

30.00
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2001/10/10

Instrument
9909928797

Cross Reference Instrument Nos. 91-25216, 94-37392,
95-58652, 99-08683 and 99-08680

**AMENDED AND RESTATED THIRD SUPPLEMENTAL DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**
(Arbor Glen Subdivision)

THIS AMENDED AND RESTATED THIRD SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this 20th day of April, 1999, by HAMILTON PROPER PARTNERS LAND PARTNERSHIP, L.P., a limited partnership organized and existing under the laws of the State of Indiana, having its principal office and place of business at 700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204-2960 ("HPPLP"), and HAMILTON PROPER NORTH, L.L.C., a limited liability company organized and existing under the laws of the State of Indiana, having its principal office and place of business at the same address as HPPLP ("HPNLLC"),

WITNESSETH: That

WHEREAS, HPPLP has heretofore made a certain Declaration of Covenants, Conditions, and Restrictions for Hamilton Proper, dated September 23, 1991, and recorded September 23, 1991, as Instrument No. 91-25216 in the Office of the Recorder of Hamilton County, Indiana (the "Original Declaration"); and

WHEREAS, HPPLP and HAMILTON PROPER PARTNERS I, L.P., a limited partnership organized and existing under the laws of the State of Indiana, having its principal office and place of business at the same address as HPPLP ("HPPI"), have heretofore made a certain Certificate of Designation of Co-Declarant, and Supplemental Declaration of Covenants, Conditions and Restrictions, dated August 23, 1994, recorded August 29, 1994, as Instrument No. 94-37392, in the Office of the Recorder of Hamilton County, Indiana (the "First Supplemental Declaration"); and

WHEREAS, HPPLP, HPPI and Hamilton Proper, L.L.C., a limited liability company organized and existing under the laws of the State of Indiana, having its principal office and place of business at the same address as HPPLP, have heretofore made a certain Certificate of Designation of Co-Declarant, and Second Supplemental Declaration of Covenants, Conditions and Restrictions, dated October 20, 1995, and recorded October 31, 1995, as Instrument No. 95-58652, in such Office (the "Second Supplemental Declaration") (the Original Declaration, as supplemented by the First Supplemental Declaration and the Second Supplemental Declaration, being hereinafter referred to collectively as the "Declaration," and all capitalized terms used but not defined herein having the meanings ascribed to them in the Declaration); and

WHEREAS, HPPLP and HPNLLC have heretofore made a certain Third Supplemental Declaration of Covenants, Conditions and Restrictions, dated February 1, 1999, and recorded February 9, 1999, as Instrument No. 99-08680, in such Office (the "Third Supplemental Declaration"); and

DECRTR197343.5

9909928797
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 05-12-1999 At 12:01:21 pm.
AMEND DECL 30.00

WHEREAS, Article VIII, Section 1, of the Original Declaration provides, in pertinent part, that "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 on 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 the Voting Members, but shall require the consent of the owner of such property, if other than the Declarant"; and

WHEREAS, as of the date hereof, there remain certain portions of the property described on Exhibit B to the Original Declaration (the "Additional Property") which have not been subjected to the terms of the Declaration; and

WHEREAS, that certain portion of the Additional Property described on Exhibit A hereto (the "Annexation Property") is commonly known as Arbor Glen Subdivision, and shall be referred to as such in certain Plats to be subsequently recorded in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, pursuant to that certain General Warranty Deed dated January 29, 1999, and recorded February 9, 1999, as Instrument No. 9908683 in the Office of the Recorder of Hamilton County, Indiana, HPNLLC is the owner of the Annexation Property and HPNLLC purchased same for the purpose of development and sale of the Annexation Property; and

WHEREAS, HPPLP and HPNLLC desire to completely amend and restate the Third Supplemental Declaration in accordance with the terms hereof; and

WHEREAS, HPPLP desires to subject to the provisions of the Declaration and the jurisdiction of the Association the Annexation Property and HPNLLC, as the owner of the Annexation Property, hereby consents to such annexation of the Annexation Property; and

WHEREAS, pursuant to Article IV, Section 2 of the Original Declaration, HPPLP as the Declarant (as defined in the Original Declaration), and HPNLLC, as the owner of the Annexation Property, desire to assign to the Association certain maintenance obligations relative to the Units located within the Annexation Property in accordance with the terms hereof; and

WHEREAS, HPPLP, as the Declarant, and HPNLLC, as the owner of the Annexation Property, desire to create and establish certain landscape and patio easements benefitting each Unit and burdening each adjoining Unit in accordance with the terms hereof and in a location determined by the floor plan and orientation of each residence constructed upon a lot; and

NOW, THEREFORE, for the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Amendment and Restatement. HPPLP and HPNLLC do hereby completely amend and restate the Third Supplemental Declaration in accordance with the terms and conditions hereof

2. Annexation. HPPLP, as the Declarant, and HPNLLC, as the owner of the Annexation Property, do hereby subject the Annexation Property to the provisions of the Declaration and the jurisdiction of the Association.

3. Maintenance. The Association shall be responsible for providing, or shall cause to be provided, routine mowing of the Units located within the Annexation Property, which services shall be provided in a manner consistent with the Community-Wide Standards. The Association, its employees, agents, contractors and designees shall have the right of ingress and egress over, upon and across such portions of the Units as shall be reasonably necessary for access to the Units for purposes of performing the foregoing services and any additional maintenance services as may be subsequently provided pursuant to Article IV, Section 2 of the Original Declaration. Pursuant to Article X of the Original Declaration, the owners of the Units located within the Annexation Property shall be responsible for the payment of a Neighborhood Assessment which shall be created and assessed by the Association in accordance with the terms of such Original Declaration.

4. Landscape and Patio Easement. HPPLP and HPNLLC do hereby grant, bargain, sell and convey for the benefit of each Unit within the Annexation Property, a perpetual and non-exclusive right and easement (the "Easement") on, over, upon and across certain portions of the Unit located adjacent to the back patio of each Unit allowing the owner of such benefitted Unit to install, clean, maintain, repair, replace, occupy, use and enjoy certain landscaping, patio and other related improvements installed by HPNLLC or the owner of the benefitted Unit in accordance with the terms hereof (the "Improvements"). The Easement shall be located on the burdened Unit immediately adjacent to the back patio of the benefitted Unit and shall measure approximately five and one-half (5 1/2) feet in width and forty (40') in length (depending upon, and as determined by, the floor plan and orientation of the benefitted and burdened Units). More specifically, the Easement shall extend laterally from the property line onto the burdened Unit to a point that is two (2) feet from the exterior wall of the residence on the burdened Unit and shall continue parallel with, and contiguous to, the property line and such exterior wall from the rear of the burdened residence toward the front of same to a point two (2) feet from the fence located adjacent to the front door of the burdened Unit, all as more particularly depicted for illustration purposes only on Exhibit B attached hereto and incorporated herein. The Improvements shall be designed, installed, cleaned, maintained, repaired and replaced in a good and professional manner consistent with the Community-Wide Standards and shall provide a natural screen or buffer to the benefitted Unit from the burdened Unit while preserving the aesthetics of both such Units.

5. Indemnification. The owner of the benefitted Unit shall indemnify, defend and hold the owner of the burdened Unit harmless from and against any loss, damage, liability or expense, including, but not limited to reasonable attorneys' fees, resulting from any injury or death of any persons, or any loss of or damage to any property, caused by or resulting from any act or omission attributable to such benefitted owner or its respective agents, employees, contractors, guests or

invitees, in connection with its or their entry upon, or use, maintenance or repair of, the Easement area or the Improvements. In addition, the owner of the benefited Unit shall not cause, allow or permit any lien to be filed upon the real estate belonging to the owner of the burdened Unit in favor of any third party contracted to perform services upon said real estate and agrees to promptly take steps to remove any such third party lien.

6. **Compliance with Laws.** The installation, construction, maintenance, repair and use of the Improvements by the owner of the benefited Unit shall comply in all respects with all applicable federal, state and local laws, rules, regulations, ordinances and the Community-Wide Standards. The exercise of the easement rights granted hereunder shall at all times be subject to all applicable governmental approvals and the owner of the benefited Unit shall be solely responsible for obtaining any and all permits and approvals and the payment of any fees charged by applicable governmental authorities relating to such owners' use thereof.

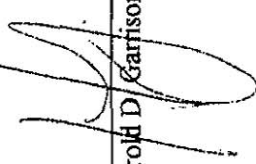
7. **Continued Use of Easement Property.** The owner of burdened Unit retains the right to utilize the Easement property for any purpose that does not materially interfere with the rights and easements granted herein to the owner of the benefited Unit.

8. **Taxes and Assessments.** Except as otherwise specifically provided for herein, each owner of the respective Units shall bear all costs incidental to the ownership of its property, including, without limitation, all insurance premiums, taxes and special assessments payable in respect thereof.

9. **Covenants to Run with the Land.** The grants and obligations, and benefits and burdens created herein shall run with the property burdened and/or benefited hereby, as the case may be, and shall apply to, be binding upon and inure to the benefit of such real estate.

IN WITNESS WHEREOF, HPPLP and HPNLLC have executed this Third Supplemental Declaration of Covenants, Conditions and Restrictions as of the day and year first above written.

HAMILTON PROPER PARTNERS
LAND PARTNERSHIP, L.P.

By: 
Harold D. Garrison, its General Partner

HAMILTON PROPER NORTH, L.L.C.
By: HDG Investments, L.L.C.,
its Class A Member

By: 
Harold D. Garrison, its sole Member

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said county and state, personally appeared Harold D. Garrison, who being first duly sworn by me upon his oath, stated that he is the General Partner of **Hamilton Proper Partners Land Partnership, L.P.**, that he is duly authorized to execute the foregoing on its behalf, that any statements or representations of fact contained therein are true and he acknowledged execution of the foregoing on behalf of said entity.

Witness my hand and Notarial Seal this 00th day of April, 1999.



NOTARY PUBLIC:
Eileen Sirola
Printed: Eileen Sirola

My County of Residence: _____

My Commission Expires: _____

Marion

9-17-2000

STATE OF INDIANA)
) SS:
COUNTY OF Marion)



Before me, a Notary Public in and for said county and state, personally appeared Harold D. Garrison, who being first duly sworn by me upon his oath, stated that he is the Sole Member of HDG Investments, L.L.C., the Class A Member of **Hamilton Proper North, L.L.C.**, that he is duly authorized to execute the foregoing on behalf of such entities, that any statements or representations of fact contained therein are true and he acknowledged execution of the foregoing on behalf of said entities.

Witness my hand and Notarial Seal this 00th day of April, 1999.



NOTARY PUBLIC:
Eileen Sirola
Printed: Eileen Sirola

My County of Residence: _____

My Commission Expires: _____

Marion

9-17-2000

DECRTB197343.5



EXHIBIT A

PART OF THE NORTH HALF OF SECTION 3, TOWNSHIP 17 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN IN FALL CREEK TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

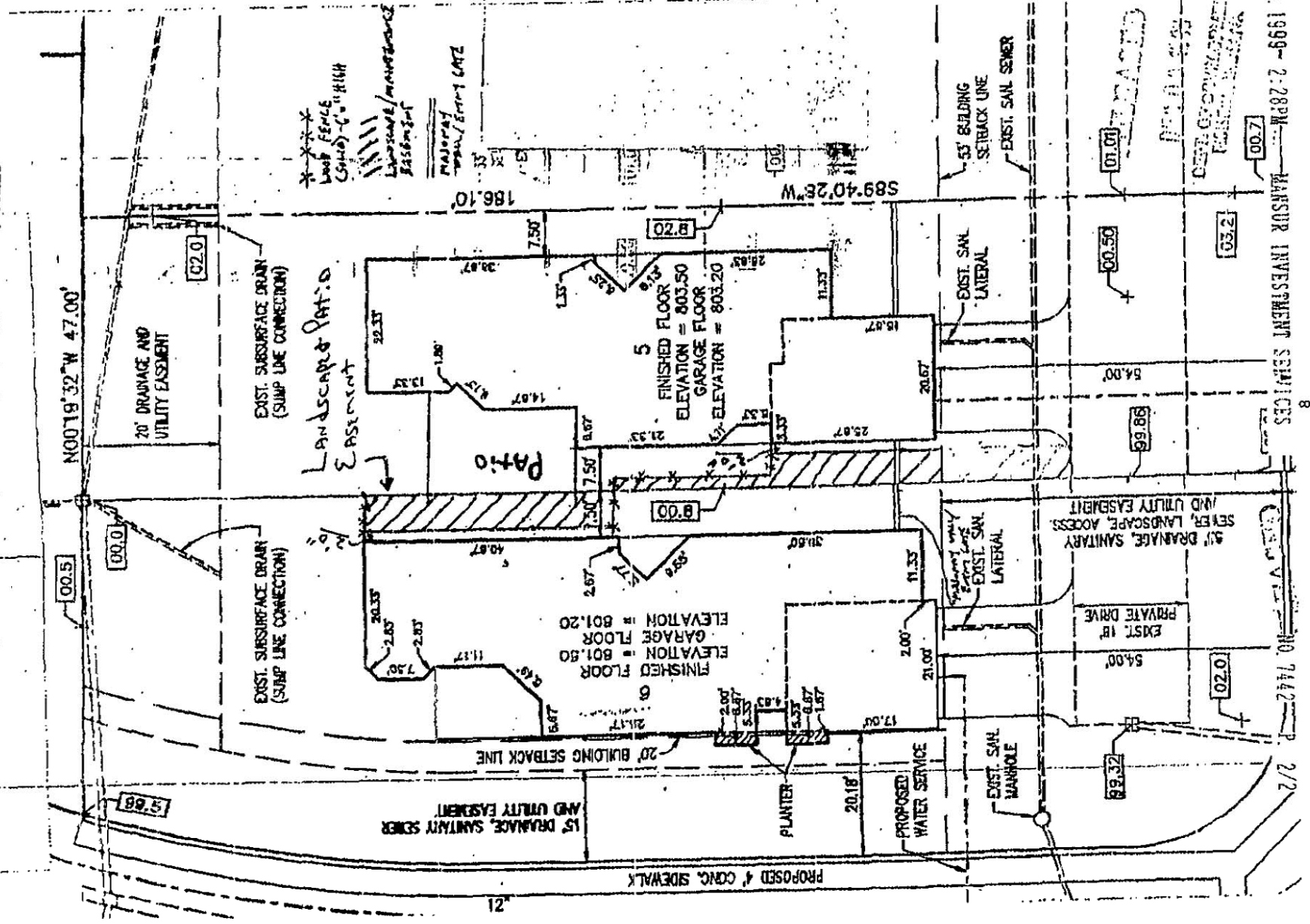
BEGINNING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE NORTH 89 DEGREES 14 MINUTES 29 SECONDS EAST (ASSUMED BEARING) ALONG THE NORTH LINE THEREOF 184.05 FEET TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 18 NORTH, RANGE 5 EAST; THENCE NORTH 89 DEGREES 53 MINUTES 49 SECONDS EAST CONTINUING ALONG THE NORTH LINE OF SAID SECTION 3 A DISTANCE OF 300.40 FEET; TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED AS INSTRUMENT NUMBER 8710958 IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE ALONG THE WEST AND SOUTH LINES THEREOF FOR THE NEXT TWO COURSES; (1) SOUTH 01 DEGREES 21 MINUTES 55 SECONDS EAST 216.82 FEET; (2) NORTH 89 DEGREES 18 MINUTES 54 SECONDS EAST 265.29 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 09 SECONDS WEST 46.55 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 578.45 FEET TO A POINT ON THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE ON SAID WEST LINE, NORTH 00 DEGREES 08 MINUTES 53 SECONDS EAST 261.66 FEET TO THE NORTHWEST CORNER OF SAID EAST HALF; THENCE NORTH 89 DEGREES 53 MINUTES 49 SECONDS EAST ALONG THE NORTH LINE THEREOF 168.94 FEET TO THE SOUTHWEST CORNER OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 34; THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST CONTINUING ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1165.40 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST ALONG THE NORTH LINE THEREOF 44.00 FEET TO THE NORTHWEST CORNER OF A 0.365 ACRES TRACT RESERVED FOR A SANITARY SEWER LIFT STATION; THENCE ON THE WEST, SOUTH AND EAST SIDES OF SAID TRACT THE FOLLOWING THREE (3) COURSES; 1) SOUTH 00 DEGREES 19 MINUTES 32 SECONDS EAST 150.00 FEET; 2) NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST 106.00 FEET; 3) NORTH 00 DEGREES 19 MINUTES 32 SECONDS WEST 150.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST 12.12 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 18 NORTH, RANGE 5 EAST; THENCE NORTH 89 DEGREES 36 MINUTES 39 SECONDS EAST CONTINUING ALONG THE NORTH LINE OF SAID SECTION 3 A DISTANCE OF

