

The Fairway at the Hawthorne uses same covenants as Hamilton Proper

HAMILTON PROPER # 9125216

9125216

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

HAMILTON PROPER

This Instrument Recorded 9-23 1991  
Sharon K. Cheny, Recorder, Hamilton County, Indiana

HAMILTON PROPER  
HAMILTON CO. IN.

91 SEP 23 PM 4:20

HYATT & RHOADS, P.C.

Attorneys

1200 Peachtree Center South Tower  
Atlanta, Georgia 30303  
(404) 659-6600

# The Fairway at the Hawthorne uses same covenants as Hamilton Proper

## TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS	1
1. Annexation.....	1
2. Area of Common Responsibility.....	1
3. Articles of Incorporation; Articles.....	2
4. Association.....	2
5. Base Assessment.....	2
6. Board of Directors; Board.....	2
7. By-Laws.....	2
8. Class "B" Control Period.....	2
9. Common Area.....	2
10. Common Expenses.....	2
11. Community-Wide Standard.....	2
12. Country Clubs.....	2
13. Declarant.....	3
14. Exclusive Common Area.....	3
15. General Common Area.....	3
16. Master Land Use Plan.....	3
17. Member.....	3
18. Mortgage.....	3
19. Mortgagee.....	3
20. Mortgagor.....	3
21. Neighborhood.....	3
22. Neighborhood Assessments.....	4
23. Neighborhood Expenses.....	4
24. Owner.....	4
25. Person.....	4
26. Properties.....	4
27. Special Assessment.....	4
28. Supplemental Declaration.....	4
29. Unit.....	5
30. Voting Group.....	5
31. Voting Member.....	5
II. PROPERTY RIGHTS	5
1. General.....	5
2. Exclusive Common Areas.....	6
3. Country Clubs.....	7
III. MEMBERSHIP AND VOTING RIGHTS	7
1. Membership.....	7
2. Voting.....	8
3. Neighborhoods and Voting Groups.....	8

9125216

The Fairway at the Hawthorne uses same covenants as Hamilton Proper

	<u>Page</u>
IV. MAINTENANCE	10
1. Association's Responsibility.....	10
2. Owner's Responsibility.....	11
3. Neighborhood's Responsibility.....	11
4. Party Walls and Party Fences.....	11
V. INSURANCE	12
1. Association Insurance.....	12
2. Individual Insurance.....	14
3. Damage and Destruction.....	15
4. Disbursement of Proceeds.....	16
5. Repair and Reconstruction.....	16
VI. NO PARTITION	16
VII. CONDEMNATION	16
VIII. ANNEXATION AND WITHDRAWAL OF PROPERTY	17
1. Annexation Without Approval of Class "A" Membership.....	17
2. Annexation With Approval of Class "A" Membership.....	17
3. Acquisition of Additional Common Area.....	18
4. Withdrawal of Property.....	18
5. Amendment.....	18
IX. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	18
1. Common Area.....	18
2. Personal Property and Real Property for Common Use.....	19
3. Rules and Regulations.....	19
4. Implied Rights.....	19
5. Governmental Interests.....	19
X. ASSESSMENTS	19
1. Creation of Assessments.....	19
2. Computation of Base Assessment.....	21
3. Computation of Neighborhood Assessments.....	22
4. Special Assessments.....	23
5. Lien for Assessments.....	23
6. Reserve Budget and Capital Contribution.....	23
7. Date of Commencement of Assessments.....	24
8. Subordination of the Lien to First Mortgages.....	24
9. Capitalization of Association.....	24
10. Exempt Property.....	24

9125216

The Fairway at the Hawthorne uses same covenants as Hamilton Proper

	<u>Page</u>
XI. ARCHITECTURAL STANDARDS	25
1. New Construction Committee.....	25
2. Modifications Committee.....	26
3. No Waiver of Future Approvals.....	26
4. Variance.....	27
5. Compliance with Guidelines.....	27
XII. USE RESTRICTIONS	27
1. Signs.....	27
2. Parking and Prohibited Vehicles.....	28
3. Occupants Bound.....	28
4. Animals and Pets.....	28
5. Quiet Enjoyment.....	29
6. Unsightly or Unkempt Conditions.....	29
7. Antennas.....	29
8. Clotheslines, Garbage Cans, Tanks, Etc.....	29
9. Subdivision of Unit and Timesharing.....	30
10. Firearms.....	30
11. Pools.....	30
12. Irrigation.....	30
13. Tents, Trailers and Temporary Structures.....	30
14. Drainage.....	30
15. Tree Removal.....	31
16. Sight Distance at Intersections.....	31
17. Utility Lines.....	31
18. Air Conditioning Units.....	31
19. Lighting.....	31
20. Artificial Vegetation, Exterior Sculpture, and Similar Items.....	31
21. Energy Conservation Equipment.....	31
22. Wetlands, Lakes and Water Bodies.....	31
23. Playground.....	32
24. Fences.....	32
25. Business Use.....	32
26. On-Site Fuel Storage.....	32
27. Leasing of Units.....	33
28. Laws and Ordinances.....	33
XIII. GENERAL PROVISIONS	33
1. Term.....	33
2. Amendment.....	34
3. Indemnification.....	34
4. Easements for Encroachment.....	35
5. Easements for Utilities, Etc.....	35
6. Cable Television Systems.....	36
7. Easement for Golf Balls.....	37
8. Severability.....	38
9. Right of Entry.....	38
10. Perpetuities.....	38

