Covenants

For

Crosswinds

Hamilton County

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INSTR # 9248616

9248616

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WINDERMERE

a subdivision located in the Town of Fishers,
Hamilton County, Indiana

This Instrument Recorded 12-8 1992
Sharon K. Cherry, Recorder, Hamilton County, Indiana

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WINDERMERE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "Declaration") is made this 24th day of December, 1992, by Windermere Partners, an Indiana Partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Hamilton County, Indiana, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and Declarant desires to subject such property to the provisions of this Declaration and to have constructed on the property a residential community to be known as "Windermere" (hereinafter the "Community") consisting of several neighborhoods, and to provide a flexible and reasonable method for the administration and maintenance of such property; and

WHEREAS, as hereinafter provided in this Declaration, Declarant has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the residential community described herein all or any portion of the Additional Property described in Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, in connection with the development of the Community, Declarant, or its assignee, may create adjacent to or nearby the Community a golf course and accompanying ammenities for public, private, or semi-private use.

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" and any Additional Property described in Exhibit "B" as may by subsequent amendment hereto be subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied and used subject to the easements, restrictions, covenants, charges, liens, and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the property and which shall touch and concern and run with the title to the 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 portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof and where provided herein, shall benefit the property on which the aforesaid golf course is located. 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.

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Article I

Definitions

DEFINITIONS. The following words, when used in this Declaration, unless the context shall prohibit or otherwise require, shall have all the following meanings. All definitions shall be applicable to the singular and plural forms of such terms:

Section 1.1. "Additional Property" shall mean and refer to the real property described in Exhibit "B" and all improvements thereon, together with such additional property as Declarant shall acquire from time to time and by amendment to Exhibit "B" hereto recorded in the records of the Recorder of Hamilton County, Indiana, add to Exhibit "B".

Section 1.2. "Annexation" shall mean and refer to the act of recording in the public records of Hamilton County, Indiana a Supplemental Declaration which makes all or a portion of the Additional Property subject to the terms of this Declaration, as more particularly described in Article IX hereof.

Section 1.3. "Architectural Standards Committee" shall mean and refer to the committee which shall be appointed by the Association's Board of Directors to approve exterior and structural improvements, additions, and changes within the Development as provided in Article XII hereof.

Section 1.4. "Area of Common Responsibility" shall mean and refer to the Common Areas, together with those areas and properties, if any, which by the terms of this Declaration, or by contract or by agreement with any Neighborhood become the responsibility of the Association. Such areas may include, but are not limited to, the office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way within or adjacent to the Property.

Section 1.5. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Windermere Homeowners Association, Inc., as filed with the Secretary of State of the State of Indiana.

Section 1.6. "Association" shall mean and refer to Windermere Homeowners Association, Inc., an Indiana not-for-profit corporation, which Declarant has caused or will cause to be incorporated, its successors or assigns.

Section 1.7. "Base Assessment" shall mean and refer to assessments levied by the Association against each Lot in the Property to fund Common Expenses in the manner herein provided.

Section 1.8. "Board of Directors" or "Board" shall mean and refer to the board of directors of the Association.

Section 1.9. "By-Laws" shall mean and refer to the By-Laws of Windermere Homeowners Association, Inc., attached hereto as Exhibit "C" and incorporated herein by reference, and including any amendments thereto.

Section 1.10. "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 Section 4.2(b) hereof.

Section 1.11. "Club Owner" shall mean and refer to the owner of the property on which the Golf Club is located, and its successors and assigns.

Section 1.12. "Common Area" shall mean and refer to all portions of the property shown on any recorded plat of the Property, which are not Lots and which are not dedicated to the public, including all improvements and structures constructed thereon, and which are further subdivided into "Exclusive Common Areas" and "General Common Areas." The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use of enjoyment therein.

Section 1.13. "Common Expenses" shall mean the actual and estimated expenses incurred for General Common Areas by the Association for the general benefit of all Lot 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. Common Expenses shall also include any other expenses denominated as such by these Declarations and shall include the costs of maintaining any intangible or tangible property (such as sewer lines, lighting and landscaping) which may not be located in a Common Area but the maintenance of which is in the best interests of the Community as determined by the Declarant (or the Board of Directors) in its sole and absolute discretion.

Section 1.14. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

Section 1.15. "Declarant" shall mean and refer to Windermere Partners, an Indiana general partnership, and any successors or assigns who take title to any portion of the property described on Exhibits "A" or any Additional Property for the purpose of development and sale, and who are designated as

the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 1.16. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Windermere and all amendments thereof filed for record in the public records of Hamilton County, Indiana.