791.24 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED AS INSTRUMENT NUMBER 9223771 AND INSTRUMENT NUMBER 9232592 IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE SOUTH 90 DEGREES 23 MINUTES 21 SECONDS EAST ALONG THE WEST LINE THEREOF 81.18 FEET TO THE APPROXIMATE CENTERLINE OF MUD CREEK; THENCE ALONG SAID CENTERLINE FOR THE NEXT EIGHTEEN COURSES; (1) SOUTH 50 DEGREES 14 MINUTES 11 SECONDS WEST 400.07 FEET; (2) SOUTH 73 DEGREES 45 MINUTES 04 SECONDS WEST 57.97 FEET; (3) NORTH 76 DEGREES 35 MINUTES 43 SECONDS WEST 52.95 FEET; (4) NORTH 61 DEGREES 17 MINUTES 19 SECONDS WEST 74.34 FEET; (5) NORTH 76 DEGREES 55 MINUTES 09 SECONDS WEST 48.52 FEET; (6) NORTH 50 DEGREES 58 MINUTES 03 SECONDS WEST 44.05 FEET; (7) NORTH 84 DEGREES 18 MINUTES 40 SECONDS WEST 83.95 FEET; (8) NORTH 74 DEGREES 46 MINUTES 04 SECONDS WEST 105.58 FEET; (9) SOUTH 72 DEGREES 05 MINUTES 10 SECONDS WEST 39.08 FEET; (10) SOUTH 38 DEGREES 13 MINUTES 16 SECONDS WEST 47.37 FEET; (11) SOUTH 54 DEGREES 05 MINUTES 12 SECONDS WEST 63.45 FEET; (12) SOUTH 32 DEGREES 42 MINUTES 24 SECONDS WEST 63.32 FEET; (13) SOUTH 25 DEGREES 31 MINUTES 18 SECONDS WEST 77.62 FEET; (14) SOUTH 02 DEGREES 51 MINUTES 05 SECONDS WEST 54.51 FEET; (15) SOUTH 13 DEGREES 23 MINUTES 34 SECONDS WEST 141.03 FEET; (16) SOUTH 00 DEGREES 54 MINUTES 28 SECONDS WEST 48.90 FEET; (17) SOUTH 25 DEGREES 53 MINUTES 25 SECONDS WEST 55.89 FEET; (18) SOUTH 55 DEGREES 39 MINUTES 58 SECONDS WEST 18.70 FEET; THENCE NORTH 50 DEGREES 59 MINUTES 04 SECONDS WEST 259.56 FEET; THENCE SOUTH 73 DEGREES 35 MINUTES 39 SECONDS WEST 59.22 FEET; THENCE SOUTH 35 DEGREES 34 MINUTES 59 SECONDS WEST 117.14 FEET; THENCE SOUTH 71 DEGREES 29 MINUTES 19 SECONDS WEST 304.90 FEET; THENCE NORTH 83 DEGREES 01 MINUTES 43 SECONDS WEST 237.84 FEET; THENCE SOUTH 82 DEGREES 57 MINUTES 37 SECONDS WEST 433.50 FEET; THENCE NORTH 54 DEGREES 17 MINUTES 41 SECONDS WEST 90.56 FEET; THENCE SOUTH 66 DEGREES 16 MINUTES 40 SECONDS WEST 52.09 FEET; THENCE NORTH 36 DEGREES 32 MINUTES 58 SECONDS WEST 50.72 FEET; THENCE NORTH 17 DEGREES 48 MINUTES 21 SECONDS EAST 157.21 FEET; THENCE NORTH 52 DEGREES 20 MINUTES 33 SECONDS WEST 126.50 FEET; THENCE SOUTH 87 DEGREES 25 MINUTES 35 SECONDS WEST 118.17 FEET; THENCE NORTH 71 DEGREES 39 MINUTES 49 SECONDS WEST 103.16 FEET; THENCE NORTH 78 DEGREES 40 MINUTES 47 SECONDS WEST 102.03 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 59.35 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 09 SECONDS WEST 74.50 FEET TO THE APPROXIMATE CENTERLINE OF MUD CREEK; THENCE ALONG SAID APPROXIMATE CENTERLINE FOR THE NEXT EIGHT COURSES; (1) SOUTH 61 DEGREES 02 MINUTES 48 SECONDS WEST 80.37 FEET; (2) SOUTH 82 DEGREES 18 MINUTES 43 SECONDS WEST 39.56 FEET; (3) NORTH 83 DEGREES 59 MINUTES 24 SECONDS WEST 118.70 FEET; (4) SOUTH 72 DEGREES 48 MINUTES 31 SECONDS WEST 77.29 FEET; (5) SOUTH 89 DEGREES 00 MINUTES 03 SECONDS WEST 86.52 FEET; (6) NORTH 79 DEGREES 20 MINUTES 33 SECONDS WEST 119.13 FEET; (7) SOUTH 89 DEGREES 55 MINUTES 59 SECONDS WEST 152.73 FEET; (8) SOUTH 75 DEGREES 31 MINUTES 23 SECONDS WEST 97.57 FEET TO THE WEST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE NORTH 00 DEGREES 06 MINUTES 09 SECONDS EAST ALONG SAID WEST LINE 579.73 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

Typical Landscape/Maintenance Easement
(For Example Only)

45220



JAN 26 1999 - 2:28 PM MANSUR INVESTMENT SERVICES

HAMILTON

P R O P E R

BY-LAWS



EXHIBIT "D"

BY-LAWS

OF

HAMILTON PROPER COMMUNITY ASSOCIATION, INC.

HYATT & RHOADS, P.C.

Attorneys

2400 Marquis One Tower
Atlanta, Georgia 30303
(404) 659-6600

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BY-LAWS
OF
HAMILTON PROPER COMMUNITY ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be Hamilton Proper Community Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of Indiana shall be located in Hamilton County. The Association may have such other offices, either within or outside the state, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Hamilton Proper (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings shall be of the Voting Members or their alternates. Subsequent regular annual meetings shall be set by the Board so as to occur at least ninety (90) but not more than one hundred twenty (120) days before the close of the Association's fiscal year on a date and at a time set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total Class "A" votes of the Association. The notice of any special meeting shall state the date,

time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings. - -

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that Voting Members or their alternates representing at least twenty-five (25%) percent of the total Class "A" votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates.

Section 10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing a majority of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Article III

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation or partnership, the person designated in writing to the secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a director.

Section 2. Directors During Class "B" Control. Subject to the provisions of Section 6 below, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when seventy-five (75%) percent of the Units permitted by the Master Land Use Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than the Declarant or builders holding title solely for purposes of development and sale;

(b) December 31, 2008; or

(c) when, in its discretion, the Class "B" Member so determines.

Section 3. Right To Disapprove Actions. This Section 3 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section. This right shall be exercisable only by the Class "B" Member, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 8, 9, and 10, of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 4. Number of Directors. The number of directors in the Association shall be not less than three (3) nor more than five (5) as provided in Section 6 below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association, with at least one (1) representative from each Voting Group. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to

each annual meeting of the Voting Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. The Nominating Committee shall nominate separate slates for the directors to be elected at large by all Voting Members, and for the director(s) to be elected by and from each Voting Group. Nominations for each slate shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own twenty-five (25%) percent of the Units permitted by the Master Land Use Plan for the property described in Exhibits "A" and "B" or whenever the Class "B" Member earlier determines, the Association shall call a special meeting at which Voting Members representing the Class "A" Members shall elect one (1) of the three (3) directors, who shall be an at-large director. The remaining two (2) directors shall be appointees of the Class "B" Member. The director elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own fifty (50%) percent of the Units permitted by the Master Land Use Plan for the property described in Exhibits "A" and "B", or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) directors. The Association shall call a special meeting at which Voting Members representing the Class "A" Members shall elect two (2) of the five (5) directors, who shall serve as at-large directors. The remaining three (3) directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within thirty (30) days after termination of the Class "B" Control Period, the Association shall call a special meeting at which Voting Members representing the Class "A" Members shall elect three (3) of the five (5) directors, who shall serve as at-large directors. The remaining two (2) directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting occurs within thirty (30) days after termination of the Class "B" Control Period,

this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the termination of the Class "B" Control Period, the directors shall be selected as follows: five (5) directors shall be elected by the Voting Members representing both Class "A" and Class "B" Members, with an equal number of directors elected from each Voting Group and any remaining directorships filled at large by the vote of all Voting Members. Three (3) directors shall be elected for a term of two (2) years and two (2) directors shall be elected for a term of one (1) year. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years.

Each Voting Member shall be entitled to cast one (1) vote with respect to each vacancy to be filled from each slate on which such Voting Member is entitled to vote. There shall be no cumulative voting. The directors elected by the Voting Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 7. Removal of Directors and Vacancies. Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. A director who was elected at large solely by the votes of Voting Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Voting Members other than the Declarant. Upon removal of a director, a successor shall then and there be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Any director appointed by the Board shall be selected from the Voting Group represented by the director who vacated the position and shall serve for the remainder of the term of such director.

8. Meetings.

Section 8. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter.

Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute

book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Voting Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation:

(a) preparation and adoption, in accordance with Article X of the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses and Neighborhood Expenses;

(b) making assessments to defray the Common Expenses and Neighborhood Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser of a Unit, any Owner of a Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

Section 18. Management. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of

this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15th) day following the due date unless otherwise determined by the Board of Directors); and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer

of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Voting Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Voting Member approval in the same manner provided in Article X, Section 4, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least fifty-one (51%) percent of the Members other than the Declarant and the Declarant's nominees.

Section 21. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the Class "B" Control Period unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice

describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Voting Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 22 of these By-Laws.

Section 3. Neighborhood Committees. In addition to any other committees appointed as provided above, there shall be a Neighborhood Committee for each Neighborhood which has no formal organizational structure or association. Such Neighborhood Committees shall consist of three (3)

members; provided, however, by vote of at least fifty-one (51%) percent of the Owners within the Neighborhood this number may be increased to five (5).

The members of each Neighborhood Committee shall be elected by the vote of Owners of Units within that Neighborhood at an annual meeting of such Owners. The first annual meeting shall be called within sixty (60) days after conveyance of fifty-one (51%) percent of the Units in the Neighborhood to persons other than a builder or developer. The Owners of Units within the Neighborhood holding at least one-third (1/3) of the total votes of Units in the Neighborhood, represented in person or by proxy, shall constitute a quorum at any meeting of the Neighborhood. The Owners of Units within a Neighborhood shall have the number of votes assigned to their Units in the Declaration. Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the Committee. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board of Directors.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article III, Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16, of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors and shall be the Voting Member from that Neighborhood.

Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of Indiana law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, Articles of Incorporation, and any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made

available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, Member of the Association, or by the duly appointed representative of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Unit at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant or its affiliates own property described in Exhibits "A" or "B" of the Declaration for development as part of the

Properties, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total Class "A" votes in the Association, including seventy-five (75%) percent of the Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Hamilton County, Indiana.

If an Owner consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

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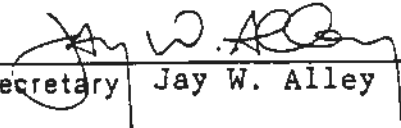
CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Hamilton Proper Community Association, Inc., an Indiana corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 23rd day of September, 1991.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 23rd day of September, 1991.

 [SEAL]
Secretary Jay W. Alley

1940g -4/4/91

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION

OF

HAMILTON PROPER COMMUNITY ASSOCIATION, INC.

I, JOSEPH H. HOGSETT, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above corporation, have been presented to me at my office accompanied by the fees prescribed by law; that I have found such

Articles conform to law; all as prescribed by the provisions of the

Indiana Business Corporation Law,

as amended.