9125216

# The Fairway at the Hawthorne uses same covenants as Hamilton Proper

	<u>Page</u>
11. Litigation.....	38
12. Cumulative Effect; Conflict.....	38
13. Use of the Words "Hamilton Proper".....	39
14. Compliance.....	39
15. Security.....	39
16. Notice of Sale or Transfer of Title.....	39
XIV. MORTGAGEE PROVISIONS.....	40
1. Notices of Action.....	40
2. Special FHLMC Provision.....	40
3. Other Provisions for First Lien Holders.....	41
4. Amendments to Documents.....	41
5. No Priority.....	42
6. Notice to Association.....	43
7. Amendment by Board.....	43
8. Applicability of Article XIV.....	43
9. Failure of Mortgagee to Respond.....	43
XV. DECLARANT'S RIGHTS.....	43
XVI. COUNTRY CLUBS.....	44
1. General.....	44
2. Conveyance of Country Clubs.....	44
3. Rights of Access and Parking.....	45
4. Assessments.....	45
5. Architectural Control.....	45
6. Limitations on Amendments.....	45
7. Jurisdiction and Cooperation.....	46

1939g

9125216

The Fairway at the Hawthorne uses same covenants as Hamilton Proper

- TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Appearing</u>
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	3
"C"	Declaration of Easements and Covenant to Share Costs	21
"D"	By-Laws of Hamilton Proper Community Association, Inc.	2

1939g-9/17/91

9125216

# The Fairway at the Hawthorne uses same covenants as Hamilton Proper

## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

HAMILTON PROPER

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 23rd day of September, 1991, by HAMILTON PROPER PARTNERS LAND PARTNERSHIP, L.P., an Indiana limited partnership ("Declarant").

Declarant, as the owner of the real property described in Exhibit "A" attached hereto or with the consent of the owners of such property, intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all present and future owners of the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter made subject to this Declaration.

Declarant, as the owner of all the property described in Exhibit "A" or with the consent of the owners of such property, and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration (as defined herein) hereby declares that such property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Indiana Horizontal Property Law, Ind. Code § 32-1-6-1, et seq.

### Article I Definitions

Section 1. "Annexation" shall mean and refer to the act of recording in the public records of Hamilton County, Indiana, a Supplemental Declaration which makes additional property subject to the terms of this Declaration, as more particularly described in Article VIII hereof.

Section 2. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any Neighborhood become the

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 3. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Hamilton Proper Community Association, Inc., as filed with the Secretary of State of the State of Indiana.

Section 4. "Association" shall mean and refer to Hamilton Proper Community Association, Inc., an Indiana corporation, its successors or assigns. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 5. "Base Assessment" shall mean and refer to assessments levied against all Units in the Properties to fund Common Expenses.

Section 6. "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana corporate law.

Section 7. "By-Laws" shall mean and refer to the By-Laws of Hamilton Proper Community Association, Inc., attached hereto as Exhibit "D" and incorporated herein by reference, as they may be amended from time to time.

Section 8. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2, of the By-Laws.

Section 9. "Common Area" shall be an inclusive term referring to all General Common Area and all Exclusive Common Area, as defined herein.

Section 10. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association, but shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

Section 11. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

Section 12. "Country Clubs" shall refer to certain parcels of real property located within or adjacent to the Properties which are privately

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

owned by Mansur Development Corp., Declarant, or their successors, successors-in-title, or assigns, and which are operated on a public or private basis as a golf course, a country club with recreational facilities which may include a golf course, a club house, pool(s), tennis court(s), and all related and supporting facilities and improvements. If the context permits or requires, the term "Country Clubs" shall also refer to the owner or owners of such property.

Section 13. "Declarant" shall mean and refer to Hamilton Proper Partners Land Partnership, L.P., an Indiana limited partnership, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant. For purposes of this Declaration, an "affiliate" of the Declarant shall be any entity which has executed a power of attorney authorizing Declarant to exercise control over any portion of the Properties owned by such entity for the purpose of exercising any of the rights granted to the Declarant under this Declaration or the By-Laws.