Section 1.17. "Development" shall mean and refer to the Property and all improvements located or constructed thereon, and any portion of the Additional Property submitted to the provisions hereof pursuant to Section 2.2.

Section 1.18. "Dwelling" shall mean and refer to any improved property designed or intended for use as a residential detached dwelling or as a patio home on a Lot located within the Development.

Section 1.19. "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, or a portion of any Neighborhood or a group of individuals, as more particularly described in Article III of this Declaration, and as identified as an Exclusive Common Area on any recorded plat of the Property.

Section 1.20. "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

Section 1.21. "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, and is identified as a General Common Area on any recorded plat of the Property.

Section 1.22. "Golf Club" shall refer to certain parcels of real property located within or adjacent to the property subject to this Declaration and which may be operated thereon on either a public, semi-private, or private basis, a golf club.

The Golf Club is not included as part of the Common Areas nor is it governed by the provisions of this Declaration except as specifically provided herein. No Owner or Occupant nor the Association shall have any rights in and to, or obligation with respect thereto, the Golf Club except as expressly and specifically provided herein.

Section 1.23. "Landscape Easement" shall mean and refer to those areas identified on any recorded plat of the Property as Landscape Easements. The landscaping located within the easement area shall be maintained by the Association and the Association shall have an easement of ingress and egress on and over such areas for the purpose of this maintenance obligation. The landscaping and other improvements planted or installed by the

Declarant and/or the Association within the Landscape Easement may not be removed by an Owner, nor may the Owner add any landscaping or improvements in such area without the approval of the Declarant and/or the Association.

Section 1.24. "Lot" shall mean and refer to each plot of land included in the Property identified as a lot on any recorded plat of the Property upon which it is intended that a Dwelling shall be constructed.

Section 1.25. "Member" shall mean and refer to a Person holding membership in the Association, as provided in Article IV below.

Section 1.26. "Mortgage" shall mean and refer to any mortgage or other security instrument by which a Lot or any structure thereon is encumbered.

Section 1.27. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 1.28. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 1.29. "Neighborhood" shall mean and refer to each portion of the Property which is a separately developed and denominated residential area subject to this Declaration in which Owners may have common interests other than those common to all Members of the Association, such as a common theme, entry feature, development name, and/or Exclusive Common Areas and facilities which are not available for use by all Members of the Association.

Although not required, there is reserved the right for each Neighborhood to establish its own, separate homeowners association as more specifically defined in Article IV (hereinafter referred to as "Neighborhood Association"). Such an association would be distinct from the Association as hereinabove defined and shall give to said Neighborhood no greater rights, privileges, or obligations. It shall not be necessary for any Neighborhood to be governed by an additional Neighborhood Association.

Section 1.30. "Neighborhood Assessments" shall mean and refer to assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article XI, Section 11.2 of this Declaration.

Section 1.31. "Neighborhood Expenses" shall mean and refer to the actual and estimated expenses incurred by the Association on behalf of Lots 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 1.32. "Owner" shall mean and refer to the record owner, whether one or more Persons, with fee simple title to any Lot which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" shall include Declarant so long as Declarant shall own any Lot. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot 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.

Section 1.33. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 1.34. "Property" shall mean and refer to those tracts or parcels of real estate described on Exhibit "A", together with all improvements thereon, and upon submission to the provisions of this Declaration, the tracts or parcels of real estate described in Exhibit "B", together with all improvements thereon.

Section 1.35. "Special Assessment" shall mean and refer to assessments levied in accordance with Article XI, Section 11.5 of this Declaration.

Section 1.36. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant (so long as he is a Member of the Association) 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 IV,Section 4.3(b) hereof.

Section 1.37. "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 IV, Section 4.3 of this Declaration or, if the context permits, the group of Members whose Lots are represented thereby.

Section 1.38. "Voting Member" shall mean and refer to the representative selected by the Lot Owners of each distinct Neighborhood to be responsible for casting all votes attributable to the Lots in such Neighborhood for election of the Board of Directors, for amending this Declaration or the By-Laws, and for all other matters provided for in this Declaration and in the By-Laws. The Voting Member from each such 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.

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Article II

Development

Section 2.1. Development of Property. Except as otherwise set forth in Article XIII, Section 13.1, all Lots within the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in these Declarations. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or holds the unexpired option to submit Additional Property (as defined in Section 2.2) to maintain and make improvements, repairs, and changes to all Common Areas and to all Lots owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas, (iii) changes in the boundaries between the Golf Club property and any portion of the Property owned by Declarant (or any of the Additional Property submitted to the term hereof), (iv) installation and maintenance of any water, sewer, and other utility systems and facilities, (v) installation of security and/or refuse facilities, and (vi) additions or changes in the boundaries of any General Common Areas, Exclusive Common Areas or Landscape Easement Areas.