NOW, THEREFORE, I hereby issue to such Corporation this Certificate of Incorporation, and further certify that its corporate existence will begin September 26, 1991.

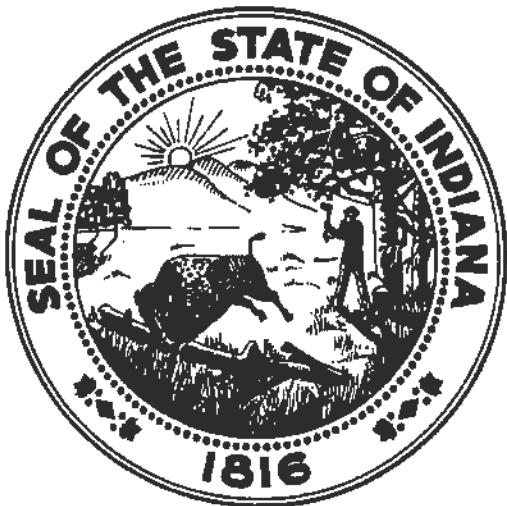
In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Twenty-sixth day of September, 1991

Joseph H. Hogsett

JOSEPH H. HOGSETT, Secretary of State

Gleana Ross

Deputy



INDIANA SECRETARY OF STATE
CORPORATIONS DIVISION

DATE: 09/26/91 TIME: 10:22 RECEIPT NO: 0250159
PAYMENT: CHECK CHECK REF#: . AMT PAID: \$0.00
DESCRIPTION: 01 Art of Inc(Dom,Prof) COMMENT: paid by 2 checks
EFF DATE: 09/26/91

PAYEE NAME AND ADDRESS (HAMILTON PROPER COMMUNITY ASSOCIATION, INC.)

Johnson Smith
.
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., IN

USER ID: IS2 NAME: _____

INDIANA SECRETARY OF STATE
CORPORATIONS DIVISION

DATE: 09/26/91 TIME: 10:26 RECEIPT NO: 0250160
PAYMENT: CHECK CHECK REF#: 20170 AMT PAID: \$4.00
DESCRIPTION: 90 see 250159 COMMENT: see 250159
EFF DATE: 09/26/91

PAYEE NAME AND ADDRESS

Johnson Smith
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USER ID: IS2 NAME: _____ *IS2*

INDIANA SECRETARY OF STATE
CORPORATIONS DIVISION

DATE: 09/26/91 TIME: 10:28 RECEIPT NO: 0250161
PAYMENT: CHECK CHECK REF#: 20165 AMT PAID: \$26.00
DESCRIPTION: 90 see 0250159 COMMENT: see 0250159
EFF DATE: 09/26/91

PAYEE NAME AND ADDRESS

Johnson Smith
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USER ID: IS2 NAME: _____ *IS2*

ARTICLES OF INCORPORATION
OF
HAMILTON PROPER COMMUNITY ASSOCIATION, INC.

The undersigned, by these Articles, associates himself for the purpose of forming a non-profit corporation under Indiana Law and certifies as follows:

Article 1. Name. The name of the Corporation shall be Hamilton Proper Community Association, Inc. For convenience, the Corporation shall be referred to in this instrument as the "Association."

Article 2. Purposes.

A. The purposes for which the Association is organized are:

(i) to be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions, and Restrictions for Hamilton Proper, recorded or to be recorded in the official records of Hamilton County, Indiana, as amended from time to time, (hereinafter the "Declaration") to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified herein, the By-Laws, and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.

B. The Association is created pursuant to the Declaration and these Articles of Incorporation and is not intended to be, nor shall it be deemed to be, a condominium association within the meaning of Ind. Code §32-1-6-1, et seq.

C. The Association shall make no distributions of income to its members, directors, or officers.

D. All terms used herein which are not defined shall have the same meaning provided in the Declaration.

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Article 3. Powers. The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a non-profit corporation which are not in conflict with the terms of these Articles, the Declaration, and the By-Laws of this Association.

B. The Association shall have all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, or the Declaration, including, without limitation, the following:

(i) to fix and to collect assessments or other charges to be levied against the property subject to the Declaration;

(ii) to manage, control, operate, maintain, repair, and improve property subjected to the Declaration or any other property for which the Association by rule, regulation, covenant, or contract has a right or duty to provide such services;

(iii) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or By-Laws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(v) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(vi) to borrow money for any purpose, subject to any limitations contained in the By-Laws;

C. Change of membership in the Association shall be established by recording in the official records of Hamilton County, Indiana, a deed or other instrument establishing record title to property subject to the Declaration. The owner designated by such instrument shall automatically become a member of the Association and the membership of the prior owner shall thereby be terminated.

D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance of his Unit.

Article 5. Term. The Association shall be of perpetual duration.

Article 6. Directors.

A. The affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The initial Board of Directors shall consist of three (3) directors.

B. The names and addresses of the members of the initial Board of Directors, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

Charles R. Cagann
10 W. Market Street, Suite 700
Indianapolis, Indiana 46204

James L. Atkinson
10 W. Market Street, Suite 700
Indianapolis, Indiana 46204

Jay W. Alley
10 W. Market Street, Suite 700
Indianapolis, Indiana 46204

C. The method of election and term of office, removal, and filling of vacancies shall be as set forth in the By-Laws. The Board may delegate such operating authority to such companies, individuals, and committees as it, in its discretion, may determine.

Article 7. Officers. The affairs of the Association shall be administered by the officers designated by the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual

meeting of the Association, and they shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

Charles R. Cagann, President
10 W. Market Street, Suite 700
Indianapolis, Indiana 46204

James L. Atkinson, Vice President
10 W. Market Street, Suite 700
Indianapolis, Indiana 46204

Jay W. Alley, Secretary-Treasurer
10 W. Market Street, Suite 700
Indianapolis, Indiana 46204

Article 8. By-Laws. The By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided by the By-Laws.

Article 9. Meetings. Meetings of the Association may be held at the principal office of the Association or at such other locations as may be reasonably convenient to the members.

Article 10. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to

others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Article 11. Amendments. Amendments to the Articles of Incorporation may be proposed and adopted as provided by Indiana law, provided that no amendment may be in conflict with the Declaration, and provided, further, no amendment shall be effective to impair or dilute any rights of members that are governed by such Declaration.

Article 12. Incorporator. The name and address of the incorporator of the Association are:

Dennis A. Johnson
Johnson, Smith, Densborn, Wright & Heath
1800 INB Tower, 1 Indiana Square
Indianapolis, Indiana 46204

Article 11. Registered Agent and Office. The initial registered office of the Corporation is 1800 INB Tower, 1 Indiana Square, Indianapolis, Indiana 46204, and the initial registered agent at such address is Dennis A. Johnson.

IN WITNESS WHEREOF, the incorporator has affixed his signature this 23rd day of September, 1991.


Dennis A. Johnson

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HAMILTON PROPER

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HAMILTON CO

HYATT & RHOADS, P.C.

Attorneys

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

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<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
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1939g-9/17/91

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

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

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

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

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 nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

(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.

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.

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

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

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

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

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

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.

(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

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

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

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

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,

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.

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

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

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.

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

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;

(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

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.

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

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,

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

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.

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.

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.

Section 27. Leasing of Units.

(a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) Leasing Provisions.

(i) General. Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Unit. All leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within ten (10) days of execution of the lease; provided, in the case of apartment buildings, the Board may accept a monthly tenant roll in lieu of such notice of lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(ii) Compliance with Declaration, By-Laws and Rules and Regulations. 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 28. Laws and Ordinances. Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Article XIII
General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing

to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant or its affiliates own property described in Exhibits "A" or "B" for development as part of the Properties, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total Class "A" votes in the Association, including seventy-five (75%) percent of the Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV hereof shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Hamilton County, Indiana.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers,

directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements for Encroachment. There shall be reciprocal appurtenant easements for encroachment and for maintenance of such encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units, or any Unit and any Country Club, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

Section 5. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant or any of its affiliates owns any property described on Exhibits "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, Hamilton County, Indiana and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the construction or use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Hamilton County, Indiana, or to any other local, state, or federal governmental entity, or to any private utility, for utility or other purposes subject to such approval requirements as may be contained in Article XIV, Section 2 of this Declaration.

Section 6. Cable Television Systems. Declarant, on behalf of itself and its nominees, successors or assigns, hereby:

(a) reserves a perpetual, irrevocable, nonexclusive easement over the Properties and each Unit for the placement, location, installation and maintenance of CATV Systems (as such term is defined below); provided, such easement shall not unreasonably interfere with the construction or use of any Unit;

(b) reserves the right, but not the obligation, to enter into contract(s) for the construction, installation and provision of CATV Systems to serve all or portions of the Properties and to connect, from time to time, such CATV Systems to such receiving or intermediary transmission source(s) as Declarant may in its sole discretion deem appropriate;

(c) reserves for itself, its nominees, successors and assigns, exclusive ownership rights in and title to, and the exclusive right to use, any and all CATV Systems installed or provided by Declarant, its nominees, successors or assigns to serve all or portions of the Properties, including such portions of any CATV System installed within dwellings and other structures constructed on Units within the Properties; and

(d) reserves the nonexclusive right to enter into contracts with the Association for the provision of CATV Systems and CATV Service to all or portions of the Properties, for which Declarant, its nominees, successors or assigns shall be entitled to charge users a reasonable fee (not to exceed any maximum charge allowable by law).

The Board of Directors may, but shall not be required to, enter into a bulk rate cable television agreement ("CATV Agreement") for the provision of CATV Service to the Units within all or portions of the Properties. If and to the extent that basic CATV Service is provided to all Units subject to assessment under Article X hereof, then the cost of such service shall be a Common Expense of the Association and shall be assessed against all such Units as part of the annual Base Assessment, regardless of whether the Owner or occupant of the Unit desires cable television service. If tier, remotes, pay channels and other services over and above the basic cable service are offered by the cable provider, such services shall be handled on an individual subscriber basis and billed directly to the subscriber.

The term "CATV System", as used herein, shall mean any and all cable television systems or master television antenna systems or other systems for the reception and transmission of television signals, including without limitation, all head-ends, switches, amplifiers, conduits, wires, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or servicing future technological advances not now known), specifically including lines located within any Unit. The term "CATV Service", as used herein, shall mean the television signals or other transmission or service provided by the CATV System.

The cable provider shall be permitted to pre-wire each dwelling constructed on any Unit within the Properties for CATV Service (collectively, the "Pre-wire") at its sole cost and expense. Each Owner acknowledges that the Pre-wire installed within the dwelling on any Unit shall be and remain personal property of the cable provider. Owners shall have no ownership interest in the Pre-wire and the right of use thereof shall remain solely with the cable provider. Each Owner by acceptance of title to a Unit hereby grants to the cable provider designated by the Declarant or the Association from time to time an irrevocable easement to install and maintain the Pre-wire in the dwelling on such Unit and agrees not to permit any other provider of cable television to utilize the Pre-wire without the prior written consent of the cable provider in its discretion. Upon termination of any CATV Agreement, the cable provider may, but is not obligated to, remove all or any portion of the Pre-wire within any Unit, after reasonable notice to the Owner or occupants thereof, provided no material or substantial permanent damage to the Unit would result from such removal.

Section 7. Easement for Golf Balls. Every Unit and the Common Area and the common property of any Neighborhood are burdened with an easement permitting golf balls unintentionally to come upon the Common Area, Units or common property immediately adjacent to the golf course and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer will seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall the Association be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 9. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Voting Members. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or By-Laws of the Association to the contrary, a Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five (75%) percent of all Members of the Neighborhood represented by the Voting Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 12. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

Section 13. Use of the Words "Hamilton Proper." No Person shall use the words "Hamilton Proper" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the terms "Hamilton Proper" in printed or promotional matter where such term is used solely to specify that particular property is located within Hamilton Proper, and the Association and the Country Clubs shall be entitled to use the words "Hamilton Proper" in their respective names.

Section 14. Compliance. Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners.

Section 15. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE NEW CONSTRUCTION AND MODIFICATIONS COMMITTEES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE NEW CONSTRUCTION OR MODIFICATIONS COMMITTEES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 16. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Unit, such

Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of assessments, notwithstanding the transfer of title to the Unit.

Article XIV
Mortgage Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Voting Members representing at least sixty-seven (67%) percent of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the

granting of easements for public or private utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. Other Provisions for First Lien Holders. To the extent possible under Indiana law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

Section 4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 3 (a) and (b) of this Article, or to the addition of land in accordance with Article VIII.

(a) The consent of Voting Members representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it owns or controls any land subject to this Declaration, and the approval of the eligible holders of first Mortgages on Units to which at least sixty-seven (67%) percent of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Members representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it owns or controls any land subject to this Declaration, and the approval of eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an eligible holder; or
- (xii) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

Section 5. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of

distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 7. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 8. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Indiana law for any of the acts set out in this Article.

Section 9. Failure of Mortgagee to Respond. Any Mortgagee who receives notice of and a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article XV Declarant's Rights

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Hamilton County, Indiana. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned by the Declarant or its affiliates and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XVI Country Clubs

Section 1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Country Club. Rights to use the Country Clubs will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Country Clubs. The owners of the Country Clubs shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Country Clubs, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether.

Section 2. Conveyance of Country Clubs. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continuing ownership or operation of the Country Clubs as depicted upon the Master Land Use Plan, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment hereto executed or joined into by the Declarant. Further, the ownership or operational duties of and as to the Country Clubs may change at any time and from time to time by virtue of, but without limitation, (a) the sale or assumption of operations of the Country Clubs by/to an independent Person, (b) the conversion of the Country Clubs membership structure to an "equity" club or similar arrangement whereby the members of the Country Clubs or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Country Club(s), or (c) the conveyance, pursuant to contract, option, or otherwise, of the Country Clubs to one or more affiliates, shareholders, employees, or independent contractors of Declarant. As to any of the foregoing or any other alternative, no consent of the Association, any Neighborhood, or any Owner shall be required to effectuate such transfer. Notwithstanding the above, under no circumstances shall any Country Clubs be conveyed to the Association

and no Owner shall have any right or interest in the Country Clubs by virtue of ownership or occupancy of a Unit.

