a 5/8" rebar,
Thence S 36° 02' 17" E, a distance of 30.00 feet to a point, THE TRUE PLACE OF BEGINNING,
Thence S 30° 02' 17" E, a distance of 858.48 feet to a 5/8" rebar,
Thence S 55° 06' 27" W, a distance of 880.20 feet to a 5/8" rebar,
Thence N 36° 02' 17" W, a distance of 495.10 feet to a mag nail in the centerline of Potters Lane,
Thence along a curve to the left having a radius of 509.86 feet, an arc length of 209.34 feet, also having a chord bearing N 37° 26' 26" E, a distance of 207.87 feet to a point,
Thence N 25° 40' 41" E, a distance of 493.87 feet to a point,
Thence along a curve to the right having a radius of 446.00, an arc length of 229.07 feet, also having a chord bearing N 40° 23' 31" E, a distance of 226.56 feet to a point,
Thence N 55° 05' 33" E, a distance of 25.60 feet to THE TRUE POINT OF BEGINNING,
Containing 13.90 acres.

**ARTICLE I
DEFINITIONS**

The following words and phrases shall have the following meaning in the Declaration:

Section 1.1 "The Village of Waterford Community Association, Inc.," Council of "Co-owners" or "Council" means all of the Unit Owners acting as a group in accordance with this

Declaration, any amendments thereto, the Bylaws, rules and regulations, and any other governing documents. The "Council of Co-owners" has been or will be incorporated as " The Village of Waterford Community Association, Inc," an Indiana corporation, or a similar name and references to Council shall include successors and assigns of that corporation.

Section 1.2 "Common Elements" means the general common elements of the Scheme, as stated in the Act, and shall include (if actually built and except as otherwise provided or stipulated in this Declaration and amendments to this Declaration) the following:

- (a) the land on which buildings stand;
- (b) the foundations, main walls, roofs;
- (c) the grounds, landscaping, walkways, roadways and parking areas that are not allocated by the Board, pursuant to this Declaration or amendments to this Declaration, for the exclusive use of a Unit owner;
- (d) the storm water detention/retention pond and pump station;
- (e) the sanitary sewer located outside the Clarksville roadway;
- (f) all other devices or installations existing for common use, and all other elements of the buildings rationally of common use or necessary to their existence, upkeep and safety.

Section 1.3 "Limited Common Elements" means those Common Elements which are covered by this Declaration or amendments to this Declaration, by the recorded floor plans, or by agreement of all Owners, for the use of a certain Unit or number of Units to the exclusion of other Units including without limitation.

- (a) interior unfinished surfaces of each Unit's perimeter walls, ceilings and floors and space between floors;
- (b) entrances and exits to the Unit;

- (c) attics (meaning any space between the roof of a building and the ceiling of a Unit), crawl spaces, basements (if any, and if not included in a Unit as shown on the final "as built" plans referred to in Section 2.2), slabs, balconies, stoops, porches, patios ~~and decks, if any, now (or hereafter if approved by the Board) attached to a particular Unit and whether or not shown on the "as built" plans;~~
- (d) garages, if assigned to a Unit and if not shown as part of the Unit on the final "as built" plans, and driveways serving one Unit;
- (e) utility service facilities serving a Unit, including the air conditioning and heating equipment and systems;
- (f) door and window frames for each Unit; and
- (g) back yard areas, meaning one of the following, as applicable. If the rear of a Unit is enclosed by a fence permitted by Developer or the Board pursuant to Section 5.4, then the back yard area shall mean that enclosed area. If there is no fence, the back yard area shall be the area in the rear of each Unit bounded as follows: (A) by the rear exterior wall of the Unit, (B) by two imaginary lines extending straight back from each side wall of the Unit, and (C) by one of the following imaginary lines, determined based on which line creates the smallest "back yard area" - either (I) the boundary line of the Land, or (II) a line that is one-half the distance between the rear wall of the Unit for which the "back yard area" is being determined and the closest wall of the closest Unit, or (III) the line of any easement, or (IV) a line 50 feet from and parallel to the rear wall of the Unit, or (V) with respect to any Unit of which a different limited common element line is shown on the plans contemplated by sections 2.2 and 2.4 (c), that the line shown on such plans.