Section 2.2. Development of Additional Property. Declarant hereby reserves the right and option, to be exercised in its sole discretion, to submit at any time and from time to time until all property described in Exhibit "B" has been subjected to this Declaration or December 31, 2008, whichever is earlier, the Additional Property as described in Exhibit "B" or a portion or portions thereof to the provisions of this Declaration. This option may be exercised by Declarant upon its accordance with the following rights, conditions, and limitations:

(a) Declarant reserves the right to terminate this option at any time prior to December 31, 2008, by executing and filing an instrument evidencing such termination in the public records of Hamilton County, Indiana.

(b) Portions of the Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Development. No single exercise of Declarant's option to submit a portion of the Additional Property to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the Lots, as well as the Common Areas, if any, to be added to the Development in connection therewith.

(d) The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Development is entirely at the discretion of Declarant and shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Development.

(e) The option may be exercised by Declarant only by the execution of an amendment to this Declaration ("Supplemental Declaration") which shall be filed in the public records of Hamilton County, Indiana, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Development by such amendment. Simultaneously therewith, Declarant shall convey to the Association the Common Areas, if any, contained within the Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, development loans, all easements and restrictions of record, utility easements, serving or otherwise encumbering the Property and/or the Additional Property, and any exceptions which would be disclosed by a survey or physical inspection of such parcel(s). Any such amendment shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration. The provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. If the Additional Property or any portion or portions thereof is added to the Development, then the number of Voting Members in the Association shall be increased by the number of Neighborhoods to be located on the Additional Property or such portion or portions thereof as are added.

(f) With respect to each Lot located within the Additional Property which is submitted to this Declaration, Declarant shall convey to the purchaser thereof the title to the Lot and its appurtenant membership and voting rights in the Association pursuant to Article IV.

Section 2.3. Golf Club. Declarant may, in its sole and absolute discretion, develop the Golf Club, including a golf course and other related facilities on the Golf Club property. The Golf Club shall be separate and distinct from the Association and governed by its own rules, regulations, and requirements. Declarant, in his sole discretion, will determine whether the Golf Club will be operated on a public semi-private, or private basis. Declarant also reserves the right and option to enter into contracts and agreements, at its sole discretion, concerning the maintenance, management and ownership of said Golf Club. The Golf Club and the Golf Club property shall not be part of the Common Areas, and neither the Association nor any Owner shall have any right or privilege in and to the Golf Club or the amenities contained therein, including the right to enter upon or use the Golf Club facilities, except under such conditions and requirements as may be established by the Club Owner from time to

time. Absolutely no rights have been granted to the Association nor any Owner regarding use of the Golf Club by this Declaration.

Section 2.4. Subdivision Plat. Declarant reserves the right, in its sole discretion, to record, modify, amend, revise and add to, at any time and from time to time, prior to December 31, 2008, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of the Lots, Common Areas, Additional Property, roads, utility systems, drainage systems, landscape easements, utility easements, drainage easements, access easements, and set-back line restrictions.

Section 2.5. Consent of Declarant. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

Article III

Property Rights

Section 3.1. General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the General Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot, and upon such transfer, such former owner shall simultaneously transfer and endorse to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided, and, except as provided in Sections 2.1 and 3.7 hereof, the boundaries between Lots and Neighborhoods shall not be relocated, unless the relocation thereof is made with the consent of at least a majority of the Owners in the Development and of Declarant, so long as Declarant owns any Lot or holds the unexpired option to submit Additional Property or any portion thereof to the Development. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a Dwelling site larger than one Lot.

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Section 3.2. Exclusive Common Areas. Certain portions of the Common Areas may be designated by Declarant in its sole discretion as Exclusive Common Areas and reserved for the exclusive use of Owners and occupants of less than all Lots, such as the Lots within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed against the Owners of Lots entitled to the exclusive use thereof as a Neighborhood Assessment, as defined herein. Initially, any Exclusive Common Area shall be designated as such by the Declarant, in its sole right and discretion, and the exclusive use thereof shall be assigned in the deed conveying the Exclusive Common Area to the Association. A portion of the Common Areas may be assigned as Exclusive Common Area and Exclusive Common Areas may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes attributable to the Lots to which such Exclusive Common Areas are assigned.

Section 3.3. Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and subject to the following provisions:

(a) The right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas. The mortgage shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, the Club Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Property, and the right of the Association to grant and accept easements as provided in Section 3.8 hereof.

(c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to Hamilton County, Indiana, or to any other public agency or authority, public service district,public or private utility,or other person, provided that any such transfer of the fee simple title must be approved by a majority of those Voting Members present at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or holds the unexpired option to submit the Additional Property or any portion thereof to the Development.

