

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

Member insured, to the Association, and to the Neighborhood Association, if any.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility, the Association and its Members for all insurable damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar limit per occurrence as respects bodily injury and property damage, and a Two Million (\$2,000,000.00) Dollar aggregate limit, if reasonably available.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association and shall be included in the Base Assessment, as defined in Article I and as more particularly described in Article X, Section 1; provided, in the discretion of the Board of Directors, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted thereby. The policies may contain a reasonable deductible, and, in the case of property insurance, the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Indiana which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) All policies on the Common Area shall be for the benefit of the Association and its Members; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood, and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

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(e) All property insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the metropolitan Indianapolis, Indiana, area.

(f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any Owner, or any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(iv) a statement that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or nonrenewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or nonrenewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk property insurance on the Unit(s) and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article V for insurance on the Common Area, unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which

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they are not obligated to do hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

A Neighborhood may have more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within the Neighborhood and the standard for returning the Units to their natural state in the event the structures are not rebuilt or reconstructed.

### Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by an insured peril to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the damage or destruction, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area or to the common property of any Neighborhood shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association, if Common Area, or the Unit Owners representing at least seventy-five (75%) percent of the total vote of the Neighborhood whose common property is damaged, if common property of a Neighborhood, shall decide within sixty (60) days after the damage or destruction not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood shall not be repaired or reconstructed and

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no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, or the Neighborhood, as applicable, in a neat and attractive condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area or to the common property of a Neighborhood for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against all Owners on the same basis as provided for Base Assessments, provided, if the damage or destruction involves the common property of a Neighborhood Association, only the Owners of Units in the affected Neighborhood shall be subject to assessment therefor. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

### Article VI No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

### Article VII Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven (67%) percent of the total Class "A" vote in the Association and of the

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Declarant, as long as the Declarant or its affiliates own any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant or its affiliates own any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

### Article VIII Annexation and Withdrawal of Property

Section 1. Annexation Without Approval of Class "A" Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2008, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto. Such annexation shall be accomplished by filing in the public records of Hamilton County, Indiana, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be an affiliate of the Declarant or the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B", and following the

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expiration of the right in Section 1, any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant, so long as Declarant or its affiliates own property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Hamilton County, Indiana, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to this Article VIII, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Hamilton Proper desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Hamilton Proper.

Section 5. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant or its affiliates own any property described in Exhibits "A" or "B" hereof.

### Article IX Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean,

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attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances and to permit Hamilton County or any municipality having jurisdiction over the Properties to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. The Association shall permit the Declarant reasonable authority to designate sites within the Properties for fire, emergency, police, water, and sewer facilities, public schools and parks, post offices, libraries, and other public facilities.

### Article X Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; and (c) Special Assessments as described in Section 4 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

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Base Assessments shall be levied equally on all Units. Neighborhood Assessments shall be levied equally against all Units in the Neighborhood benefitting from the services supported thereby, provided that in the event of assessments for maintenance of Exclusive Common Areas assigned to less than all Units in a Neighborhood, such assessments shall be levied only against the Units to which such Exclusive Common Areas are assigned; and provided, further, in the event of assessments for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, such assessments for the use and benefit of particular Units shall be levied on a pro rata basis among only the benefitted Units if so directed by the Neighborhood in writing to the Board of Directors. Special Assessments shall be levied as provided in Section 4 below.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Indiana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Each Owner by acceptance of a deed to his or her Unit, acknowledges that all Base Assessments and Neighborhood Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; provided, the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may revoke the privilege of paying in installments and require all annual assessments to be paid in full immediately. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment may be paid in monthly installments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by nonuse of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of: (a) any alleged failure of the Association or Board to take some action or perform some function required to be taken or

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performed by the Association or Board under this Declaration or the By-Laws; (b) any inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association; or (c) any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Until termination of the Class "B" Control Period, the Declarant may annually elect, in lieu of paying regular assessments on its unsold Units, to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year, including budgeted contributions to reserves. The Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared.

The Base Assessment to be levied against each Unit for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any assessments levied on owners of commercial property within or adjacent to the Properties pursuant to that certain Declaration of Easements and Covenants to Share Costs attached hereto as Exhibit "C" and incorporated herein. In addition, the Board shall take into account the number of Units subject to assessment under Section 7 hereof on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article VIII hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 1 above); provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior

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to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Voting Members by Voting Members or their alternates representing at least a majority of the total Class "A" vote in the Association, and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Article II, Section 4, of the By-Laws, which petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3: Computation of Neighborhood Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood or part thereof on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated as provided in Section 1 above.

The Board shall cause a copy of the applicable budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit for the coming year to be delivered to the Unit Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority of the Owners of Units subject to the Neighborhood Assessment; provided, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten (10%) percent of the Units subject to such assessment; and provided, further, the right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

In the event that any proposed budget for Neighborhood Expenses is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

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## Section 4. Special Assessments.

(a) Entire Membership. The Association may levy Special Assessments from time to time provided any such assessment receives the affirmative vote or written consent of Voting Members or their alternates representing a majority of the total Class "A" votes in the Association and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Unit to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, or the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the senior officer of the Neighborhood and an opportunity for a hearing.

Section 5. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 6. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected

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needs of the Association, as shown on the budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Sections 2 and 3 of this Article.