- (h) "side yard areas", meaning one of the following, as applicable. If the side of a Unit is enclosed by a fence permitted by Developer or the Board pursuant to Section 5.4, then the side yard area shall mean that enclosed area. If there is no fence, the side yard area shall be the area in the side of each Unit bounded as follows: (A) by the side exterior wall of the Unit, (B) by two imaginary lines extending parallel from the rear and front wall of the Unit, and (C) by one of the following imaginary lines, determined based on which line creates the smallest "side yard area" - either (I) the boundary line of the Land, or (II) a line that is one-half the distance between the side wall of the Unit for which the "side yard area" is being determined and the closest wall of the closest Unit, or (III) the line of any easement, or (IV) a line 25 feet from and parallel to the side wall of the Unit, or (V) with respect to any Unit of which a different limited common element line is shown on the plans contemplated by sections 2.2 and 2.4 (c), that the line shown on such plans. Conflicts involving intersecting lines between side and back yard shall be resolved by Developer or its successor The Village of Waterford Condominium Association, Inc.

Section 1.4 "Use of Other Structures and Vehicles"

- (a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds or field offices used by a builder or Developer, which shall be removed when construction or development is completed.
- (b) No outbuilding, trailer, basement, tent, shack, garage, barn or structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.
- (c) No trailer, truck, motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a garage or basement. No automobile

which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in the subdivision. No trailer, boat, truck, or other vehicle, except an automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four hours in any one, calendar year.

(d) No automobile shall be continuously or habitually parked on any street or public right of-way in the subdivision.

(e) All garage doors shall remain closed at all times except when required to be open for the entrance or exit of a vehicle housed therein.

Section 1.5 "Unit of "Condominium Unit" means the enclosed space consisting of one or more rooms as measured from interior unfinished surfaces, having direct access to the Common Elements. The location and extent of each Unit are as shown on the plans of the Scheme recorded with this Declaration and include garage, if made part of the Unit on the plans. Notwithstanding that some of the following might be located in the Common Elements or Limited Common Elements, the plumbing, heating, and air conditioning equipment (including all ducts and pipes), electrical wiring and equipment, hot water heater, telephone lines, cable television lines, window panes, doors (including storm and screen doors, if any), windows, halls, stairways and other equipment located within or connected to a Unit for the sole purpose of serving that Unit exclusively, are a part of the Unit, the maintenance repair and replacement of same being the responsibility of the Unit owners.

Section 1.6 "Common Expenses" means and includes all charges, costs and expenses incurred by the Council for and in connection with the administration and operation of the Scheme, including without limitation: maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Elements; any additions and alterations thereto; all labor, services, materials, supplies and equipment therefor; all liability for loss or damage arising out of or in

connection with the Common Elements and their use; all premiums of hazard, liability and other insurance with respect to the Scheme; all liabilities incurred in acquiring a Unit pursuant to judicial sale, administrative, accounting, legal and managerial expenses; amounts incurred in replacing or ~~substantially repairing capital improvements~~ of the Scheme, including roof repair and replacement, and road, driveway and parking area resurfacing; all reserve funds established by the Council; all charges for utilities not separately metered; provided, however, if the rate of any of the common utilities increased as a result of a particular owner's excessive usage, the Board may collect such increase from the Unit owner.

Section 1.7 "Co-Owner" or "Owner" or "Unit Owner" means the record owner, one of more persons or other legal entities, of a fee simple title to any Unit, but excluding those having an interest in the Unit merely as security for the performance of an obligation.

Section 1.8 "Board" or "Board of Administration" shall mean Board of Directors of the Council, having certain responsibilities delegated to it by the Council.

Section 1.9 "Bylaws" shall mean the Bylaws as amended from time to time, of the Council.

Section 10.0 "Rules and Regulations" means the rules made from time to time by the Council.

ARTICLE 11 UNITS AND COMMON ELEMENTS

Section 2.1 **Description and Number of Units.** The general description and the number of each Unit, expressing its area, location and other data necessary for identification, is contained in Exhibit A attached as a part of this Declaration.

Section 2.2 **Floor Plans.** Simultaneously with recording of this Declaration, there has been filed in the Office of the Recorder of Clark County, Indiana, a set of "as built" floor plans showing the layout, location, Unit numbers and dimensions of the initial Units and, if applicable, the initial Limited

Common Elements; stating the name of the Scheme; and bearing the verified statement of a registered architectural professional or engineer certifying that the plans fully and accurately depict the layout, location, Unit number and dimensions of the existing Units as built. The initial floor plans are of record in Condominium Plat Book _____, Instrument Number _____, in the office of the Recorder of Clark County, Indiana.