(d) The rights of the Association and Declarant reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Property.

(e) The rights and easements reserved to the Golf Club Owner as provided herein.

(f) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.4. Park Area. There shall be created a park area comprising approximately six acres, together with whatever other amenities Declarant may, in its sole discretion, create (hereinafter collectively referred to as the "Park Area"). The Park Area shall be designated on a subdivision plat hereafter recorded with the Recorder's Office of Hamilton County, Indiana, and shall hereafter be added to the Common Areas of the Community at such time as Declarant shall determine but in no event later than the termination of the Class B Control Period. Subject to the terms and provisions of this Declaration and the rules and regulations from time to time established by the Board of Directors, every Owner and his family, tenants, and guests shall have the non-exclusive right, privilege, and easement of access to and the use and enjoyment of the Park Area. Additionally, Owners and occupants of that nearby real estate which is described in Exhibit "D" (which is attached hereto and made a part hereof) shall have the same rights of access and use of the Park Area as every Owner; provided, however, each owner from the Exhibit "D" area shall pay an annual fee assessed by the Association that is based on an allocation of the cost of maintenance and upkeep of the Park Area among all users of the Park Area. Irrespective of whether the Park Area has yet been added to the Common Areas, the income, if any, generated by the Park Area and the expenses incurred with respect to the Park Area shall belong to and be the responsibility of the Association; provided, however, the original cost of construction and creation of the Park Area shall be the obligation of Declarant.

Section 3.5. Swim and Tennis Club. Declarant may create a swimming pool and tennis court area (hereinafter collectively referred to as the "Swim and Tennis Club"), which shall be maintained and administered separate and apart from the Park Area. At any time prior to the termination of the Class B Control Period, Declarant (or its assignee) shall transfer ownership of the Swim and Tennis Club to the Association or to an entity created and owned by the Association (or its members) for the purpose of owning the Swim and Tennis Club. Fees shall be charged to all persons using any part of the Swim and Tennis Club, regardless of whether such persons are Owners hereunder, with the amount of said fees being determined by Declarant in its sole discretion, or by the Association subsequent to it obtaining ownership thereto. Upon payment of the required fees, such person shall receive a one year membership to the Swim and Tennis Club. Notwithstanding any provision in this Declaration to the contrary, no individual shall have the right to the use of the Swim and Tennis Club unless he has first paid the required fees and obtained membership thereto. Membership in the Association does not confer any rights to the use of the Swim and Tennis Club. Declarant, and later the Association upon transfer of

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ownership of the Swim and Tennis Club, shall have the right to make rules and regulations governing the operation and use of the Swim and Tennis Club.

One-year memberships for the use of the Swim and Tennis Club shall be made available to persons in three separate categories according to the following order and priority:

Category 1 - Owners and occupants of Lots in the Community and Owners and occupants of Lots on certain property located outside the Community in that nearby real estate described in Exhibit "D" (which is attached hereto and made a part hereof) provided such real estate is still used for residential purposes;

Category 2 - the Golf Club Owner and such persons who are members of the Golf Club or who have been conferred rights to the use of the Golf Club by the Golf Club Owner; and

Category 3 - the general public.

Pursuant to this list of priority herein provided, if a person from a category which is higher in priority desires to become a member of the Swim and Tennis Club after capacity has been reached, then the membership of the person in the category of the lowest priority who was the last to become a member of the Swim and Tennis Club will not be permitted to be renewed for the next calendar year. Fees charged to those persons in Category 2 and Category 3 for membership in the Swim and Tennis Club may, in the discretion of the Declarant, or in the discretion of the Association subsequent to it obtaining ownership thereto, be charged at a rate of up to fifteen percent (15%) higher than those charged to members from Category 1.

The level of capacity for the Swim and Tennis Club shall be determined by Declarant in a Supplemental Declaration prior to the transfer of ownership of the Swim and Tennis Club to the Association or the entity formed to own the Swim and Tennis Club. The level of capacity shall not be modified whatosever by any person, including but not limited to, the Declarant and/or the Association, except: (i) in the event that any part of the Swim and Tennis Club is itself modified, in which event the level of capacity could be modified by a declaration of the Board of Directors; or (ii) Declarant and/or the Board of Directors determines that capacity should be reduced (according to the priority for reductions set forth above) in order to maintain the tax-exempt status of the Association (but not merely for the purpose of preventing fees received from non-Owners being designated as taxable income to the Association). The income received and expenses incurred with respect to the Swim and Tennis Club shall be separate and distinct from the funds and obligations of the Association. Any profit or loss generated by the operation of the Swim and Tennis Club shall belong to or be borne by the Association.