Section 3. Rights of Access and Parking. The Country Clubs and their members (regardless of whether such members are Owners hereunder), their guests, invitees, and the employees, agents, contractors, and designees of the Country Clubs shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel from/to the entrance to the Properties to/from the Country Club(s), respectively, and, further, over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Country Club(s). Without limiting the generality of the foregoing, members of the Country Clubs and permitted members of the public shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after golf tournaments and other similar functions held by/at the Country Clubs.

Section 4. Assessments. The Country Clubs shall not be obligated to pay assessments to the Association except as may specifically be provided in that certain Declaration of Easements and Covenant to Share Costs attached hereto as Exhibit "C" and incorporated herein by reference. The Association may enter into a contractual arrangement or other covenant to share costs with the Country Clubs whereby the Country Clubs will contribute funds for, among other things, a higher level of Common Area maintenance.

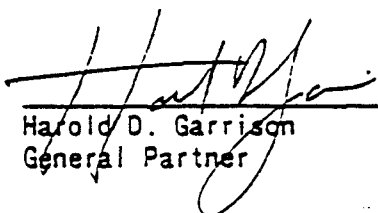
Section 5. Architectural Control. Neither the Association, the Modifications Committee, nor any Neighborhood Association or Committee or board thereof, shall approve or permit any construction, addition, alteration, change, or installation on or to any Unit which is adjacent to the Country Club property, without giving the Country Club at least fifteen (15) days' prior notice of its intent to approve or permit the same together with copies of the request therefor and all other documents and information finally submitted in such regard. The Country Club shall then have fifteen (15) days to submit its comments on the proposal in writing to the appropriate committee or association, which shall consider, but shall not be bound by, such comments. The failure of the Country Club to respond to the aforesaid notice within the fifteen (15) day period shall constitute a waiver of the Country Club's right to comment on the matter so submitted. Notwithstanding any comments submitted by the Country Club to the appropriate committee or association, any decision thereafter of such committee or association shall be final. This Section shall also apply to any work on the Common Areas hereunder or any common property or common elements of a Neighborhood Association, if any.

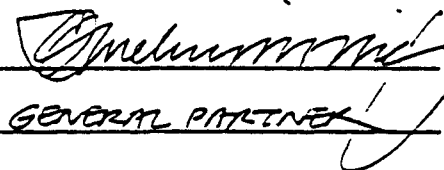
Section 6. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Country Clubs, no amendment to this Article, and no amendment in derogation hereof to any other provisions of this Declaration, may be made without the written approval thereof by the owners of the affected Country Clubs. The foregoing shall not apply, however, to amendments made by the Declarant.

Section 7. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Country Clubs shall cooperate to the maximum extent possible in the operation of the Properties and the Country Clubs. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the design guidelines established by the NCC pursuant to Article XI hereof. Except as specifically provided herein or in the By-Laws, the Association shall have no power to promulgate rules and regulations affecting activities on or use of the Country Club(s) without the prior written consent of all the affected Country Clubs.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 23rd day of September, 1991

HAMILTON PROPER PARTNERS LAND PARTNERSHIP,
L.P., an Indiana limited partnership

By:  [SEAL]
Harold D. Garrison
Its: General Partner

Attest:  [SEAL]
Its: GENERAL PARTNER

STATE OF INDIANA

COUNTY OF MARION

TO WIT:

Before me, ROBIN E GREENWALT, a notary public in and for the State and County aforesaid, on this 23 day of SEPTEMBER 19 91, appeared HAMILTON PROPER PARTNERS LAND PARTNERSHIP, L.P., by Harold D. Garrison, its general partner, and acknowledged the execution of the foregoing instrument on behalf of said limited partnership.

Given under my hand and official seal this 23 day of SEPTEMBER, 1991.

Robin E. Greenwalt [SEAL]
NOTARY PUBLIC

My Commission Expires: 3-29-93

Prepared by: Jo Anne P. Stubblefield
Hyatt & Rhoads, P.C.
1200 Peachtree Center South Tower
Atlanta, Georgia 30303

1939g -- 9/12/91

EXHIBIT "A"

Land Initially Submitted

NEIGHBORHOOD: Chestnut Hill, Section 1

Part of the North Half of Section 10, Township 17 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at a railroad spike set over a stone marking the Northwest corner of the Northwest Quarter of said Section 10; thence along the West line thereof, South 00 degrees 33 minutes 09 seconds West (astronomic bearing) 930.33 feet to the Point of beginning; thence North 51 degrees 12 minutes 05 seconds East 323.10 feet to a curve having a radius of 100.00 feet, the radius point of which bears North 51 degrees 12 minutes 05 seconds East thence Easterly along said curve 90.33 feet to a point which bears South 00 degrees 33 minutes 09 seconds East from said radius point thence North 39 degrees 25 minutes 51 seconds East 66.00 feet thence North 00 degrees 33 minutes 09 seconds West 440.00 feet thence North 55 degrees 13 minutes 52 seconds East 70.76 feet thence North 34 degrees 46 minutes 08 seconds West 77.59 feet thence North 55 degrees 13 minutes 52 seconds East 50.00 feet to a curve having a radius of 150.00 feet, the radius point of which bears South 55 degrees 13 minutes 52 seconds West thence Northwesterly along said curve 7.14 feet to a point which bears North 52 degrees 30 minutes 10 seconds East from said radius point thence North 52 degrees 30 minutes 10 seconds East 181.40 feet to a curve having a radius of 1230.00 feet, the radius point of which bears North 59 degrees 15 minutes 13 seconds East thence Northerly along said curve 31.92 feet to a point which bears South 60 degrees 44 minutes 26 seconds West from said radius point thence North 60 degrees 44 minutes 26 seconds East 60.00 feet to a curve having a radius of 1170.00 feet, the radius point of which bears North 60 degrees 44 minutes 26 seconds East; thence Southeasterly along said curve 408.41 feet to a point which bears South 40 degrees 44 minutes 26 seconds West from said radius point, and which point is the beginning of a compound curve having a radius of 850.00 feet, the radius point of which bears North 40 degrees 44 minutes 26 seconds East; thence Easterly along said curve 510.13 feet to a point which bears South 06 degrees 21 minutes 17 seconds West from said radius point; thence South 06 degrees 21 minutes 17 seconds West 60.00 feet to a point on the East line of the West Half of the Northwest Quarter of said Section 10; thence along said East line, South 00 degrees 32 minutes 16 seconds West 376.75 feet to the North line of a tract as described in a Warranty Deed to James C. and Mary Ann Hawk recorded as Instrument 3808558 in the Office of the Recorder of Hamilton County, Indiana; thence along the North line of said tract, South 89 degrees 25 minutes 51 seconds West 1335.57 feet to a point on the West line of the Northwest Quarter of said Section 10; thence along said West line, North 00 degrees 33 minutes 09 seconds East 50.00 to the Point of Beginning, containing 15.937 acres, more or less.

EXHIBIT "9"

Land Subject to Annexation

Part of the North Half of Section 1, the Northwest Quarter of the Southeast Quarter of Section 3 and Part of the East Half of Section 4 all in Township 17 North, Range 3 East of the Second Principal Meridian in Hamilton County, Indiana, more particularly described as follows:

Beginning at a 14' iron pipe marking the Southwest corner of the Northwest Quarter of said Section 1; thence North 88 degrees 33 minutes 51 seconds East (azimuthic bearing) along the West line of the said Northwest Quarter Section 902.54 feet; thence North 89 degrees 38 minutes 25 seconds East parallel with the North line of the Southeast Quarter of the said Northwest Quarter Section 234.30 feet; thence North 88 degrees 33 minutes 51 seconds East parallel with the said West line 114.15 feet to the North line of the Southeast Quarter of the said Northwest Quarter Section; thence South 89 degrees 38 minutes 25 seconds West along the said North line 224.30 feet to the Northwest corner of the said Quarter Quarter Section; thence North 88 degrees 33 minutes 51 seconds East along the West line of the said Northwest Quarter Section 1769.36 feet to the Northwest corner of the Northwest Quarter of said Section 1; thence North 89 degrees 38 minutes 25 seconds East along the North line of said Northwest Quarter Section 200.24 feet to a Harrison monument marking the Southwest corner of the Southeast Quarter of Section 11, Township 13 North, Range 3 East; thence North 89 degrees 38 minutes 25 seconds East along the North line of the Northwest Quarter of said Section 1, 974.92 feet to the Northwest corner of a 3.00 acre tract of land conveyed to Arthur L. and Rosann Johnson per Warranty Deed recorded as Instrument 727554 in Deed Book 222, Page 232 in the office of the Recorder of Hamilton County, Indiana (the next five courses are along the boundary of said 3.00 acre tract): (1) thence South 90 degrees 45 minutes 22 seconds East 156.40 feet; (2) thence South 90 degrees 44 minutes 42 seconds East 122.36 feet; (3) thence South 94 degrees 38 minutes 24 seconds East 56.72 feet; (4) thence North 87 degrees 37 minutes 40 seconds West 109.50 feet; (5) thence North 82 degrees 38 minutes 16 seconds West 219.94 feet to the North line of the said Northwest Quarter Section; thence North 89 degrees 38 minutes 25 seconds East along the said North line 460.79 feet to the Northwest corner of a 3.779 acre tract-of-land, conveyed to Ronald J. and Teresa L. Booth per Warranty Deed recorded as Instrument 822762 in Deed Book 237, Page 703-708 in the said Recorder's office (the next seven courses are along the boundary of said 3.79 acre tract): thence South 98 degrees

06 minutes 22 seconds West parallel with the East line of the said Northwest Quarter Section 94.34 feet to the approximate center line of Mud Creek (the next five courses are along the approximate center line of Mud Creek): (1) thence North 85 degrees 59 minutes 28 seconds East 39.30 feet; (2) thence South 52 degrees 56 minutes 09 seconds East 37.09 feet; (3) thence South 75 degrees 07 minutes 26 seconds East 55.29 feet; (4) thence North 88 degrees 19 minutes 05 seconds East 130.03 feet; (5) thence North 71 degrees 59 minutes 05 seconds East 160.19 feet to the East line of the said Northwest Quarter Section; thence North 88 degrees 06 minutes 12 seconds East along the said East line 579.73 feet to a stone (found-down 9 inches) marking the Northwest corner of the said Northwest Quarter Section; thence North 89 degrees 14 minutes 29 seconds East along the North line of the Northwest Quarter of the Northwest Quarter of said Section 1, 184.03 feet to a Harrison monument marking the Southwest corner of the Southeast Quarter of Section 14, Township 18 North, Range 3 East; thence North 89 degrees 33 minutes 49 seconds East along the North line of the Northwest Quarter of the Northwest Quarter of said Section 1, 200.40 feet to the Northwest corner of a 1.131 acre tract of land conveyed to Michael U. and Mary Sue Hurdle per Warranty Deed recorded as Instrument 8710758 in the said Recorder's office (the next three courses are along the boundary of said 1.131 acre tract): (1) thence South 81 degrees 21 minutes 34 seconds East 216.31 feet; (2) thence North 89 degrees 18 minutes 34 seconds East 263.29 feet; (3) thence North 88 degrees 41 minutes 09 seconds East 214.89 feet to the North line of the said Quarter Quarter Section; thence North 89 degrees 33 minutes 49 seconds East along the said North line 576.01 feet to the Northwest corner of the said Quarter Quarter Section; thence continuing North 89 degrees 33 minutes 49 seconds East along the North line of the East Half of the Northwest Quarter of said Section 1, 168.94 feet to a 5/8 inch rebar set in a stone marking the Southwest corner of the East Half of the Southeast Quarter of Section 14.

Township 18 North, Range 5 East; thence North 89 degrees 40 minutes 28 seconds East along the North line of the East Half of the said Northwest Quarter Section 171.92 feet to the Northwest corner of a tract of land per Memorandum of Land Contract recorded as Instrument /8810734 in the said Recorder's Office (the next three courses are along the boundary of said tract); (1) thence South 00 degrees 08 minutes 49 seconds West 254.77 feet-measured (254.1 feet-deed); (2) thence North 89 degrees 51 minutes 49 seconds East 157.14 feet; (3) thence North 00 degrees 08 minutes 49 seconds East 250.10 feet-measured (254.1 feet-deed) to the North line of the East Half of the said Northwest Quarter Section; thence North 89 degrees 40 minutes 28 seconds East along the said North line 134.30 feet to the Northwest corner of the Northeast Quarter of said Section 1; thence continuing North 89 degrees 40 minutes 28 seconds East along the North line of the said Northeast Quarter Section 162.14 feet to the Southeast corner of the Southwest Quarter of Section 14, Township 18 North, Range 5 East; thence North 89 degrees 36 minutes 11 seconds East along the North line of the said Northeast Quarter Section 791.33 feet to the Northwest corner of a tract of land conveyed to Marion C. Hensley as Trustee for Fall Creek Township per Warranty Deed recorded as Instrument /22851 in Deed Book 126, page 134 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence South 00 degrees 23 minutes 29 seconds East 349.20 feet; (2) thence North 89 degrees 36 minutes 11 seconds East parallel with the North line of the said Northeast Quarter 484.79 feet-measured (485.7 feet-deed) to the center line of Brooks School Road; thence South 05 degrees 21 minutes 57 seconds West along the said center line-