Section 2.3 Percentage of Common Interest. Appurtenant to each Unit is that Unit's percentage of common interest, as set forth in Exhibit A. This percentage is computed by taking as a basis the floor area of the individual Unit in relation to the floor area of all existing Units. Except as otherwise provided in this Declaration and except as otherwise provided by the Act, the percentage of common interest is permanent and shall not be altered without the acquiescence of the Owners representing all Units in the Scheme.

ARTICLE III EASEMENTS

Section 3.1 Easements for Encroachment, Access and Utilities. The Units Common Elements and Limited Common Elements shall have and be subject to the following easements:

- (a) An easement exists for any maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit (including those common facilities located above a suspended ceiling), which facilities serve more than one Unit and are part of the Common Elements.
- (b) An easement exists for ingress and egress for the maintenance, repair and replacement of any load bearing wall located within a Unit.
- (c) If any part of the Common Elements encroaches upon any Unit or Limited Common Element, an easement shall exist for the encroachment, the maintenance, repair and replacement

thereof, so long as it continues. If any building of the Scheme shall be partially or totally destroyed and then rebuilt, minor encroachments on any parts of the Common Elements due to reconstruction shall be permitted, and easements shall exist for the encroachments.

~~(d) An easement exists for ingress, egress and maintenance in favor of any public utility providing utility service to the Scheme and the Units.~~

(e) An easement exists in favor of the Council of Co-owners, exercisable by the Board and its agents, to enter any Unit or any Limited Common Element from time to time during reasonable hours, as may be necessary for the operation of the Scheme (including the right to inspect Common Elements), on the event of emergency, for necessary action to prevent damage to any part of the Scheme.

(f) Developer reserves the right during development to grant, transfer, cancel, relocate, and otherwise deal with all utility and other easements now or hereafter affecting the Common Elements.

Section 3.2 Reservation of Easements by Developer. To benefit land that may never be brought into the Scheme, Developer reserves any and all sanitary sewer lines, storm sewer lines, telephone lines, electricity or other power lines, cable television lines, rights of way for ingress and egress and any other lines or accompanying easements. These reservations of easements shall be construed broadly in favor of Developer to facilitate the development of real estate that may never be brought into the Scheme.

ARTICLE IV PERMANENCY OF INTEREST

Section 4.1 Alteration and Transfer of Interests. The Common Elements and easements appurtenant to each Unit shall have a permanent character and shall not be altered without the consent

of the Board of Administration and the Unit owner affected. The Common Elements and easements shall not be separated from the Unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with the Unit even though the Common Elements or easements are not expressly mentioned or described in the conveyance or other instrument.

Section 4.2 Partition. The Common Elements shall remain undivided and shall not be the object of any action for partition or division of any part thereof except as provided by the Act.

ARTICLE V RESTRICTIONS

The Units and the Common Elements and Limited Common Elements shall be subject to the following restrictions, which restrictions shall be permanent:

Section 5.1 Use. The Unit shall be used only for single family residential purposes. The Unit shall be subject to such limitations and conditions as may be contained herein, or in the Bylaws of the Council, or any Rules and Regulations which may be adopted from time to time by the Board as to the use and appearance of the Units and the Common Elements.

Section 5.2 Subdivision. There shall be no subdivision or partition of any Unit without the prior written approval of the majority of the Board. If such approval is granted, such subdividing shall not alter or diminish the voting rights or the percentage of interest in the Common Elements previously allocated to the Unit undergoing such subdividing.

Section 5.3 Leases. Any Unit lease shall be in writing and shall be subject to this Declaration, the Bylaws and Rules and Regulation, and a copy of such lease shall be delivered to the Board,

Section 5.4 Fences and Back and Side Yard Areas. No fence, patio, wall, above or below ground pool, hot tub, antenna or receiver/transmitters (including those commonly known as "satellite dishes"), outbuilding or shed, or any other structure or placement of any kind or nature shall

be erected or located anywhere in the Common Elements or Limited Common Elements (including within the "back yard area" and "side yard area" constituting Limited Common Area) without the prior written approval of Developer or the Board. Anytime an approved fence is in place; it must at no time have a locked gate, to allow the Council's maintenance personnel access.

Section 5.5 Penalties. Violation of this Declaration, the Bylaws or any rules adopted by the Board of Administration, may be remedied by the Board, or its agent, by the imposition of reasonable fines or by legal action for damages, injunctive relief, restraining order, or specific performance. In addition, an aggrieved Unit owner may maintain a legal action for similar relief. A Unit owner in accepting ownership of a Unit agrees to become subject to this enforcement in the event of violation.