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Section 3.6. Access. All Owners, by accepting title to Lots conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot and acknowledge and agree that such access, ingress, and egress shall be limited to roads, sidewalks, walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all Lots shall be provided at all times. There is reserved unto Declarant, the Association, and their respective successors and assigns the right and privileges, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Development or particular Neighborhood.

Section 3.7. Easements for Declarant. During the period that Declarant owns any Lot or holds the unexpired option to submit the Additional Property or any portion thereof to the Development, Declarant shall have an easement for access to Common Areas for the purpose of constructing structures and other improvements in and to the Lots and the Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot or has the right to submit the Additional Property or any portion thereof to the Development, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of owners in the Development to the use of the Common Areas.

Section 3.8. Utility and Public Service Easements.

(a) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power to grant and accept easements to and from Hamilton County, Indiana, or any other public authority or agency, public service district, public or private utility or other person, upon, over, under and across (i) all of the Common Areas; and (ii) those portions of all Lots as are reasonably necessary for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water, and sewer lines, provided that such easement

shall not unreasonably affect the use, developability, marketability, or value of any such Lot. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

(b) Declarant hereby grants to Hamilton County, Indiana, or such other governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

Section 3.9. Drainage Easements. There is hereby reserved an easement for the Declarant, the Association, or its assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Property and adjoining Property; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot in the condition originally provided by Declarant and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by Owner without the written consent of the Association; provided, however, that Declarant, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.10. Landscape Easements. Landscape easements, as designaged on a Plat of all or any part of the Property, are hereby created and reserved for the use of Declarant and the Association for access to and installation, maintenance, repair, and replacement of walls, earth mounds, trees, foilage, landscaping, and other improvements. Except as installed by Declarant or the Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon said Landscape Easements.

Section 3.11. Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the

Owner, its agents, employees, successors, and assigns, the right and easement to enter upon any unimproved portions of Lots which are located within thirty (30) feet from the water's edge of any lake, pond, or the body of water located on the Golf Club property for the purpose of mowing such area and keeping the same free and clear of unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

(c) **Golf Course Maintenance.** An easement over and across the portions of the Common Areas and each Lot which is adjacent to the Golf Club property for purposes of maintenance and landscaping. This easement shall permit, but shall not obligate, Club Owner and its agents, employees, successors, and assigns with respect to the Golf Club property to go upon any such portions of the Common Areas, and such Lots to maintain or landscape the areas encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering application of fertilizer, mowing, and the removal of underbrush, stumps, trash or debris, and trees of less than two (2) inches in diameter. The area encumbered by this easement shall be limited to the portion of the Common Areas and such Lots within thirty (30) feet of those boundary lines of the Common Areas and such Lots which are adjacent to the golf course or adjacent to lakes, ponds, or other bodies of water abutting the golf course; provided, however, the entire unimproved portion of each Lot shall be subject to such easement until the landscaping plan for such Lot has been approved and implemented pursuant to Section 12.10 hereof. Notwithstanding the rights granted to Club Owner by the foregoing, there is hereby reserved and granted to Club Owner the same rights of enforcement as belong to the Association against any Owner (and said Owner's Lot) for such Owner's failure to maintain the 30 foot easement area in accordance with both the Community-Wide Standard and the landscaping plan approved for said Lot.

(d) **Entry by Golfers.** Each Lot and any portion of the Common Areas which is adjacent to Golf Club property shall be subject to the easement for the use of the golf course players and their caddies to enter upon the unimproved portion of any such Lot or Common Area which is within ten (10) feet of any such golf course to remove a ball, subject to the official rules of the golf course, with such entering not being deemed to be a trespass. Golf course players or their caddies shall not be entitled to enter on any such Lots or portions of the Common Areas with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any, such Lot or the Common Areas or in any way commit a nuisance while on any such portion of the Development.

(e) **Landscaping Plan Approval.** In addition to the provisions of Article XII hereof, the landscaping plan for any Lots and the portion of the Common Areas adjacent to any golf course located on the Golf Club property shall, for that portion of such Lot, or Common Areas which is within thirty (30) feet of

contrary, there is hereby reserved and created for the use of Declarant, and its successors and assigns, and persons constructing any Dwelling or improvement, an easement for access to the Property for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots, Common Areas, or the Additional Property, for so long as Declarant owns any Lot or holds the unexpired option to add the Additional Property or any portion thereof to the Development.