Section 7. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Unit on the first day of the first month following the later of: (a) the date on which a subdivision plat or condominium plat depicting the Unit is filed in the Hamilton County, Indiana, public records; or (b) the date upon which the Unit is made subject to this Declaration. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Section 8. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Indiana law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectable from Owners of all the Units, including such acquirer, its successors and assigns.

Section 9. Capitalization of Association. Upon acquisition of record title to a Unit by the first purchaser thereof other than the Declarant or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year as determined by the Board. Such contribution shall not be considered an advance payment of assessments and shall be in addition to, not in lieu of, assessments then or thereafter becoming due. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

Section 10. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) all Common Area;

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- (b) the Country Clubs (except as provided in Exhibit "C" hereof); and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

### Article XI Architectural Standards

Nothing shall be erected on any Unit, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 1 and 2 below. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 1 and 2 of this Article XI. This Article may not be amended without the Declarant's written consent so long as the Declarant or its affiliates own any land subject to this Declaration or subject to annexation to this Declaration.

Section 1. New Construction Committee. The New Construction Committee (NCC) shall consist of at least three (3), but no more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until one hundred (100%) percent of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the NCC who shall serve and may be removed at the discretion of the Board of Directors. The members of the NCC may include architects, engineers, and other persons who are not Members of the Association.

The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines and application and review procedures. Such guidelines may vary on a Neighborhood-by-Neighborhood basis as determined in the sole discretion of the NCC. Copies shall be available from the New Construction Committee for review. The guidelines and procedures

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shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. In the event that the NCC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed approved.

**Section 2. Modifications Committee.** The Board of Directors may establish a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by and shall serve at the discretion of the Board of Directors. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the appropriate board or committee of any Neighborhood Association subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the above, the MC shall not take any action or approve any plans inconsistent with the guidelines promulgated by the NCC.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with those of the NCC. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Unit visible from outside the Unit shall be subject to approval hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

**Section 3. No Waiver of Future Approvals.** The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

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**Section 4. Variance.** The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the NCC or MC shall not be considered hardships warranting a variance.

**Section 5. Compliance With Guidelines.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the NCC or MC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in Article III, Section 22 of the By-Laws.

### Article XII Use Restrictions

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association) as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

**Section 1. Signs.** No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors, except entry and directional signs installed by Declarant and such signs as may be required by legal proceedings. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Notwithstanding the above, no signs, flags, banners or

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similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties.

### Section 2. Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or in appropriate spaces or designated areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations as the Board of Directors, or any Neighborhood having concurrent jurisdiction over parking areas within the Neighborhood, may adopt. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. The Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-quarters of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board or by the Neighborhood having jurisdiction over parking areas within a particular Neighborhood. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with Article III, Section 22 of the By-Laws.

Section 3. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit or Country Club. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties,

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except that dogs, cats, or other usual and common household pets not to exceed a total of two (2) may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed from the Properties upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person.

**Section 5. Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

**Section 6. Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

**Section 7. Antennas.** No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee. Notwithstanding this, the Declarant, its nominees, successors or assigns shall have the right, without obligation, to erect an aerial or satellite dish, or install other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties.

**Section 8. Clotheslines, Garbage Cans, Tanks, Etc.** All clotheslines, garbage cans, above-ground storage tanks, mechanical equipment, and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall

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regularly be removed from the Properties and shall not be allowed to accumulate thereon.

**Section 9. Subdivision of Unit and Time Sharing.** No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Unit or Units owned by Declarant or its affiliates. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. This Section shall not preclude subdivision by Declarant or its designees of parcels of vacant land designated for development of multiple Units on the Master Land Use Plan.

No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

**Section 10. Firearms.** The discharge of firearms within the Properties is prohibited. The term "firearms" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

**Section 11. Pools.** No above-ground swimming pools shall be erected, constructed or installed on any Unit, provided, nothing herein shall preclude installation and use of hot tubs, spas, jacuzzis or any similar apparatus, with prior approval pursuant to Article XI hereof.

**Section 12. Irrigation.** All sprinkler and irrigation systems shall be subject to approval in accordance with Article XI of this Declaration. Provided, however, this Section 12 shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property in accordance with Article VIII, Section 1.

**Section 13. Tents, Trailers and Temporary Structures.** Except as may be permitted by the Declarant or the NCC during initial construction within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Unit or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Board, or by the Declarant.

**Section 14. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow.

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Section 15. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required by the committee having jurisdiction to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion.

Section 16. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 17. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 18. Air Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Unit.

Section 19. Lighting. Except for seasonal Christmas decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 20. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration.

Section 21. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof.

Section 22. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be aesthetic amenities and no active use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. This Section shall not apply to prohibit use by the Country Club(s) of lakes, ponds, or streams within the Country Club(s) for irrigation of the property comprising the Country Club(s) or other purposes in connection with golf course play. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties. No docks, piers, or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Declarant or the Association.

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**Section 23. Playground.** Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. No playground equipment, tree houses, or similar structures shall be erected on any Unit without prior approval pursuant to Article XI hereof.

**Section 24. Fences.** No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI of this Declaration.

**Section 25. Business Use.** No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This Section shall not apply to the Country Clubs nor shall it apply to any activity conducted by the Declarant or its affiliates or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which such entity owns within the Properties.

**Section 26. On-Site Fuel Storage.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association and the Country Clubs shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

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