ARTICLE VI ADMINISTRATION

Section 6.1 Council of Co-Owners; Voting. The administration of the Scheme shall be vested in a Council of Co-owners consisting of all the Unit owners of the Scheme. The owner of any Unit, upon acquiring title, shall automatically become a member, each Unit owner shall have one vote for each Unit owned. If more than one person or entity owns a Unit, their one vote shall be exercised as they determine among themselves, but no vote may be split, and, if the owners of a Unit cannot agree among themselves as to the vote, no vote shall be allowed.

Section 6.2 Developer's Proxy Rights. The administration of the Scheme, including the adoption and amendment of Bylaws, adoption of rules, assessment of Common Expenses and all other matters relating to the administration of the Scheme, is vested in the Developer until (i) 120 days from the date at least 100% of the Units contemplated for the Scheme have been conveyed to third parties; (ii) until the Developer elects to surrender this power to the Unit owners; or (iii) until the release of all bonds executed for Development by Developer, whichever first occurs. Until that time, the Developer

shall constitute the Council of Co-owners and the Board of Administration, and shall possess the irrevocable proxy of the Unit owners to operate and administer the Scheme during this time, which proxy each Unit owner automatically grants upon acceptance of a deed to a Unit. All Unit owners, by ~~acceptance of a deed to a Unit, agree to this administration of the Scheme by the Developer.~~

Section 6.3 Administration of the Scheme. Administration of the Scheme, including the use, maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations to them, shall be in accordance with the provisions of the Act, this Declaration, the Bylaws of the Council, and all rules adopted by the Board of Administration. Specifically (but not exclusively) the Council shall:

- (a) Maintain, repair and replace all improvements in the Common Elements which are required by law to be maintained, repaired, and replaced upon, adjoining, or in connection with, any part of the Scheme.
- (b) Keep all Common Elements in a clean and sanitary condition and observe and all laws, ordinances, rules and regulations now or hereafter made by any governmental unit where applicable to the Scheme.
- (c) Well and substantially repair, maintain and keep all Common Elements of the Scheme in good order and condition; maintain and keep said land and all adjacent land between any boundary of the Scheme and the established street line in a neat and attractive condition, keeping all trees, shrubs and grass in good cultivation; replant the same as may be necessary and make good all defects in the Common Elements of the Scheme required in this Declaration to be repaired by the Council.
- (d) Except as may be provided herein, in the Bylaws and Scheme Rules, keep all Common Elements in a clean and sanitary condition and well and substantially repair, and maintain

them in good order and condition.

(e) Observe any setback lines affecting the Scheme as shown on the plans herein.

(f) ~~Regulate the use of the Common Elements and Limited Common Elements.~~

Section 6.4 Board of Administration. Administration of the Scheme shall be conducted for the Council by a Board of Administration (the Developer during the period outlined in Section 6.2) for Council of Co-Owners in accordance with the Bylaws. The Board shall be authorized to delegate administration of its duties and powers by written contract to a professional managing agent or administrator employed for that purpose by the Board so long as such contract does not exceed three years duration and is cancelable by the Board upon ninety days prior written notice. It shall be the responsibility of the Board to determine annually, subject to the approval of the Council, the estimated Common areas expenses of the Scheme for the succeeding twelve months, and, having so determined, to make and collect the assessment monthly from each Unit owner, as set forth in Article VII. Where no such determination is formally made for any year, the calculations utilized for the previous twelve months shall remain in effect until such oversight is corrected. The Board shall keep detailed accounts of the receipts and expenditures affecting the Scheme and its administration. Such books and records shall be available for examination by any Unit owner upon reasonable request and at such reasonable times and location as maybe specified by the Board.

ARTICLE VII ASSESSMENTS

Section 7.1 Covenant for Assessments. The proportionate share of each owner of each Unit in the common surplus and the Common Expenses of the condominium project is equal to the percentage of common interest appurtenant to the Unit of that Owner. The initial percentage

of common interest appurtenant to each Unit has been set out in Exhibit A to this Declaration, with such percentage to be altered by amendment to this Declaration in accordance with Section 2.4 of this Declaration. Each person and/or entity who becomes an Owner of a Unit whether or not it ~~shall be so expressed in any such deed or other form of conveyance,~~ shall be deemed to covenant and agree to pay to the Council the Unit's share of assessments as fixed, established, and collected from time to time as hereinafter provided. All assessments, together with interest thereon at the rate of ten (10%) percent per annum and costs of collection (including a lien preparation charge, filing fees, court costs and reasonable attorneys fees) shall be a charge and a continuing lien upon the Unit against which the assessment is made, and shall also be the personal obligation, jointly and severally, of the Owner or Owners of the Unit at the time when the assessment fall due.