Section 14. "Exclusive Common Area" shall mean and refer to certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II of this Declaration.

Section 15. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 16. "Master Land Use Plan" shall mean and refer to the concept plan for the development of the property described on Exhibits "A" and "B", prepared by David Jensen Associates and dated May 25, 1988, as it may be amended from time to time.

Section 17. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 18. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 19. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 20. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 21. "Neighborhood" shall mean and refer to each separately developed and denominated residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or common areas and facilities which are not

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

owned by Mansur Development Corp., Declarant, or their successors, successors-in-title, or assigns, and which are operated on a public or private basis as a golf course, a country club with recreational facilities which may include a golf course, a club house, pool(s), tennis court(s), and all related and supporting facilities and improvements. If the context permits or requires, the term "Country Clubs" shall also refer to the owner or owners of such property.

Section 13. "Declarant" shall mean and refer to Hamilton Proper Partners Land Partnership, L.P., an Indiana limited partnership, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant. For purposes of this Declaration, an "affiliate" of the Declarant shall be any entity which has executed a power of attorney authorizing Declarant to exercise control over any portion of the Properties owned by such entity for the purpose of exercising any of the rights granted to the Declarant under this Declaration or the By-Laws.

Section 14. "Exclusive Common Area" shall mean and refer to certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II of this Declaration.

Section 15. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 16. "Master Land Use Plan" shall mean and refer to the concept plan for the development of the property described on Exhibits "A" and "B", prepared by David Jensen Associates and dated May 25, 1988, as it may be amended from time to time.

Section 17. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 18. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 19. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 20. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 21. "Neighborhood" shall mean and refer to each separately developed and denominated residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or common areas and facilities which are not

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

available for use by all Association Members. For example, and by way of illustration and not limitation, each condominium, townhome development, cluster home development, and single-family detached housing development shall constitute a separate Neighborhood.

In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Article III, Section 3) having jurisdiction over the property within the Neighborhood. It shall not be necessary for any Neighborhood to be governed by an additional owners association except in the case of a condominium or as otherwise required by law. Neighborhoods may be divided or combined in accordance with Article III, Section 3, of this Declaration.

Section 22. "Neighborhood Assessments" shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article X, Section 1 of this Declaration.

Section 23. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

Section 24. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Association.

Section 25. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 26. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter made subject to this Declaration by Supplemental Declaration.

Section 27. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 4 of this Declaration.

Section 28. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant and

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

recorded in the public records of Hamilton County, Indiana, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or designates Voting Groups as specified in Article III, Section 3(b) hereof. The term shall also refer to the instrument recorded by the Association pursuant to Article VIII, Section 2 of this Declaration to subject additional property to this Declaration.

Section 29. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon. In the case of an apartment building or other structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Land Use Plan or the site plan approved by Declarant, whichever is more recent, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Section 30. "Voting Group" shall mean one (1) or more Voting Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Article III, Section 3(b), of this Declaration or, if the context permits, the group of Members whose Units are represented thereby.

Section 31. "Voting Member" shall mean and refer to the representative selected by the Members of each Neighborhood to be responsible for casting all votes attributable to Units in the Neighborhood for election of directors, amending this Declaration or the By-Laws, and all other matters provided for in this Declaration and in the By-Laws. The Voting Member from each Neighborhood shall be the senior elected officer (e.g., Neighborhood Committee chairman or Neighborhood Association president) from that Neighborhood; the alternate Voting Member shall be the next most senior officer.

### Article II Property Rights

Section 1. General. Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Area, subject to:

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

(a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) the right of the Association to limit the number of guests who may use any recreational facilities within the Common Area, and to adopt rules regulating the use and enjoyment of the Common Area;

(c) the right of the Association to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed thirty (30) days for violations of the Declaration, By-Laws, or rules of the Association after notice and a hearing pursuant to the Article III, Section 22 of the By-Laws;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area pursuant to Article XIII, Section 5 hereof;

(e) the right of the Association to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

(f) the right of the Association to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(g) the rights of certain Owners to the exclusive use of portions of the Common Areas, designated Exclusive Common Areas, as more particularly described in Section 2 below.

Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchaser other than a builder or developer holding title for the purpose of development and resale.

Section 2. Exclusive Common Areas. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods, or private driveways serving more than one Unit. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of those Units to which the Exclusive Common Areas are assigned.

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the plat of survey relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Article IX, Section 1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the consent of the Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

Section 3. Country Clubs. Access to the Country Clubs, if any, within or adjacent to the Properties is strictly subject to the terms, conditions, rules and procedures established by the respective owners of the Country Clubs, as more particularly described in Article XVI of this Declaration. No Owner or occupant gains any right to enter, to use, or to require the continued existence or operation of those facilities by virtue of ownership or occupancy of a Unit.

### Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. The owner(s) of the Country Clubs shall not be members of the Association, and shall not be entitled to vote except as specifically provided herein or in the By-Laws.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

**Section 2. Voting.** The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) **Class "A".** Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof; there shall be only one (1) vote per Unit. Unless otherwise specified in this Declaration or the By-Laws, the vote for each Unit shall be exercised by the Voting Member, as defined in Article I, representing the Neighborhood of which the Unit is a part.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one (1) Person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) **Class "B".** The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2, of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3, of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or

(ii) when, in its discretion, the Declarant so determines.

### **Section 3. Neighborhoods and Voting Groups.**

(a) **Neighborhoods.** Every Unit shall be located within a Neighborhood as defined in Article I. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of another owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium or as otherwise required by law. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Article V, Section 3, of the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Each Neighborhood, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood, the cost of which shall be assessed against the benefitted Units as a Neighborhood Assessment pursuant to Article X hereof.

The senior elected officer of each Neighborhood Association or Neighborhood Committee shall serve as the Voting Member for such Neighborhood and shall cast all votes attributable to Units in the Neighborhood on all Association matters requiring membership vote, unless otherwise specified in this Declaration or the By-Laws. The next most senior officer shall be the alternate Voting Member and may cast such votes in the absence of the Voting Member. The Voting Member may cast all such votes as it, in its discretion, deems appropriate. Notwithstanding the above, each Voting Member shall cast only one (1) equal vote for election of directors.

Initially, each portion of the Properties which is intended to be subdivided for development as two (2) or more Units at the time it is conveyed by the Declarant or its affiliate, or which is described on a single plat or series of plats by a single name, shall constitute a separate Neighborhood. The developer of any such Neighborhood may apply to the Board of Directors to divide the parcel constituting the Neighborhood into more than one (1) Neighborhood or to combine two (2) or more Neighborhoods into one (1) Neighborhood at any time. Upon a petition signed by a majority of the Unit Owners in the Neighborhood, any Neighborhood may also apply to the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhood or to combine two (2) Neighborhoods into one (1) Neighborhood.

Any such application shall be in writing and shall include a plat of survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units included within the proposed Neighborhood(s). A Neighborhood consolidation shall automatically be deemed granted upon filing the required documents with the Board. A Neighborhood division requested by the Neighborhood or by the Neighborhood developer shall automatically be deemed granted unless the Board of Directors denies such application in writing within thirty (30) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) Voting Groups. In order to guarantee representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others, the Declarant shall establish Voting Groups for election of directors to the Board. The Declarant shall establish Voting Groups not later than the date of expiration of the Class "B" Control Period by filing with the Association and in the public records of Hamilton County, Indiana, a Supplemental Declaration identifying each Voting Group and designating the Units within each group. Such

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Class "B" Control Period. Until such time as Voting Groups are established by Declarant, or in the event that Declarant fails to establish Voting Groups, all Units shall be assigned to the same Voting Group. Each Voting Group shall be entitled to elect the number of directors specified in Article III, Section 6 of the By-Laws. Any other members of the Board of Directors shall be elected at large by all Voting Members without regard to Voting Groups.

### Article IV Maintenance

**Section 1. Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including all private streets, situated upon the Common Areas, landscaped rights-of-way along the primary loop road through the Properties, medians of public streets within the Properties, entry features for the Hamilton Proper community, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Areas shall be a Common Expense to be allocated among all Units as part of the Base Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

The Association shall also be responsible for maintenance, repair and replacement of property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those designated by Supplemental Declaration. This assumption of responsibility may take place either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board

9125216

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

**Section 2. Owner's Responsibility.** Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with Article X, Section 4 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

**Section 3. Neighborhood's Responsibility.** Upon resolution of the Board of Directors, each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to additional covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Article X, Section 4 of this Declaration.

### **Section 4. Party Walls and Party Fences.**

(a) **General Rules of Law to Apply.** Each wall or fence built as a part of the original construction on the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) **Damage and Destruction.** If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it, and if the other Owner or

## The Fairway at the Hawthorne uses same covenants as Hamilton Proper

Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, the Board shall appoint an arbitrator and the decision of the arbitrator shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

### Article V Insurance

Section 1. Association Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk property insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to property insurance on the Common Area, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration affecting the Neighborhood, obtain and continue in effect adequate blanket all-risk property insurance, if reasonably available, on properties within the Neighborhood. If all-risk coverage is not reasonably available, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate and shall provide coverage for the full replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment, as defined in Article I hereof.

The Association shall have no insurance responsibility for any part of any Country Club property.

Insurance obtained on the properties within any Neighborhood, whether obtained by such Neighborhood or the Association, shall at a minimum comply with the applicable provisions of this Section 1, including the provisions of this Article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to each

9125216