Section 3.12. Maintenance Easement. Subject to the terms of Section 5.1 hereof, there is hereby reserved and created for the use of Declarant, the Association and their respective agents, employees, successors, and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a Community-Wide Standard of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

Section 3.13. Easements for Golf Club Property. There is hereby reserved and created for the use of Club Owner, its successors, assigns, and successors-in-title with respect to the Golf Club property, the following easements:

(a) **Utility Easements.** The right and easement for access to and for the installation, maintenance, repair, replacement and use within the Common Areas and those portions of Lots encumbered pursuant to Section 3.8 hereof of security systems and utility facilities and distribution lines, including without limitation, drainage systems, storm sewers and electrical, gas, telephone, water, sewer and master television antenna and/or cable system lines, and the easement for the drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements form time to time located thereon, such rights to be limited and restricted as set forth in Section 3.8 hereof.

(b) **Construction, Maintenance, and Repair.** The right and easement on, over, and across the Common Areas and such portions of the Lots within ten (10) feet of any boundary line of any Lot adjacent to the Golf Club property for the construction of such improvements on the Golf Club property or such portions of the Development as Club Owner shall desire from time to time and for maintaining, repairing, and replacing such improvements, provided that Club Owner shall not use such easement so as to unreasonably interrupt or interfere with any Owner's use of the Common Areas and such portions of the Lots and shall promptly repair and restore any damage to said Common Areas and such portions of the Lots caused by the use of the right and easement granted herein. In addition, there is hereby reserved for the benefit of Club

any such golf course, be in general conformity with the overall landscaping plan of such golf course, and shall be subject to Club Owner's prior right of approval, which approval shall not be unreasonably withheld. To promote a suitable and attractive open space atmosphere, no fence, wall, shrubbery, building, or other structure will be permitted within said thirty (30) foot portion of those Lots or portions of the Common . eas which are adjacent to the fairways or greens of such golf course, without the prior written approval of the Architectural Standards Committee and the Club Owner. There is hereby reserved over and across said thirty (30) foot portion of said Lots and the Common Areas the right and easement of light, air, and view for the benefit of the adjacent golf course located on the Golf Club property. Any woodpiles, playground equipment or any type of structure within such areas must be screened from such areas by the Owner of said Lot and such screening must first be approved by the Club Owner.

(f) **Change in Easement Size.** The depth of any easement created by this Section 3.13 may be changed by the recording of a Plat specifically identifying the extent of the easement with respect to a Lot or the Common Areas affected thereby; provided, however, no such change shall be made to an individual Lot (without the Lot Owner's consent) after such Lot has been purchased unless the effect of such change would be to decrease the size of the easement and no such change in the size of the easement with respect to Common Areas shall be made after the termination of the Class B Control Period (without the Association's consent) unless the effect of such change is to decrease the size of the easement across the Common Areas.

Section 3.14. Access to Golf Club. Access to the Golf Club, if any, within or adjacent to the Property is strictly subject to the terms, conditions, rules and procedures established by the respective owners of the Golf Club, as more particularly described in Article XVIII 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 Lot.

Article IV

Membership and Voting Rights

Section 4.1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. The owner(s) of the Golf Club 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 Lot owned. In the event the Owner of a Lot 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-

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Laws. The membership rights of a Lot 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 provision of this Declaration and the By-Laws.

Section 4.2. Voting. The Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) **Class A.** Class A membership 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 Lot in which they hold the interest required for membership under Section 4.1 hereof. There shall be only one (1) vote per Lot. Unless otherwise specified in this Declaration or the By-Laws, the vote for each Lot shall be exercised by the Voting Member, as defined in Article I, representing the Neighborhood of which the Lot is a part.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) person holds the interest in such Lot required for membership, the vote for such Lot 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 Lot'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 hereinafter defined. The Class B Control Period shall begin as of the date of this Declaration and extend to the earlier of: (i) the date on which ninety percent (90%) of the Lots have been sold or conveyed to persons (other than Declarant) or Builders holding title solely for purposes of development or sale. In making such calculation, the numerator shall be the total Lots sold and the denominator shall be the total Lots anticipated for sale and ownership in the Community as determined by Declarant as of that date; (ii) December 31, 2008; or (iii) the date on which Declarant determines that the Class B Control Period shall end and notice of such termination is filed by means of an instrument recorded with the Recorder of Hamilton County, Indiana. The Class B Membership shall terminate and become converted to Class A Membership upon the termination of the Class B control Period.

Section 4.3. Neighborhoods.

(a) **Neighborhoods.** Every Lot shall be located within a Neighborhood as defined in Article I. The Lots within a particular Neighborhood may be subject to additional covenants

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and the Lot Owners may all be members of another owner's association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Article V, Section 5.2 of the By-Laws, to represent the interests of Owners of Lots in such Neighborhood.