Section 7.2 Determination of Regular Assessment, Reserves, Special Assessments, Fine Assessments, Expansion, Start Up Assessment.

(a) The Council, acting through the Board, shall, from time to time, but not less than once every twelve (12) months, determine the amount of the regular total assessment necessary to defray the Common Expenses for a given period not to exceed twelve (12) months. When setting the regular total assessment, the Council should include both (A) those funds required during the period for general operating purposes, and (B) those reserve funds estimated to be necessary for future capital improvement. All funds required for general operating purposes under (A) above may be held in the name of the Council. All funds required for reserves for capital improvements under (B) above shall be in an account in the name of the Council, for the benefit of all of the Unit owners in the Scheme. Any Unit owner, by the acceptance of a deed, does authorize the disbursement of any and all of the escrow funds solely upon the written authorization of the Board.

(b) Each Unit Owner is liable to pay that percentage or the regular total assessment that is

applicable to his or her Unit's percentage of the common interest, as determined by the Council. Notwithstanding the foregoing sentence, for an unoccupied Unit owned by the Developer, the Developer is only liable for sixty (60%) percent of the assessment which it would otherwise have to pay for the Unit. ~~If the Unit becomes occupied, the Developer must thereafter begin paying a full assessment for that Unit.~~

(c) The Council may from time to time levy special assessments for reasonable purposes. A special assessment may be levied against one Unit, or a group of Units or all of the Units, as circumstances reasonably warrant according to the Unit or Units benefitted by the assessment. If the assessment is apportioned among Units, the method of apportionment shall be based upon square feet unless for some reason that method would be very unfair. In that case, Council can determine another reasonable method of apportionment.

(d) If the Scheme is expanded during a given year and additional Units are brought into the Scheme, the new Unit shall pay the same assessment per square foot as the existing Units are paying for assessment year. If in the Council's sole discretion, such a rate would not be reasonable, the Council may adjust the rate up or down for those new Units until the next annual assessment is made

(e) The Council may levy a reasonable assessment, as a fine or penalty for violation of this declaration. A lien may be filed for this assessment and this assessment may be enforced by foreclosure and otherwise treated as a regular assessment.

(f) A special assessment, due immediately, arises against a Unit upon the initial special assessment shall be in an amount equal to the sum of one month of the full regular assessment. It shall be collected at closing and paid to the Council for use by the Council for Common Expenses. This special assessment is in addition to the regular assessment. Any reduced assessment on the Unit ends as of the First day of the month immediately following the month in which title was transferred of

record from the Developer (or successor developer or designated developer).

Section 7.3 Billing. The Council shall inform each Unit owner of the amount of the total assessment due from the Owner of that particular Unit. The Owner of each Unit must pay his or her ~~Unit's required assessment in advance each month.~~ Payment is to be made to such person at such a address as Council determines. Payment shall be due on the first day of each month, unless the Council otherwise directs. Special assessments are due thirty (30) days after the bill for the special assessments has been mailed or otherwise sent out by Council, unless the Council otherwise directs. If the Scheme is expanded and additional Units are brought into the Scheme during a given assessment year, those additional Units shall begin paying an assessment on the first day of the month immediately following the month after the Units were brought, of record, into the Scheme.

Section 7.4 Limited Common Element Assessment. An additional assessment may be made by the Council against any Unit to pay any expense resulting from a Limited Common Elements benefitting that Unit. The assessment must be reasonable. The assessment should be apportioned among the Units (if more than one) using the Limited Common Element in a fair and reasonable manner. The assessment may be a regular annual assessment and may be billed and included as part of the regular annual assessment described in Section 7.2 above.

Section 7.5 Assessment Certificate. The Council, shall upon demand, at any reasonable time, furnish to any owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Council, setting forth the status of said assessment; i.e., "current," and if no current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge to cover labor and material may be made in advance by the Council for each Certificate.

Section 7.6 Non-Payment of Assessment. Any assessments (including special

assessments) levied pursuant to this Declaration which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in the declaration, thereupon become a continuing lien upon the Unit which shall bind the Unit in the hands of the Owner and the Owner's successors and assigns.

If the assessment is not paid within fifteen days after the due date, the assessment shall bear interest at a reasonable rate set by the Board in its minutes, and the Council may bring an action at law against the Unit owner personally obligated to pay the same and/or foreclose the lien against the Unit. Interest, costs and reasonable attorneys fees shall be added to the amount of assessment. No Owner may waive or otherwise escape liability for the assessments by non-use of the Common Elements or by abandonment of his Unit.