2192.05 feet to the Northeast corner of a tract of land conveyed to Curtis J. Grasso per Warranty Deed recorded as Instrument /8627882 in Deed Book 162, pages 81-83 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence South 89 degrees 27 minutes 24 seconds West parallel with the South line of the said Northeast Quarter Section 896.72 feet-measured (895.95 feet-deed); (2) thence South 00 degrees 11 minutes 17 seconds West parallel with the West line of the said Northeast Quarter Section 353.14 feet-measured (351.12 feet-deed) to the South line of the said Northeast Quarter Section; thence South 89 degrees 17 minutes 24 seconds West along the said South line 129.37 feet to a stone (with "X" and "S" cut in south side) marking the center of said Section 1; thence South 89 degrees 21 minutes 14 seconds West along the South line of the East Half of the Northwest Quarter of said Section 1, 1331.14 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said Section 1; thence South 00 degrees 23 minutes 23 seconds East along the East line of the said Quarter Quarter Section 1317.31 feet to the Southeast corner of the said Quarter Quarter Section; thence South 89 degrees 29 minutes 05 seconds West along the South line of the said Quarter Quarter Section 1333.19 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 1; thence South 89 degrees 40 minutes 58 seconds West along the South line of the said Quarter Quarter Section 391.78 feet; thence North 27 degrees 33 minutes 52 seconds West along the extension of the Easterly line of Block "A" (Lake and Dam) in Geist Road-Minor Plat recorded in Plat Book 10, pages 78 and 79 in the said Recorder's Office 7.53 feet to the Southeast corner of said Block "A"; thence North 27 degrees 33 minutes 52 seconds West along the Easterly line of said Block "A" 477.69 feet to the Northeast corner thereof, which is the Southwest corner of a tract of land conveyed to Bradley and Cindy Stewart per Warranty Deed recorded as Instrument /8704586 in the said Recorder's Office (the next six courses are along the boundary of said tract); (1) thence North 27 degrees 33 minutes 52 seconds West 284.38 feet; (2) thence South 59 degrees 16 minutes 13 seconds West 71.00 feet; (3) thence North 71 degrees 43 minutes 42 seconds West 46.00 feet; (4) thence South 63 degrees 16 minutes 13 seconds West 70.00 feet; (5) thence South 43 degrees 16 minutes 18 seconds West 128.00 feet; (6) thence North 89 degrees 57 minutes 20 seconds West 45.00 feet to the East line of a tract of land conveyed to Richard and Linda Easterly per Warranty Deed recorded as Instrument /7049 in Deed Book 119, page 190 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence North 00 degrees 17 minutes 40 seconds East 60.00 feet to the Northeast corner thereof; (2) thence North 89 degrees 57 minutes 20 seconds West 80.00 feet to the Southeast corner of a tract of land conveyed to Richard and Agnes Lux per Warranty Deed recorded as Instrument /8619112 in Deed Book 159, page 422 in the said Recorder's Office; thence North 00 degrees 17 minutes 40 seconds East along the East line of said "Lux" tract 140.00 feet to the South line of a tract of land conveyed to Floyd and Carolyn Deal per Warranty Deed recorded as Instrument /8311422 in Deed Book 139, pages 605-607 in the said Recorder's Office (the next three courses are along the boundary of said tract); (1) thence South 87 degrees 17 minutes 20 seconds East 325.70 feet to the Southeast corner thereof; (2) thence North 17 degrees 05 minutes 02 seconds West 259.24 feet; (3) thence North 01 degrees 13 minutes 45 seconds West 128.98 feet-measured (128.6 feet-deed) to the North line of the Southeast Quarter of said Section 4; thence South 89 degrees 38 minutes 19 seconds West along the said North line 12.77 feet to the Southeast corner of a 5.00 acre tract of

land conveyed to Lawrence and Joann Strickler per Warranty Deed recorded as Instrument /041260 in Deed Book 144, page 1013 in the said Recorder's Office (the next two courses are along the boundary of said tract): (1) thence North 00 degrees 21 minutes 21 seconds West 433.60 feet; (2) thence South 09 degrees 30 minutes 39 seconds West parallel with the South line of the Northeast Quarter of said Section 4, 206.01 feet to the Easterly corner of a 11.27 acre tract of land quitclaimed to Mills and Anna Morrell per Quitclaim Deed recorded as Instrument /0731376 in the said Recorder's Office (the next five courses are along the boundary of said tract); (1) thence North 00 degrees 20 minutes 00 seconds West 37.70 feet; (2) thence North 36 degrees 40 minutes 06 seconds West 324.05 feet; (3) thence North 47 degrees 56 minutes 57 seconds West 337.34 feet; (4) thence South 39 degrees 10 minutes 39 seconds West parallel with the South line of the said Northeast Quarter 221.63 feet; (5) thence South 00 degrees 21 minutes 21 seconds East 576.25 feet to the Northeast corner of a tract of land conveyed to Wayne and Patricia Gordon per Warranty Deed recorded as Instrument /04140 in Deed Book 140, pages 743-745 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence South 39 degrees 10 minutes 39 seconds West parallel with the said South line 400.00 feet; (2) thence South 30 degrees 21 minutes 21 seconds East 106.70 feet to the Northwest corner of a tract of land conveyed to Wayne and Patricia Gordon per Warranty Deed recorded as Instrument /14341 in Deed Book 122, page 489 in the said Recorder's Office; thence South 00 degrees 21 minutes 21 seconds East along the West line of said tract 126.70 feet to the South line of the said Northeast Quarter Section; thence South 39 degrees 10 minutes 39 seconds West along the said South line 405.91 feet to the point of beginning, containing 487.24 acres, more or less.

Subject to all legal easements and rights of way.

Also, part of the West Half of the Southeast Quarter of Section 4, Township 17 North, Range 5 East of the Second Principal Meridian in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the said Half Quarter Section; thence North 00 degrees 16 minutes 18 seconds East (astronomic bearing) along the West line thereof 1750.31 feet; thence North 89 degrees 41 minutes 19 seconds East parallel with the South line of the said Half Quarter Section 200.90 feet; thence North 00 degrees 16 minutes 18 seconds East parallel with the said West line 700.00 feet; thence North 89 degrees 41 minutes 19 seconds East parallel with the said South line 496.00 feet to the Point of Beginning; thence continuing North 89 degrees 41 minutes 19 seconds East parallel with the said South line 633.43 feet-measured (633.40 feet-deed) to the East line of said Half Quarter Section; thence South 00 degrees 17 minutes 40 seconds West along the said East line 817.32 feet to the Northeast corner of a tract of land conveyed to Ralph and Dawn Smith per Warranty Deed recorded as Instrument /059473 in Deed Book 149, pages 366 and 367 in the Office of the Recorder of Hamilton County, Indiana (the next three courses are along the boundary of said tract): (1) thence South 39 degrees 41 minutes 19 seconds West parallel with the said South line 348.00 feet; (2) thence South 00 degrees 17 minutes 40 seconds West parallel with the said East line 200.00 feet; (3) thence North 39 degrees 41 minutes 19 seconds East parallel with the said South line 348.00 feet to the said East line; thence South 00 degrees 17 minutes 40 seconds West along the said East line 433.50 feet to a point that is North 00 degrees 17 minutes 40 seconds East 500.00 feet from the Southeast corner of the said Half Quarter Section; thence South 09 degrees 41 minutes 19 seconds West parallel with the said South line 634.79 feet; thence North 00 degrees 16 minutes 09 seconds East 1450.31 feet to the point of beginning, containing 19.55 acres, more or less.

Subject to all legal easements and rights of way.

ALSO:

Part of the South Half of Section 3, part of the Southeast Quarter of Section 4, and part of the North Half of Section 10 all in Township 17 North, Range 5 East of the Second Principal Meridian in Hamilton County, Indiana, more particularly described as follows:

Beginning at a railroad spike set over a stone marking the Southeast corner of the Southeast Quarter of said Section 4; thence South 89 degrees 44 minutes 53 seconds West (astronomic bearing) along the South line of the Southeast Quarter of the Southeast Quarter of said Section 4, 1348.44 feet to a railroad spike set over a stone marking the Southwest corner of the said Quarter Quarter Section; thence North 00 degrees 17 minutes 40 seconds East along the West line of the said Quarter Quarter Section 797.50 feet to the Southwest corner of a tract of land conveyed to Larry J. and Linda A. Hardin per Warranty Deed recorded as Instrument #4909 in Deed Record 311, pages 644 thru 646 in the Office of the Recorder of Hamilton County, Indiana (the next two courses are along said "Hardin" tract); thence North 89 degrees 13 minutes 40 seconds East 234.00 feet; thence North 00 degrees 17 minutes 40 seconds East 60.00 feet to the Southeast corner of a tract of land conveyed to Larry J. and Linda A. Hardin per Warranty Deed recorded as Instrument #10117 in Deed Record 288, page 159 in the said Recorder's Office; thence continuing North 00 degrees 17 minutes 40 seconds East along the East line of said "Hardin" tract 171.50 feet to the South line of a tract of land conveyed to Donald O. and Betty S. Garrity per Warranty Deed recorded as Instrument #8606864 in Deed Record 355, page 481 in the said Recorder's Office (the next two courses are along said "Garrity" tract); thence North 89 degrees 13 minutes 40 seconds East 415.00 feet; thence North 00 degrees 03 minutes 16 seconds West 257.24 feet to the South line of Block "A" (Lake and Dam) in Galst Road-Minor Plat recorded in Plat Book 10, pages 78 and 79 in the said Recorder's Office; thence South 89 degrees 53 minutes 32 seconds East along the said South line of Block "A" 280.00 feet to the Southeast corner thereof; thence South 27 degrees 33 minutes 52 seconds East along the extension of the Easterly line of said Block "A" 7.33 feet to the North line of the Southeast Quarter of the Southeast Quarter of said Section 4; thence North 89 degrees 40 minutes 58 seconds East along the said North line 391.78 feet to the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 3; thence North 89 degrees 29 minutes 05 seconds East along the North line of the said Quarter Quarter Section 1333.19 feet to the Southwest corner of the Northeast Quarter of the Southwest Quarter of said Section 3; thence North 00 degrees 03 minutes 23 seconds West along the West line of the said Quarter Quarter Section 1317.31 feet to the Northwest corner of the said Quarter Quarter Section; thence North 89 degrees 21 minutes 14 seconds East along the North line of the said Quarter Quarter Section 1331.14 feet to a stone (with "X" and "53" cut in south side) marking the center of said Section 3; thence North 89 degrees 27 minutes 24 seconds East along the North line of the Southeast Quarter of said Section 3, 1194.67 feet (1194.6 feet-deed) to the centerline of Brooks School Road; thence South 05 degrees 27 minutes 40 seconds West along said centerline 710.35 feet; thence South 04 degrees 07 minutes 24 seconds West along said centerline 867.30 feet to a stone; thence South 02 degrees 51 minutes 32 seconds West along said centerline 1068.60 feet to a point on the South line of the Southeast Quarter of said Section 3, said point lies North 89 degrees 17 minutes 04 seconds East 1004.67 feet (1004.60 feet-deed) from the Southwest corner of the said Southeast Quarter Section; thence South 89 degrees 17 minutes 04 seconds West along the said South line 173.57 feet to a point which lies North 89 degrees 17 minutes 04 seconds East 831.00 feet from the Northwest corner of the Northeast Quarter of said Section 10; thence South 33 degrees 40 minutes 28 seconds West (along a line running in the general Southwesterly direction of Brooks School Road and lying Easterly thereof, and if extended, would intersect the West line of the said Northeast Quarter Section at a point South 00 degrees 31 minutes 23 seconds West 1254.00 feet from the Northwest corner of the said Northeast Quarter Section) 576.39 feet to the Northeast corner of a 3.100 acre tract of land conveyed to Mansur Development Corp. per Warranty Deed recorded as Instrument #8825060 in the said Recorder's Office (the next four courses are along said "Mansur" tract); (1) thence North 77 degrees 11 minutes 38 seconds West 375.35 feet; (2) thence South 01 degrees 36 minutes 24 seconds West 143.79 feet; (3) thence North 88 degrees 03 minutes 36 seconds West 243.61 feet; (4) thence South 01 degrees 36 minutes 24 seconds West 190.33 feet to the Southwest corner thereof; thence North 88 degrees 03 minutes 36 seconds West 1232.65 feet to the West line of the East Half of the Northwest Quarter of said Section 10; thence South 00 degrees 32 minutes 16 seconds West along the said West line 315.81 feet to the North line of a tract of land conveyed to James C. and Mary Ann Meuk per Warranty Deed recorded as Instrument #8808558 in the said Recorder's Office; thence South 89 degrees 26 minutes 51 seconds West along the North line of said "Meuk" tract 1335.57 feet (1346.50 feet-deed) to the West line of the Northwest Quarter of said Section 10; thence North 00 degrees 33 minutes 09 seconds East along the said West line 980.83 feet to the point of beginning, containing 279.626 acres, more or less.

Subject to all legal easements and rights of way.

ALSO:

Part of the East Half of the Northwest Quarter of Section 3, Township 17 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the east half of the Northwest Quarter of Section 3 Township 17 North, Range 5 East, thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 342.86 feet to the true point of beginning; thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 957.14 feet; thence South 00 degrees 14 minutes 57 seconds West parallel with the West line of said East Half 254.1 feet; thence South 90 degrees 00 minutes 00 seconds West parallel with the North line of said East Half 357.14 feet; thence North 00 degrees 14 minutes 57 seconds East parallel with the West line of $\frac{1}{4}$ said East Half 354.1 feet to the point of beginning; subject to all applicable easements and rights-of-way of record.

ALSO:

Including that real estate described as Lot 1 and the 35 foot right-of-way adjacent to said lot in POVERTY KNOB, a subdivision in Hamilton County, Indiana the plat of which is recorded in Plat Book 11, page 145 in the Office of the Recorder of Hamilton County, Indiana more particularly described as follows:

Commencing at the Northwest corner of the East Half of the Northwest Quarter of Section 3 Township 17 North, Range 5 East; thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 140.0 feet to the true point of beginning; thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 202.86 feet; thence South 00 degrees 14 minutes 57 seconds West parallel with the West line of said East Half 254.1 feet; thence South 90 degrees 00 minutes 00 seconds West parallel with the North line of said East Half 202.86 feet; thence North 00 degrees 14 minutes 57 seconds East parallel with the West line of said East Half 254.1 feet to the point of beginning; subject to all applicable easements and rights-of-way of record.

ALSO:

Including that real estate described as Lot 2 and the 35 foot right-of-way adjacent to said lot in POVERTY KNOB, a subdivision in Hamilton County, Indiana the plat of which is recorded in Plat Book 11, page 145, in the Office of the Recorder of Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the East Half of the Northwest Quarter of Section 3 Township 17 North, Range 5 East; thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 140.0 feet, thence South 00 degrees 14 minutes 57 seconds West parallel with the West line of said East Half 254.1 feet; thence South 90 degrees 00 minutes 00 seconds West parallel with the North line of said East Half 140.0 feet to the West line of said East Half; thence North 00 degrees 14 minutes 57 seconds East on and along aforesaid West line 254.1 feet to point of beginning; subject to all applicable easements and rights-of-way of record.