Each Neighborhood, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may, in its discretion, request that the Association provide a higher level of service or special services, not provided for all Members of the Association, for the benefit of Lots in such Neighborhood, the cost of which shall be assessed against the benefitted Lots as a Neighborhood Assessment pursuant to Article XI hereof.

The senior elected officer of each Neighborhood Association or Neighborhood Committee shall serve as the Voting Member of such Neighborhood and shall cast all votes attributable to Lots 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 Property which is intended to be subdivided for development as a separate Neighborhood by the Declarant, or which is described on a single plat or series of plats by a single name shall constitute a separate Neighborhood.

(b) **Voting Groups.** In order to attempt 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 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 Lots 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, Declarant, or in the event that Declarant fails to establish Voting Groups, all Lots shall be assigned to the same Voting Group. Each Voting Group shall be entitled to elect the number of directors specified in Section 3.6 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.

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Article V

Maintenance

Section 5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded as hereinafter provided. The 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, structure, and improvements, including all private streets, situated upon the Common Areas, landscaped easements along the primary loop road through the Property, medians of public streets within the Property entry features for the Windermere 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 with any Neighborhood, or other person or entity, 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 Lots 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 Lots to which the Exclusive Common Areas are assigned notwithstanding that the Association may be responsible for performing such maintenance pursuant to contract or agreement 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 whether 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 Property. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Lots 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 or property located outside the Development, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit,

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appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

In the event that Declarant or Board of Directors determines that: (i) any Owner or Neighborhood has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his or its responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner or Neighborhood written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner or Neighborhood as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of an emergency situation, such Owner or Neighborhood, as the case may be, shall have fifteen (15) days within which to complete the, same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner or Neighborhood to comply with the provision hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner or Neighborhood, as the case may be, and said cost (with respect to any Neighborhood responsibility) shall be added to and become a part of the assessments for all Owners within such Neighborhood and shall become a lien against such Owners' Lots, or shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that Declarant

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undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses, including reasonable attorneys' fees.

Section 5.2. Owner's Responsibility. Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling in a manner consistent with the Community-Wide Standards 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 Lot.

No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Architectural Standards Committee as provided in Article XII hereof, or (ii) do any work which, in the reasonable opinion of the Architectural Standards Committee, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement thereto, without in every such case obtaining the written approval of the Architectural Standards Committee, of the Club Owner, as the case be, directly affected thereby or benefitting from such easement.

Section 5.3. 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 Areas of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any signage, entry feature, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Although not required to do so, if any Neighborhood has responsibility, through contract or agreement, to maintain all or a portion of the Property within a particular Neighborhood pursuant to additional covenants affecting the Neighborhood, it 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 Lots within such Neighborhood as provided in Article XI, Section 11.4 of this Declaration.

Article VI

Insurance and Casualty Losses

Section 6.1. Insurance. The Association, Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the General Common Areas. If a blanket all-risk coverage policy 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 casualty insurance on the General Common Areas, 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 casualty insurance, if reasonably available, on Exclusive Common Areas within the Neighborhood. If all-risk insurance 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 Lots 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 Golf Club property.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its agents. The public liability policy shall have at a minimum a one Million Dollar ($1,000,000) single person limit as respects to bodily injury and property damage, a Three Million ($3,000,000) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand Dollar ($500,000) minimum property damage limit.

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 XI, Section 11.2. Notwithstanding the foregoing, however, 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 casualty 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 first 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 General Common Areas shall be for the benefit of the Association and its Members; all policies secured at the request of a Neighborhood on the Exclusive Common Areas shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Mortgagees, as their interest may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Property 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 casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement.

(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, the Associations' Board of Directors, the Neighborhoods, the Owners and their respective tenants, servants, agents, and guests, including without limitation, the Association's Manager;

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

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of any one or more Owner;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of 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;

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

(vi) a statement that the Association, Neighborhoods and Lot Owners will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or nonrenewal.

(vii) All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an Owner and shall also name the Declarant as an additional insured.

In addition to 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 Associations funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgement but, if reasonable available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Lots, plus reserves on hand. Bonds should contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least fifteen (15) days prior written notice to the Association of any cancellation, substantial modifications or non-renewal.

Section 6.2. Individual Insurance. By virtue of taking title to a Lot 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 casualty insurance on the Lot(s) and structures constructed thereon meeting the same requirements as set forth in Section 6.1 of this Article VI for insurance on the Common Areas, except Owners may have reduced limits on the coverage. The Board of Directors may require all Owners to furnish copies or certificates thereof to the Association. 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 Lot, the Owners 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 XII of this Declaration and all applicable zoning, building and other governmental regulations. 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 Lot 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 Lot in a neat, safe, 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 Lots within the Neighborhood and the standard for returning the Lots to their natural state in the event the structures are not rebuilt or reconstructed.