Section 7.7 Priority of Council Lien. The lien provided for in this Article shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes assessments and liens of bona fide first mortgages or vendor's liens which have been filed of record unless notice of this lien has been filed of record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by Council. The Council is entitled to recover its reasonable attorneys fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Council shall be entitled, but not obligated, to become a purchaser at the foreclosure sale.

Section 7.8 Disputes as to Common Expenses; Adjustments. Any owner who believes some portion of common expenses chargeable to her Unit, for which an assessment lien has been levied by the Council, has been improperly charged against that owner or the Unit, may bring action in appropriate court of law. The Council in its reasonable discretion may, in order to prevent manifest injustice, adjust (increase or decrease) the assessment for any Unit based upon a consideration of the

following factors: the floor area of the Unit; the number of occupants in the Unit; or the demand on utilities by the occupants of the Unit; the accessibility of the Unit to Limited Common Areas. Council in its reasonable discretion may abate or reduce a Unit's assessment for a reasonable period of time, ~~during which a Unit uninhabitable, through no fault of the Owners, as a result of damage or~~ destruction.

Section 7.9 Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Council.

Any purchaser of a Unit at a foreclosure sale shall automatically become a member of the Council and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 7.10 Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses

When the mortgagee of a first mortgage of record or other purchaser of a Unit acquires title to the Unit as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title shall not be liable for the share of the Common Expenses or other assessments by the Council chargeable to such Unit which became due prior to the acquisition of title to the Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible for all of the Units, including that of such acquirer, its successors or assigns. However, the Council's lien rights may be asserted against surplus proceeds of any judicial sale or against any payments made by the mortgagee to the owner mortgagor in the case of a deed in lieu of foreclosure

Section 7.11 Liability for Assessments Upon Voluntary Conveyance

The personal obligation of each Owner to pay the assessment against the Unit shall pass to any subsequent grantee who takes title through contract, operation of law, or through any other method or

instrument other than a commissioner's deed or other court ordered deed or other than a deed to a mortgagee in lieu of foreclosure. The original owner shall not be released from the obligation of the assessment, but instead will be jointly and severally liable with the subsequent grantee. However, any ~~such grantee or proposed grantee shall be entitled to an assessment certificate as described elsewhere~~ in this Article, and such grantee shall not be liable for, nor shall the Unit be conveyed subject to a lien for, any unpaid assessment made by the Council against the grantor in excess of the amount set forth in the assessment certificate for the period reflected in the assessment certificate. This section shall not prejudice the right of the grantee to recover from the grantor the amounts paid by the grantee for the assessment which was also the obligation of the grantor.

Section 7.12 Late Charge. The Council may make a reasonable late charge or charges for any assessment, or installment of an assessment, not paid when due. This late charge shall also be a part of the assessment and shall also be a continuing lien upon the Unit and shall otherwise be treated and collected in the same manner as the assessment.

Section 7.13 Miscellaneous.

- (a) The Council may change the interest rate due on delinquent assessments, except that the rate cannot be changed more often than once every six months. As of its effective date, the new interest rate will apply to all assessments then delinquent.
- (b) The Unit owner has the sole responsibility of keeping the Council informed of owner's current address if different from the Unit owned. Otherwise, notice sent by the Council to Unit address is sufficient for any notice requirement under this Declaration.
- (c) The lien under this Article arises automatically, and no notice of lien need be recorded to make the lien effective.
- (d) The assessment lien includes all collection costs, including demand letters,

preparation of documents, reasonable attorneys fees, court costs, filing fees, and any other expenses occurred by the Council in enforcing or collecting the assessment,

(e) If any Common Element, including any Limited Common Area, is ~~intentionally or negligently damaged or destroyed through the act or omission of any Unit owner, the~~ Council may issue an individual assessment against the owner and the owner's Unit for the expenses involved in doing repairs and in making and/or enforcing the assessment, including reasonable attorneys fees.

(f) Any assessment otherwise payable in installments, shall become immediately due and payable in full without notice upon default in the payment of any installment.