EXHIBIT B

Page 6

ALSO:

Lot 5 in Lake-View Addition, as per plat thereof, recorded in Deed Record 130, page 612 in the Office of the Recorder of Hamilton County, Indiana.

ALSO:

Part of the Northeast and Northwest Quarters of Section 10, Township 17 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at a stone marking the Northwest corner of the said Northeast Quarter Section; thence North 89 degrees 45 minutes 40 seconds East along the North line of the said Northeast Quarter Section 831.00 feet; thence South 34 degrees 09 minutes 04 seconds West (along a line running in the general Southwesterly direction of Brooks School Road and lying Easterly thereof, and if extended, would intersect the West line of the said Northeast Quarter Section at a point South 01 degrees 00 minutes 00 seconds West 1254.00 feet from the Northwest corner of the said Northeast Quarter Section) 576.39 feet to the Place of Beginning; thence continue South 34 degrees 09 minutes 04 seconds West (along said line) 309.65 feet; thence North 87 degrees 35 minutes 00 seconds West 449.36 feet; thence North 02 degrees 25 minutes 00 seconds East 190.33 feet; thence South 87 degrees 35 minutes 00 seconds East 243.61 feet; thence North 02 degrees 25 minutes 00 seconds East 141.79 feet; thence South 76 degrees 43 minutes 02 seconds East 375.35 feet to the place of beginning, containing 3.100 acres, more or less.

Subject to all legal highways, rights of way and easements.

EXHIBIT "C"

DECLARATION OF EASEMENTS AND
COVENANT TO SHARE COSTS

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

BACKGROUND STATEMENT

Declarant is the owner of, or controls with the consent of the owner, all that property which is subject to the Declaration of Covenants, Conditions and Restrictions for Hamilton Proper, recorded in Deed Book ____, Page ____, of the public records of Hamilton County, Indiana (such Declaration is herein referred to as the "Residential Declaration" and all property subject thereto, together with any property which may from time to time be added by amendment, is herein referred to as the "Residential Property"). Declarant is also the owner of, or controls with the consent of the owner, all that property described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Commercial Property"), and all that property described on Exhibit "B" attached hereto and incorporated herein (the "Country Club(s)"). (The Residential Property, Commercial Property and Country Club(s)) are hereinafter collectively referred to as the "Properties").

Acknowledging that the future owners and occupants of the Commercial Property and the Country Club(s) will benefit from the performance by Hamilton Proper Community Association, Inc. ("Association") of certain of its maintenance responsibilities under the Residential Declaration and hereunder, Declarant desires to provide for an equitable allocation of the costs of such maintenance between the Association, the owners of the Commercial Property and the owners of the Country Club(s).

NOW, THEREFORE, Declarant, as the owner or with the consent of the owner, hereby declares that all of the Properties shall be held, sold, and conveyed subject to the covenants, conditions and easements contained herein, which are made for the express benefit of the Association and the present and future owners of the Commercial Property and the Country Club(s), and which shall run with the title to the Properties and shall bind all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of the Association and each owner of any part of the Properties.

Article I
Easements

Section 1. Easements Appurtenant to Commercial Property. There is hereby reserved a perpetual, nonexclusive easement appurtenant to the Commercial Property over, under and across the Residential Property for the

Commercial Property over, under and across the Residential Property for the purpose of storm water drainage and retention of storm water runoff from the Commercial Property.

Section 2. Easements Appurtenant to the Country Club(s). There is hereby reserved a perpetual, nonexclusive easement appurtenant to the Country Club(s) over, under and across the Residential Property for the purpose of storm water drainage and retention of storm water runoff from the Country Club(s).

Section 3. Easements for Maintenance. There are hereby reserved to the Association blanket easements over, under and across the Commercial Property and the Country Club(s) for access, ingress and egress, maintenance and repair to the extent reasonably necessary for the Association to perform its maintenance responsibilities under the Residential Declaration and hereunder.

Article II Obligation To Share Costs

Section 1. Responsibility for Assessments.

(a) Each and every owner of any portion of the Commercial Property, by acceptance of a deed, whether or not it shall be expressed in such deed, covenants and agrees to pay annual assessments to the Association to cover a portion of the costs incurred by the Association in maintaining, repairing, replacing, and insuring the Commercial Maintenance Property, as defined in Section 2(a) below.

(b) Each and every owner of any portion of the Country Club(s), by acceptance of a deed, whether or not it shall be expressed in such deed, covenants and agrees to pay annual assessments to the Association to cover a portion of the costs incurred by the Association in maintaining, repairing, replacing, and insuring the Club Maintenance Property, as defined in Section 2(b) below.

(c) The obligation of each owner to pay this assessment shall be a separate and independent covenant on the part of each owner, and no diminution or abatement of the assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association to adequately perform such maintenance responsibilities, the sole remedy of each owner for failure of the Association to perform being suit at law or in equity.

Section 2. Maintenance Property.

(a) The Commercial Maintenance Property, as such term is used herein, shall refer to all grass, landscaping, and any entry features which are located at the intersection of Fall Creek Road and Hamilton Parkway, and all landscaping, signage, and improvements within the right-of-way of Hamilton Parkway which the Association is obligated to maintain and/or insure under the

Residential Declaration. The Commercial Maintenance Property shall also include that portion of the property bounded on the north by Hawthorne Ridge and on the east by Hamilton Parkway, which serves as a drainage basin and detention pond for the Commercial Property.

(b) The Club Maintenance Property, as such term is used herein, shall refer to all grass, landscaping, and any entry features which are located at the intersection of Fall Creek Road and Hamilton Parkway, and at the intersection of Brooks School Avenue and Club Point, and shall also refer to that portion of the Residential Property which serves as part of the storm water drainage and retention system for the Country Club(s).

Section 3. Computation of Assessments.

(a) On an annual basis, the Association shall determine an estimated budget for maintaining, repairing, replacing, and insuring the Commercial Maintenance Property and the Club Maintenance Property in a manner consistent with, and to the level of the Community-Wide Standard established by, the Residential Declaration during the upcoming year, including an appropriate amount to be placed in a reserve fund for capital repairs and replacements. Such budget shall be adjusted to reflect any excess or deficiency in the budget assessed for the immediately preceding year, as compared to actual expenses for that period.

(b) Eighteen (18%) percent of such annual budget, as adjusted, plus any unreimbursed costs incurred by the Association during the previous fiscal year to collect amounts due hereunder, (hereinafter "Commercial Basis"), shall be used as the basis for computing the total annual assessment obligation for the Commercial Property. The total annual assessment payable by each owner of any portion of the Commercial Property shall be determined by the following formula:

Total Acreage Owned
by Commercial Owner
Within Commercial
Property

x Commercial Basis = Assessment
(Dollars)

Total Acreage of
Commercial Property

(c) Six (6%) percent of such annual budget, as adjusted, plus any unreimbursed costs incurred by the Association during the previous fiscal year to collect amounts due hereunder, (hereinafter the "Club Basis"), shall be used as the basis for computing the total annual assessment the Country Club(s). The total annual assessment obligation payable by the owner(s) of the Country Club(s) shall be determined by the following formula:

Total Acreage Owned
Within Country
Club(s)

_____ x Club Basis = Assessment
(Dollars)

Total Acreage of
Country Club(s)

Section 3. Payment of Assessments. Within thirty (30) days of receipt of notice of an annual assessment, each owner of any portion of the Commercial Property and the Country Club(s) shall pay to the Association the entire amount due. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Association may from time to time reasonably determine. If the assessment is not paid when due, a lien, as herein provided, shall attach to the property of the delinquent owner within the Commercial Property or the Country Club(s), as applicable, and, in addition, the lien shall include the late charge, interest (not to exceed the maximum lawful rate) on the principal amount due and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may institute suit to collect such amounts and to foreclose its lien. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all its members. The Association, acting through its Board and on behalf of its members, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Article III General

Section 1. Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Association or to the owner(s) of any portion of the Commercial Property or the Country Club(s), as applicable, at the address of such property or such other address as is registered with the Association. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party or address specified above; or (b) on the third (3rd) day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

Section 2. Recordkeeping. The Residential Association shall maintain or cause to be maintained full and accurate books of account with respect to its management, maintenance and operation of the Commercial Maintenance Property and the Club Maintenance Property. Such books and records and financial statements related thereto shall be made available for inspection and copying by the owners of the Commercial Property and the

owner(s) of the Country Club(s) upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be paid by the owner or owners requesting such copies. If an owner or owners of the Commercial Property or the Country Club(s) desire to have the records audited, it may do so at its expense, and the Association shall cooperate by making available to the party performing the audit the records, including all supporting materials (e.g., check copies, invoices, etc.) for the year then ended. If the amount of actual expenses for the preceding year is disputed after audit, the owner or owners requesting the audit and the Residential Association shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by more than five (5%) percent of the amount asserted, then the Residential Association shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by less than five (5%) percent of the amount asserted, then the owner or owners requesting the second audit shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by the Residential Association and said owner or owners. Variances shall be taken into account in the following year's budget as provided under Article II hereof.

Section 3. Unilateral Annexation By Declarant. Declarant shall have the unilateral right, privilege and option from time to time at any time to subject additional Commercial Property to the provisions of this Declaration by filing for record a Supplemental Declaration subjecting such property to the terms hereof and describing such property. Any such annexation shall be effective upon the filing for record of the Supplemental Declaration unless otherwise provided therein. Nothing herein shall preclude the annexation of property that, at the time that this Declaration is recorded, is not owned by Declarant. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of the then owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any real property annexed by Declarant.

The rights reserved unto Declarant to subject additional land to this Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any additional land to this Declaration.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Properties; or (d) if such amendment is necessary to enable any governmental agency or reputable private

insurance company to insure mortgage loans on any portion of the Commercial Property or the Country Club(s); provided, however, any such amendment shall not adversely affect the title to any property unless the owner thereof shall consent thereto in writing. Further, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided therein, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any owner or occupant hereunder, nor shall it adversely affect title to the property of any owner without the consent of the affected owner or occupant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the directors of the Association, owners of a majority of the total acreage within the Commercial Property, owners of a majority of the total acreage within the Country Club(s), and, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument, the consent of the Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 5. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect for a period of thirty (30) years after the date that this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years, unless such extension is disapproved by at least a majority of the directors of the Association, owners of a majority of the total acreage within the Commercial Property, owners of a majority of the total acreage within the Country Club(s) and, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument, the consent of Declarant. Every purchaser or grantee of any interest in any portion of the Properties, by acceptance of a deed or other conveyance therefor, agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

Section 6. Binding Effect. This Declaration shall be binding upon and shall inure to the benefit of every owner of any portion of the Properties and shall also inure to the benefit of the Association.

Section 7. Interpretation. This Declaration shall be governed by and construed under the laws of the State of Indiana.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

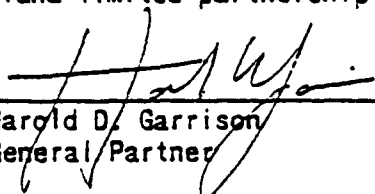
Section 9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 10. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision, or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 11. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

The undersigned has executed this Declaration as of the date first above written.

HAMILTON PROPER PARTNERS LAND PARTNERSHIP, L.P.,
an Indiana limited partnership

By:  [SEAL]

Harold D. Garrison
General Partner

1939g -- 04/04/91

STATE OF INDIANA

COUNTY OF Marion

TO WIT:

Before me, Robin E Greenwalt, a notary public in and for the State and County aforesaid, appeared Hamilton Proper Partners Land Partnership, L.P., by Harold D. Garrison, its general partner, and acknowledged the execution of the foregoing instrument on behalf of said limited partnership.

Given under my hand and official seal this 23 day of September, 1991.

Robin E Greenwalt
NOTARY PUBLIC

My Commission Expires: 3-29-93

This instrument prepared by:

Jo Anne P. Stubblefield
Hyatt & Rhoads, P.C.
1200 Peachtree Center South Tower
Atlanta, Georgia 30303

1939g-91291

EXHIBIT A

COMMERCIAL PROPERTY

Part of the East Half of the Northwest Quarter and part of the West Half of the Northeast Quarter of Section 10, Township 17 North, Range 5 East of the Second Principal Meridian in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of Lot 1 in Lake View Addition, the plat of which is recorded in Deed Record 130, page 612 as Instrument #4514 in the Office of the Recorder of Hamilton County, Indiana, which said beginning point lies North 00 degrees 32 minutes 16 seconds East (astronomic bearing) along the West line of the East Half of the said Northwest Quarter 150.00 feet from the Southwest corner thereof; thence North 89 degrees 26 minutes 51 seconds East along the North line of said Lake View Addition 935.96 feet (937.20 feet-deed) to a point which lies 400.00 feet Westerly along the North line of said Lake View Addition from a point on the East line of said Northwest Quarter which lies North 00 degrees 31 minutes 23 seconds East along said East line 150.00 feet from the Southeast corner thereof; thence North 00 degrees 31 minutes 23 seconds East parallel with the East line of said Northwest Quarter 326.70 feet; thence North 89 degrees 26 minutes 51 seconds East parallel with the South line of the said Northwest Quarter 400.00 feet to the said East line; thence North 00 degrees 31 minutes 23 seconds East 892.28 feet (892.38 feet-deed) to a point which lies South 00 degrees 31 minutes 23 seconds West along said East line 1254.00 feet from the Northeast corner of the said Northwest Quarter; thence North 33 degrees 40 minutes 28 seconds East (along a line running in the general Northeasterly direction of Brooks School Road and lying Easterly thereof, and if extended, would intersect the North line of the said Northeast Quarter Section at a point North 89 degrees 17 minutes 04 seconds East 831.00 feet from the Northwest corner of the said Northeast Quarter Section) 633.22 feet to the Southeast corner of a 3.100 acre tract of land conveyed to Mansur Development Corp. per Warranty Deed recorded as Instrument #8825060 in the said Recorder's Office; thence North 88 degrees 03 minutes 36 seconds West along the Southerly line of said "Mansur" tract and its extension thereof 1682.04 feet to the West line of the East Half of the said Northwest Quarter Section; thence South 00 degrees 32 minutes 16 seconds West along the said West line 1815.80 feet to the point of beginning, containing 53.921 acres, more or less.