ARTICLE VIII COMMUNITY ASSOCIATION

Section 8.1 **The Village of Waterford Community Association, Inc.** The Village of Waterford Community Association, Inc. ("Community Association") has been created to maintain "The Village of Waterford Community". Pursuant to this Declaration, every owner of a Unit in The Village of Waterford Community shall be automatically a Class A member of the Community Association and shall be required to pay to the Community Association on an annual basis the "Maintenance Assessment" as defined therein. By acceptance of a deed, each owner of a lot in The Village of Waterford Community shall comply with the provisions of the Declaration as well as the Articles of Incorporation, Bylaws, Rules and Regulations of the Community Association. No owner of any lot in The Village of Waterford Community shall be entitled to have Clubhouse membership privileges unless the Community Association determines to make such memberships available and then only on such terms and conditions as the Community Association may require.

Section 8.2 **Maintenance Assessment.** The "Maintenance Assessment" means the annual assessment levied from time to time by the Community Association for the maintenance of the

Common Property but which does not include any obligations or expenses with respect to the Clubhouse. Currently the Maintenance Assessment is \$_____ per unit per year.

Section 8.3 Rights, Duties and Obligations. Except as set forth above, every Unit owner in ~~The Village of Waterford shall have the same rights, duties and obligations with respect to the~~ Community Association (and the Community Association shall have the same rights, duties and obligations with respect to each such Unit owner) as are found in this Declaration.

Upon initial conveyance of each Unit in The Village of Waterford (excluding, if applicable, any conveyance by Developer pursuant to a single transaction of all or substantially all of the Units), the respective Owners purchasing such Units shall pay the The Waterford Community Association, Inc. a non-refundable initial assessment in the amount of \$300. This initial assessment shall be used as working capital for The Waterford Community Association and is not collected in lieu of any installments of the Maintenance Assessment.

ARTICLE IX INSURANCE

Section 9.1 General Insurance. The Council shall carry a master policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and if required by law, worker's compensation insurance with respect to the Scheme and the Council's administration thereof in accordance with the following provisions:

(a) The master policy shall be purchased by the Council for the benefit of the Council, the Unit Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Bylaws. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.

(b) All buildings, improvements, and other Common Elements shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one

(100%) percent of the replacement value of the exterior of the building, the brick, window, framing, roofing and rough in mechanicals, interior walls, partitioning, finished dry wall, in furnished by the Developer and other improvements and betterments, as determined from time to time by the Council.

~~The Council may elect to carry insurance to cover such other perils from time to time shall be~~
 customarily covered with respect to buildings and improvements similar in construction, location and use.

(c) The Unit owner shall be responsible to obtain fire and other perils coverage for the interior finish of the Unit, but not limit to all fixtures, trim, carpet, appliances, HVAC, ceramic tile, hardwood floors plumbing fixtures and appliances.

(d) The Council shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Unit Owners, individually and as a group (arising out of their ownership interest in the Common Elements), to another Unit Owner. The amount of the such insurance shall be reasonably determined by the Council.

Section 9.2 Fidelity Insurance. The Council shall carry fidelity coverage against dishonest acts on the part of officers and employees, members of the Council, members of the Board, trustees, employees, or volunteers responsible for the handling of funds collected and held for the benefit of the Unit Owners. The fidelity bond or insurance must name the Council as the named insured and shall be written in an amount sufficient to provide protection which is not less than the total annual assessments plus all accumulates reserves and all other funds held by the Council either in its own name or for the benefit of the Unit Owners.

Section 9.3 Directors' and Officers' Errors and Omissions Insurance. The Council may purchase insurance to protect itself and to indemnify any director or officer, past or present, against expenses actually and reasonably incurred by a director or officer in connection with the

bringing of any action, suit proceeding, civil or criminal, to which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Council; or to obtain such fuller protection and indemnification for directors and officers as the law of Indiana permits. The policies shall be in an amount to be reasonably determined by the Council.

Section 9.4 Premiums. The premiums upon insurance purchased by the Council shall be Common Expenses.

Section 9.5 Proceeds. Proceeds of all insurance policies owned by the Council shall be held by the Council for the use of the Unit Owners and their mortgagees as their interest may appear, provided, however, the proceeds of any insurance received by the Council because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise permitted by this Declaration.

Section 9.6 Power of Attorney. Each Unit Owner shall be deemed to appoint the Council its true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Council. Without limitation on the foregoing, the Council as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds and to route the same to the Council, the Unit Owners and their respective mortgagees as their interest appear, to execute releases of liability and to execute all documents and to do all things on behalf of the Unit Owners and the Scheme as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Council in regard to such matters.