Subject to all legal easements and rights of way.

EXHIBIT "B"

Country Club Property

[TO BE ADDED BY AMENDMENT PURSUANT TO RESERVED POWERS OF DECLARANT
IN ARTICLE III, SECTIONS 3 AND 4 OF FOREGOING INSTRUMENT]

File:

36,00
14
2.00 nonu

Cross Reference Instrument Nos. 91-25216, 94-37392,
95-58652, 99-08683, 99-08680 and 99-28797

199909964230
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 11-03-1999 At 12:47 pm.
AMEND DECL 36.00

**SECOND AMENDED AND RESTATED
THIRD SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**
(Arbor Glen Subdivision)

THIS SECOND AMENDED AND RESTATED THIRD SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this ___ day of August, 1999, by HAMILTON PROPER PARTNERS LAND PARTNERSHIP, L.P., a limited partnership organized and existing under the laws of the State of Indiana, having its principal office and place of business at 700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204-2960 ("HPPLP"), and HAMILTON PROPER NORTH, L.L.C., a limited liability company organized and existing under the laws of the State of Indiana, having its principal office and place of business at the same address as HPPLP ("HPNLLC"),

WITNESSETH: That

WHEREAS, HPPLP has heretofore made a certain Declaration of Covenants, Conditions, and Restrictions for Hamilton Proper, dated September 23, 1991, and recorded September 23, 1991, as Instrument No. 91-25216 in the Office of the Recorder of Hamilton County, Indiana (the "Original Declaration"); and

WHEREAS, HPPLP and HAMILTON PROPER PARTNERS I, L.P., a limited partnership organized and existing under the laws of the State of Indiana, having its principal office and place of business at the same address as HPPLP ("HPPI"), have heretofore made a certain Certificate of Designation of Co-Declarant, and Supplemental Declaration of Covenants, Conditions and Restrictions, dated August 23, 1994, recorded August 29, 1994, as Instrument No. 94-37392, in the Office of the Recorder of Hamilton County, Indiana (the "First Supplemental Declaration"); and

WHEREAS, HPPLP, HPPI and Hamilton Proper, L.L.C., a limited liability company organized and existing under the laws of the State of Indiana, having its principal office and place of business at the same address as HPPLP, have heretofore made a certain Certificate of Designation of Co-Declarant, and Second Supplemental Declaration of Covenants, Conditions and Restrictions, dated October 20, 1995, and recorded October 31, 1995, as Instrument No. 95-58652, in such Office (the "Second Supplemental Declaration") (the Original Declaration, as supplemented by the First Supplemental Declaration and the Second Supplemental Declaration, being hereinafter referred to collectively as the "Declaration," and all capitalized terms used but not defined herein having the meanings ascribed to them in the Declaration); and

WHEREAS, HPPLP and HPNLLC have heretofore made a certain Third Supplemental Declaration of Covenants, Conditions and Restrictions, dated February 1, 1999, and recorded

February 9, 1999, as Instrument No. 99-08680, in such Office (the "Third Supplemental Declaration"); and

WHEREAS, HPPLP and HPNLLC have heretofore made a certain Amended and Restated Third Supplemental Declaration of Covenants, Conditions and Restrictions, dated April 20, 1999, and recorded May 12, 1999, as Instrument No. 9909928797, in such Office (the "Amended and Restated Third Supplemental Declaration"); and

WHEREAS, Article VIII, Section 1, of the Original Declaration provides, in pertinent part, that "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 the Voting Members, but shall require the consent of the owner of such property, if other than the Declarant"; and

WHEREAS, as of the date hereof, there remain certain portions of the property described on Exhibit B to the Original Declaration (the "Additional Property") which have not been subjected to the terms of the Declaration; and

WHEREAS, that certain portion of the Additional Property described on Exhibit A hereto (the "Annexation Property") is commonly known as Arbor Glen Subdivision, and shall be referred to as such in certain Plats to be subsequently recorded in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, pursuant to that certain General Warranty Deed dated January 29, 1999, and recorded February 9, 1999, as Instrument No. 9908683 in the Office of the Recorder of Hamilton County, Indiana, HPNLLC is the owner of the Annexation Property and HPNLLC purchased same for the purpose of development and sale of the Annexation Property; and

WHEREAS, HPPLP and HPNLLC desire to completely amend and restate the Amended and Restated Third Supplemental Declaration in accordance with the terms hereof; and

WHEREAS, HPPLP desires to subject to the provisions of the Declaration and the jurisdiction of the Association the Annexation Property and HPNLLC, as the owner of the Annexation Property, hereby consents to such annexation of the Annexation Property; and

WHEREAS, pursuant to Article IV, Section 2 of the Original Declaration, HPPLP as the Declarant (as defined in the Original Declaration), and HPNLLC, as the owner of the Annexation Property, desire to assign to the Association certain maintenance obligations relative to the Units located within the Annexation Property in accordance with the terms hereof and the Association

shall charge against the owners of each such Unit a Neighborhood Assessment as defined and provided for in the Declaration; and

WHEREAS, HPPLP, as the Declarant, and HPNLLC, as the owner of the Annexation Property, desire to create and establish certain patio, walkway and landscape easements benefitting each Unit and burdening each adjoining Unit in accordance with the terms hereof and in a location determined by the floor plan and orientation of each residence constructed upon a lot; and

NOW, THEREFORE, for the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. **Amendment and Restatement.** HPPLP and HPNLLC do hereby completely amend and restate the Amended and Restated Third Supplemental Declaration in accordance with the terms and conditions hereof.

2. **Annexation.** HPPLP, as the Declarant, and HPNLLC, as the owner of the Annexation Property, do hereby subject the Annexation Property to the provisions of the Declaration and the jurisdiction of the Association.

3. **Maintenance.** The Association shall charge a Neighborhood Assessment against each Unit located within the Annexation Property and shall perform, or shall cause to be performed, (i) routine mowing, fertilization and weed control of the grass areas of the Units, (ii) routine mulching and maintenance of street frontage landscape beds, (iii) annual opening and closing of the lawn irrigation systems serving each Unit, (iv) snow removal from the driveways and front walks for each Unit after any snow accumulation in excess of two (2) inches, and (v) maintenance and repair of the privacy fence and wall adjacent to 116th Street and all roadways located upon the Annexation Property, all of which services shall be provided in a manner consistent with the Community-Wide Standards. The Association, its employees, agents, contractors and designees shall have the right of ingress and egress over, upon and across such portions of the Units as shall be reasonably necessary for access to the Units for purposes of performing the foregoing services and any additional maintenance services as may be subsequently provided pursuant to Article IV, Section 2 of the Original Declaration. Pursuant to Article X of the Original Declaration, the owners of the Units located within the Annexation Property shall be responsible for the payment of a Neighborhood Assessment which shall be created and assessed by the Association in accordance with the terms of such Original Declaration.

4. **Landscape and Patio Easement.** HPPLP and HPNLLC do hereby grant, bargain, sell and convey for the benefit of each Unit within the Annexation Property, a perpetual and exclusive right and easement (the "Patio Easement") on, over, upon and across certain portions of the Unit located adjacent to the back patio of each Unit allowing the owner of such benefitted Unit to install, clean, maintain, repair, replace, occupy, use and enjoy certain landscaping, patio and other related improvements installed by HPNLLC or the owner of the benefitted Unit in accordance with the terms hereof (the "Patio Improvements"). The Patio Easement shall be located on the burdened

Unit immediately adjacent to the back patio of the benefitted Unit and shall measure approximately seven (7') feet in width and forty (40') in length (depending upon, and as determined by, the floor plan and orientation of the benefitted and burdened Units). More specifically, the Patio Easement shall extend laterally from the property line onto the burdened Unit to a point that is two (2) feet from the exterior wall of the residence on the burdened Unit and shall continue parallel with, and contiguous to, the property line and such exterior wall from the rear of the burdened Unit toward the front of same to a point contiguous with the fence located adjacent to the front door of the burdened Unit, all as more particularly depicted for illustration purposes only on **Exhibit B** attached hereto and incorporated herein. The Improvements shall be designed, installed, cleaned, maintained, repaired and replaced in a good and professional manner consistent with the Community-Wide Standards and shall provide a natural screen or buffer to the benefitted Unit from the burdened Unit while preserving the aesthetics of both such Units. The owner of the burdened Unit shall not be entitled to enter upon or access the Patio Easement area without first providing three (3) days prior written notice to the owner of the benefitted Unit of its desire to access same, except, however, the owner of the burdened Unit shall be entitled to enter upon the Patio Easement area without notice in the event an emergency condition exists which requires immediate maintenance to the burdened Unit in order to avoid damage occurring to same.

5. **Landscape and Walkway Easement.** HPPLP and HPNLLC do hereby grant, bargain, sell and convey for the benefit of each Unit within the Annexation Property, a perpetual and exclusive right and easement (the "Walkway Easement") on, over, upon and across certain portions of the Unit located adjacent to the front door of each Unit allowing the owner of such benefitted Unit pedestrian access to such Unit and to install, clean, maintain, repair, replace, occupy, use and enjoy certain landscaping, walkway and other related improvements installed by HPNLLC or the owner of the benefitted Unit in accordance with the terms hereof (the "Walkway Improvements"). The Walkway Easement shall be located on the burdened Unit immediately adjacent to the front door of the benefitted Unit and shall measure approximately seven (7') feet in width and fifty-two (52') feet in length (depending upon, and as determined by, the floor plan and orientation of the benefitted and burdened Units). More specifically, the Walkway Easement shall extend laterally from the property line onto the burdened Unit to a point that is two (2) feet from the exterior wall of the residence on the burdened Unit and shall continue parallel with, and contiguous to, the property line and such exterior wall from the common wall/fence located nearest to the street toward the rear of such Units to a point contiguous with the fence located adjacent to the front door of the benefitted Unit, all as more particularly depicted for illustration purposes only on **Exhibit B** attached hereto and incorporated herein. The Improvements shall be designed, installed, cleaned, maintained, repaired and replaced in a good and professional manner consistent with the Community-Wide Standards and shall provide a natural screen or buffer to the benefitted Unit from the burdened Unit while preserving the aesthetics of both such Units. The owner of the burdened Unit shall not be entitled to enter upon or access the Walkway Easement area without first providing three (3) days prior written notice to the owner of the benefitted Unit of its desire to access same, except, however, the owner of the burdened Unit shall be entitled to enter upon the Walkway Easement area without notice in the event an emergency condition exists which requires immediate maintenance to the burdened Unit in order to avoid damage occurring to same.

6. **Indemnification.** The owners of the Units benefitted hereunder shall indemnify, defend and hold the owners of the burdened Units harmless from and against any loss, damage, liability or expense, including, but not limited to reasonable attorneys' fees, resulting from any injury or death of any persons, or any loss of or damage to any property, caused by or resulting from any act or omission attributable to such benefitted owner or its respective agents, employees, contractors, guests or invitees, in connection with its or their entry upon, or use, maintenance or repair of, the Patio Easement area, the Walkway Easement area, the Patio Improvements or the Walkway Improvements. In addition, the owners of the benefitted Units shall not cause, allow or permit any lien to be filed upon the real estate belonging to the owners of the burdened Units in favor of any third party contracted to perform services upon said real estate and agrees to promptly take steps to remove any such third party lien.

7. **Compliance with Laws.** The installation, construction, maintenance, repair and use of the Patio Improvements and the Walkway Improvements by the owners of the Units benefitted by same shall comply in all respects with all applicable federal, state and local laws, rules, regulations, ordinances and the Community-Wide Standards. The exercise of the easement rights granted hereunder shall at all times be subject to all applicable governmental approvals and the owners of the Units benefitted thereby shall be solely responsible for obtaining any and all permits and approvals and the payment of any fees charged by applicable governmental authorities relating to such owners' use thereof.

8. **Continued Use of Easement Property.** Subject to the terms hereof, the owners of the burdened Units retain the right to utilize the Patio Easement area and the Walkway Easement area property for any purpose that does not materially interfere with the rights and easements granted herein to the owners of the benefitted Units.

9. **Taxes and Assessments.** Except as otherwise specifically provided for herein, each owner of the respective Units shall bear all costs incidental to the ownership of its property, including, without limitation, all insurance premiums, taxes and special assessments payable in respect thereof.

10. **Covenants to Run with the Land.** The grants and obligations, and benefits and burdens created herein shall run with the property burdened and/or benefitted hereby, as the case may be, and shall apply to, be binding upon and inure to the benefit of such real estate.

IN WITNESS WHEREOF, HPPLP and HPNLLC have executed this Second Amended and Restated Third Supplemental Declaration of Covenants, Conditions and Restrictions as of the day and year first above written.

HAMILTON PROPER PARTNERS
LAND PARTNERSHIP, L.P.

HAMILTON PROPER NORTH, L.L.C.
By: HDG Investments, L.L.C.,
its Class A Member

By: [Signature]
Harold D. Garrison, its General Partner

By: [Signature]
Harold D. Garrison, its sole Member

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said county and state, personally appeared Harold D. Garrison, who being first duly sworn by me upon his oath, stated that he is the General Partner of **Hamilton Proper Partners Land Partnership, L.P.**, that he is duly authorized to execute the foregoing on its behalf, that any statements or representations of fact contained therein are true and he acknowledged execution of the foregoing on behalf of said entity.

Witness my hand and Notarial Seal this 27th day of ~~April~~ ^{September}, 1999.

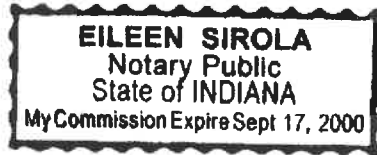
NOTARY PUBLIC:

[Signature]

Printed: Eileen Sirola

My Commission Expires:
9-17-2000

My County of Residence:
Marion



STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said county and state, personally appeared Harold D. Garrison, who being first duly sworn by me upon his oath, stated that he is the Sole Member of HDG Investments, L.L.C., the Class A Member of **Hamilton Proper North, L.L.C.**, that he is duly authorized to execute the foregoing on behalf of such entities, that any statements or representations of fact contained therein are true and he acknowledged execution of the foregoing on behalf of said entities.