Section 9.7 Responsibility of Unit Owner. The Council shall not be responsible for

procurement or maintenance of any insurance covering the contents or the interior of any Unit nor the liability of any Unit Owner for injuries therein not caused by or connected with the Council's operation, maintenance or use of the Scheme. Each Unit Owner shall obtain insurance

~~coverage at his own expense upon his Unit's furnishings personal property and these items under 9.1~~

(c) above; and, in addition, shall obtain comprehensive personal liability insurance covering liability for damage to persons or property of others located within such Unit Owner's Unit, or in another Unit in the project or upon the Common Areas, resulting from the negligence of the insured Unit Owner, in such amounts as shall from time to time be determined by the Council.

Section 9.8 Release. All policies purchased under this Article by either the Council or the individual Unit Owners shall provide for the release by the issuer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owners, member of their family, their employees, their tenants, servants, agents and guests, the Council, any employee of the Council, the Board, or any occupant of the Scheme, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 9.9 Approximate Coverage. If any of the required insurance coverage under this Article becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Council shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

Section 9.10 Additional Policy Requirements. All such insurance coverage obtained by the Council shall be written in the name of the Council, for the use and benefit of the Council, the Unit Owners and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) Exclusive authority to adjust losses under policies in force on the Scheme obtained by the Council shall be vested in the Council provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

~~(b) In no event shall the insurance coverage obtained by the Council hereunder be brought~~
into contribution with insurance purchased by individual Owners, occupants, other their mortgagees, and the insurance carried by the Council shall be primary.

(c) All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.

(d) The Council should make reasonable efforts to secure insurance policies that provide for the following:

(I) a waiver of subrogation;

(II) that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;

(III) that no policy may be canceled; invalidated or suspended on account of the conduct or any director, officer or employee of the Council or its duly authorized manager without prior demand in writing delivered to the Council to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Council, its manager, any owner or mortgagee; and

(IV) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

Section 9.11 Other Insurance Requirements. If this Project is intended to be qualified under the requirements of FHLMC, FNMA, HUD, FHA, VA or other similar program, the insurance requirements of that program are incorporated herein by reference. If any insurance company is unsure

of the coverage intended, it should ask for an interpretation from the Board. Otherwise, the broadest coverage shall be presumed, if there is an ambiguity.

ARTICLE X ALTERATIONS

Section 10.1 Alteration of Scheme. Restoration or replacement of the Scheme (unless resulting from casualty destruction), or construction of any additional buildings (other than those initially contemplated in the Scheme including those contemplated by Section 2.4 of this Declaration), material alterations or additions to any building of the Scheme, shall be undertaken by the Council or Unit Co-owners only after unanimous approval of all Co-Owners, and with written consent of the holders of all liens on Units affected and in accordance with the complete plans and specifications approved in writing by the Board. Promptly upon completion of such restoration, alteration or replacement, the Board of Administration shall duly record the amendment with a complete set of floor plans of the Units of the Scheme as so altered, certified as built by a registered architect or engineer.

Section 10.2 Reconstruction. Where casualty destruction, partial or total, of the building occurs, whether arising from events covered by insurance or not, the determination as to reconstruction shall be governed by the Act as may be amended or supplemented from time to time.

ARTICLE XI INDEBTEDNESS

Section 11.1 Incurrence and Retirement of Indebtedness. The Council of Co-Owners, acting by unanimous vote of the Board, may borrow money from time to time for the following purposes:

(a) To cover any budgetary deficit for operational expenses, so long as such loan can be repaid within six months from anticipated Common Expense income not needed for ongoing

operations;

(b) their respective percentages of common interest.

(c) If the Scheme continues after taking by eminent domain, then the remaining portion of

~~the Scheme shall be re-surveyed and this Declaration amended accordingly by the Board, if any Unit shall have been taken, then the amended Declaration shall reflect such taking and shall proportionately readjust the percentage of common interest of the remaining Unit owners based upon a total percentage of common interest of 100%.~~

Section 12.2 Amendment of Declaration. Except as otherwise provided in this Declaration, or in the Indiana Condominium Property Law, this Declaration may be amended from time to time by a majority of the Unit owners, effective only upon recording of the signed instrument setting forth the amendment.

WITNESS the signature of Developer on the 21st day of February, 2006.

MICHAEL A. YOUNG, INC.

By: Michael A. Young
Title: President

STATE OF INDIANA)
) SS
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me on FEB 21, 2006 by MICHAEL A YOUNG as Developer of Village of Waterford Kentucky Corporation on behalf of said Corporation.

Nelissa Love (CPA 4021) Notary Public

County of Residence: Clark
My Commission Expires: 2-18-09

This document prepared by:

John H. Thompson
111 W. Chestnut St.
Jeffersonville, IN 47130