Witness my hand and Notarial Seal this 27th day of ~~April~~ ^{September}, 1999.

NOTARY PUBLIC:

Eileen Sirola

Printed:

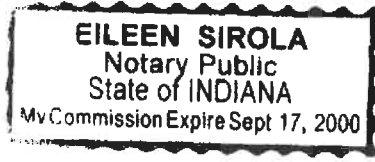
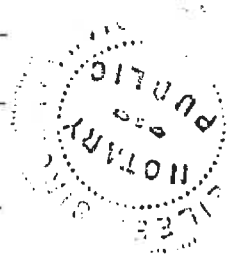
Eileen Sirola

My County of Residence:

Marion

My Commission Expires:

9-17-2000



sce

Exhibit A

Description of Annexation Property

EXHIBIT A

PART OF THE NORTH HALF OF SECTION 3, TOWNSHIP 17 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN IN FALL CREEK TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

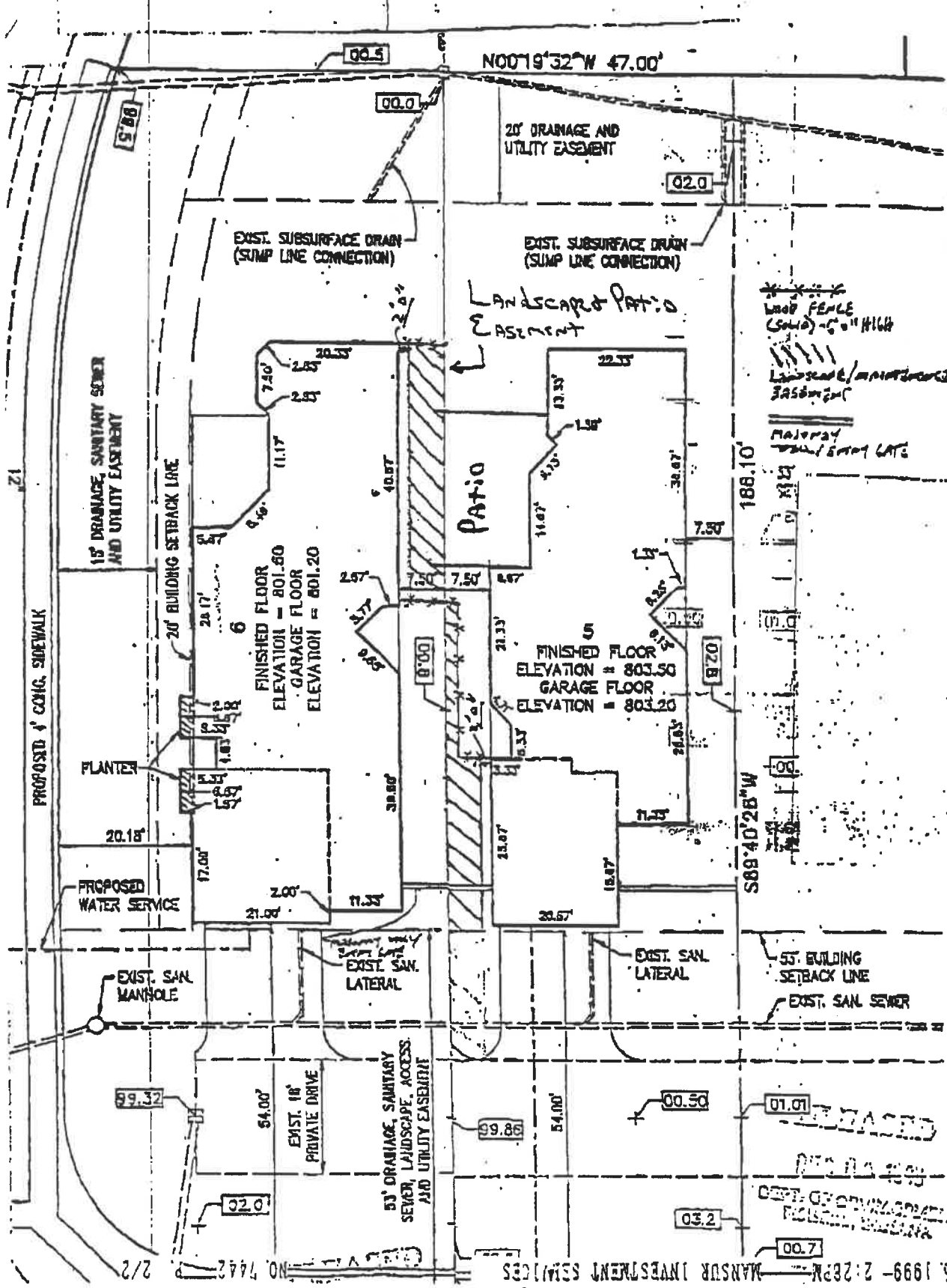
BEGINNING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE NORTH 89 DEGREES 14 MINUTES 29 SECONDS EAST (ASSUMED BEARING) ALONG THE NORTH LINE THEREOF 184.05 FEET TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 18 NORTH, RANGE 5 EAST; THENCE NORTH 89 DEGREES 53 MINUTES 49 SECONDS EAST CONTINUING ALONG THE NORTH LINE OF SAID SECTION 3 A DISTANCE OF 300.40 FEET; TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED AS INSTRUMENT NUMBER 8710958 IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE ALONG THE WEST AND SOUTH LINES THEREOF FOR THE NEXT TWO COURSES; (1) SOUTH 01 DEGREES 21 MINUTES 55 SECONDS EAST 216.82 FEET; (2) NORTH 89 DEGREES 18 MINUTES 54 SECONDS EAST 265.29 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 09 SECONDS WEST 46.55 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 578.45 FEET TO A POINT ON THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE ON SAID WEST LINE, NORTH 00 DEGREES 08 MINUTES 53 SECONDS EAST 261.66 FEET TO THE NORTHWEST CORNER OF SAID EAST HALF; THENCE NORTH 89 DEGREES 53 MINUTES 49 SECONDS EAST ALONG THE NORTH LINE THEREOF 168.94 FEET TO THE SOUTHWEST CORNER OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 34; THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST CONTINUING ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1165.40 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST ALONG THE NORTH LINE THEREOF 44.00 FEET TO THE NORTHWEST CORNER OF A 0.365 ACRE TRACT RESERVED FOR A SANITARY SEWER LIFT STATION; THENCE ON THE WEST, SOUTH AND EAST SIDES OF SAID TRACT THE FOLLOWING THREE (3) COURSES; 1) SOUTH 00 DEGREES 19 MINUTES 32 SECONDS EAST 150.00 FEET; 2) NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST 106.00 FEET; 3) NORTH 00 DEGREES 19 MINUTES 32 SECONDS WEST 150.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST 12.12 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 18 NORTH, RANGE 5 EAST; THENCE NORTH 89 DEGREES 36 MINUTES 39 SECONDS EAST CONTINUING ALONG THE NORTH LINE OF SAID SECTION 3 A DISTANCE OF

791.24 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED AS INSTRUMENT NUMBER 9223771 AND INSTRUMENT NUMBER 9232592 IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE SOUTH 00 DEGREES 23 MINUTES 21 SECONDS EAST ALONG THE WEST LINE THEREOF 81.18 FEET TO THE APPROXIMATE CENTERLINE OF MUD CREEK; THENCE ALONG SAID CENTERLINE FOR THE NEXT EIGHTEEN COURSES; (1) SOUTH 50 DEGREES 14 MINUTES 11 SECONDS WEST 400.07 FEET; (2) SOUTH 73 DEGREES 46 MINUTES 04 SECONDS WEST 57.97 FEET; (3) NORTH 76 DEGREES 35 MINUTES 43 SECONDS WEST 52.95 FEET; (4) NORTH 62 DEGREES 17 MINUTES 19 SECONDS WEST 74.34 FEET; (5) NORTH 76 DEGREES 55 MINUTES 09 SECONDS WEST 48.52 FEET; (6) NORTH 50 DEGREES 58 MINUTES 03 SECONDS WEST 44.05 FEET; (7) NORTH 84 DEGREES 18 MINUTES 40 SECONDS WEST 83.95 FEET; (8) NORTH 74 DEGREES 46 MINUTES 04 SECONDS WEST 105.58 FEET; (9) SOUTH 72 DEGREES 05 MINUTES 10 SECONDS WEST 39.08 FEET; (10) SOUTH 38 DEGREES 13 MINUTES 16 SECONDS WEST 47.37 FEET; (11) SOUTH 54 DEGREES 05 MINUTES 12 SECONDS WEST 63.45 FEET; (12) SOUTH 32 DEGREES 42 MINUTES 24 SECONDS WEST 63.32 FEET; (13) SOUTH 25 DEGREES 31 MINUTES 18 SECONDS WEST 77.62 FEET; (14) SOUTH 02 DEGREES 51 MINUTES 05 SECONDS WEST 54.51 FEET; (15) SOUTH 13 DEGREES 23 MINUTES 34 SECONDS WEST 141.03 FEET; (16) SOUTH 00 DEGREES 54 MINUTES 28 SECONDS WEST 48.90 FEET; (17) SOUTH 25 DEGREES 53 MINUTES 25 SECONDS WEST 55.89 FEET; (18) SOUTH 55 DEGREES 39 MINUTES 58 SECONDS WEST 18.70 FEET; THENCE NORTH 50 DEGREES 59 MINUTES 04 SECONDS WEST 259.56 FEET; THENCE SOUTH 73 DEGREES 35 MINUTES 39 SECONDS WEST 59.22 FEET; THENCE SOUTH 35 DEGREES 34 MINUTES 59 SECONDS WEST 117.14 FEET; THENCE SOUTH 71 DEGREES 29 MINUTES 19 SECONDS WEST 304.90 FEET; THENCE NORTH 83 DEGREES 01 MINUTES 43 SECONDS WEST 237.94 FEET; THENCE SOUTH 82 DEGREES 57 MINUTES 37 SECONDS WEST 433.50 FEET; THENCE NORTH 54 DEGREES 17 MINUTES 41 SECONDS WEST 90.96 FEET; THENCE SOUTH 66 DEGREES 16 MINUTES 40 SECONDS WEST 52.09 FEET; THENCE NORTH 36 DEGREES 32 MINUTES 58 SECONDS WEST 50.72 FEET; THENCE NORTH 17 DEGREES 48 MINUTES 21 SECONDS EAST 157.21 FEET; THENCE NORTH 52 DEGREES 20 MINUTES 33 SECONDS WEST 126.50 FEET; THENCE SOUTH 87 DEGREES 25 MINUTES 35 SECONDS WEST 118.17 FEET; THENCE NORTH 71 DEGREES 39 MINUTES 49 SECONDS WEST 103.16 FEET; THENCE NORTH 78 DEGREES 40 MINUTES 47 SECONDS WEST 102.03 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 59.35 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 09 SECONDS WEST 74.50 FEET TO THE APPROXIMATE CENTERLINE OF MUD CREEK; THENCE ALONG SAID APPROXIMATE CENTERLINE FOR THE NEXT EIGHT COURSES; (1) SOUTH 61 DEGREES 02 MINUTES 48 SECONDS WEST 80.37 FEET; (2) SOUTH 82 DEGREES 18 MINUTES 43 SECONDS WEST 39.55 FEET; (3) NORTH 83 DEGREES 59 MINUTES 24 SECONDS WEST 118.70 FEET; (4) SOUTH 72 DEGREES 43 MINUTES 31 SECONDS WEST 77.29 FEET; (5) SOUTH 89 DEGREES 00 MINUTES 03 SECONDS WEST 86.52 FEET; (6) NORTH 79 DEGREES 20 MINUTES 33 SECONDS WEST 119.13 FEET; (7) SOUTH 89 DEGREES 55 MINUTES 59 SECONDS WEST 152.73 FEET; (8) SOUTH 75 DEGREES 31 MINUTES 23 SECONDS WEST 97.57 FEET TO THE WEST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE NORTH 00 DEGREES 06 MINUTES 09 SECONDS EAST ALONG SAID WEST LINE 579.73 FEET TO THE POINT OF BEGINNING.

sce

Exhibit B

Illustration of the Easements



~~WOOD FENCE (Solid) 6" HIGH~~
 LANDSCAPE/MAINTENANCE EASEMENT
 MAJORWAY WALL/STREET CAFE

JAN. 26. 1999 - 2:28PM
 MANSUR INVESTMENT SERVICES
 8

NO. 7442
 2/2

CONSENT OF MORTGAGEE AND SUBORDINATION OF MORTGAGE TO SECOND AMENDED AND RESTATED THIRD SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FIRST INDIANA BANK, a federal banking association ("Mortgagee"), presently holds a mortgage executed in its favor by Hamilton Proper North, L.L.C., dated February 1, 1999, and recorded with the Office of the Recorder of Hamilton County, Indiana, on February 9, 1999, as Instrument No. #9908684 (the "Mortgage") which encumbers the Annexation Property. Mortgagee hereby consents to the terms and provisions of the Amended and Restated Third Supplemental Declaration of Covenants, Conditions and Restrictions and further agrees that the lien of the Mortgage, to the extent it encumbers the Annexation Property, shall be subordinate and subject to the terms and conditions of the the Amended and Restated Third Supplemental Declaration of Covenants, Conditions and Restrictions.

DATED: 10/12/99

MORTGAGEE:

FIRST INDIANA BANK, a federal banking
association

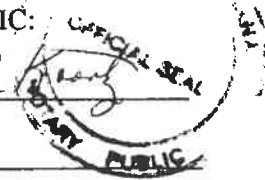
By: *Charles B. Lauck*
Charles B. Lauck, Vice President

STATE OF Indiana)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Charles B. Lauck, who, being first duly sworn by me upon his oath, says that he is a Vice President of **First Indiana Bank**, that he is duly authorized to execute the foregoing instrument on its behalf and he acknowledged execution of the foregoing.

Witness my hand and Notarial Seal this 12 day of October, 1999.



NOTARY PUBLIC: *Rosalind Koontz* 

My Commission Expires:

Printed: _____
My County of Residence:

sce

This instrument was prepared by John B. Baxter, Attorney-at-Law, JOHNSON, SMITH, PENCE & HEATH, LLP, One Indiana Square, Suite 1800, Indianapolis, IN 46204.