Section 6.3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Property 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 or obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the General Common Area or to the Exclusive Common Area 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 General Common Area, or the Lot Owners representing at least seventy five (75%) percent of the total vote of the Neighborhood whose Exclusive Common Area is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason 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 the General Common Area or Exclusive Common Area of a Neighborhood shall be repaired or reconstructed. If there is no reconstruction, and there is no Neighborhood, then any insurance proceeds would revert to the Association.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the General Common Area or to the Exclusive Common Area of any Neighborhood shall not be repaired or reconstructed and no alternative

improvements are authorized, then the affected portion of the Property shall be restored to its natural state and maintained by the Association, or the Neighborhood, as applicable, in a neat and attractive condition consistent with the Community-Wide Standard (see Section 1.14).

Section 6.4. 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 for payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the General 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(s) 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 Lot and may be enforced by such Mortgagee.

Section 6.5. Repair and Reconstruction. If the damage or destruction to the General Common Area or to the Exclusive Common Area 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, however, if the damage or destruction involves the Exclusive Common Area of a Neighborhood Association, only the Owners of Lots in the affected Neighborhood shall be subject to assessment therefore. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VII

No Partition

Except as is permitted in the declaration or amendments thereto, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provision 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.

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Article VIII

Condemnation

Section 8.1. Condemnation of Common Areas. 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 (or, in the case of Exclusive Common Areas, of the Class A vote attributable to Lots benefitted by the Exclusive Common Area) and of the Declarant, as long as the Declarant owns 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 (or Neighborhood Association, if any, in the case of Exclusive Common Areas) 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 owns any Property described in Exhibits "A" and "B" of this declaration, and Voting Member representing at least seventy five percent (75%) of the total Class A vote of the Association (or, in the case of Exclusive Common Areas, of the Class A vote attributable to Lots benefitted by the Exclusive Common Areas) 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 therefore, in accordance with plans approved by the Board of Directors or the Association (or Neighborhood Association, if any, in the case of Exclusive Common Areas). If such improvements are to be repaired or restored, the above provisions in Article VI 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.

Section 8.2. Condemnation of Lots. In the event that all or any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot responsible for the maintenance and repair of such Lot as the case may be, elects not to restore the remainder of the Lot, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot and any remaining undamaged improvements thereon in a clean, orderly, safe and sightly condition. In addition, if the size or configuration of such Lot

"A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 9.2. 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 2.2, any property described on Exhibit "B", to the provision 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 owns property subject to this Declaration or which may become subject hereto in accordance with Section 9.1 of this Article.

Annexation shall be accomplished by filing of a 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 provision of the By-Laws dealing with regular or special meetings, as the case maybe, 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 9.2 and to ascertain the presence of a quorum at such meeting.

Section 9.3. 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 as a Common Area for the benefit of its Members.

Section 9.4. 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 IX, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates or the Association from the provision of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Windermere desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Windermere.

Section 9.5. 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 X

Rights and obligations of the Association

Section 10.1. General Common Areas. The Association, subject to the rights of the Declarant and to the rights of the Owners set forth in this Declaration shall be responsible for the exclusive management and control of the Common Areas and other 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. Except to the extent otherwise required by the provision of the Official Code of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the power herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further action on the part of Owners.

Section 10.2. Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the official Code of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those rights and privileges reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Official Code of Indiana, this Declaration, the By-laws, or the Articles of Incorporation, the provisions of the Official Code of Indiana, this Declaration, and the By-Laws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with 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. Such power of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public and private utilities, or others, as a Common Expense or by billing directly to Lots to furnish trash collections, water, sewer, and/or security service for the Common Areas and/or the Lots. The Association shall have the right to own (as a common property) any drainage system, piping, sewer equipment or materials, or any other utility equipment which Declarant or the Association deems to be in the best interests of the Community. Notwithstanding the foregoing provision 10.2 or any other provision of this Declaration to the contrary, for so long as Declarant shall own any Lot or holds the unexpired option to submit the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

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Section 10.3. Agreements. Subject to the prior approval of Declarant for so long as Declarant owns any Lot or holds the unexpired option to submit the Additional Property or any portion thereof to the Development, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and no limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the Directors, Officers, or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire or contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

Section 10.4. Personal Property and Real Property for Common Use. The Association, acting through its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The share of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is an appurtenance to such Lot.

Section 10.5. Rules and Regulations The Association, as provided in Article XIV hereof, through its Board of Directors, may make and enforce reasonable rules and regulations governing

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the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include 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 Property to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 10.6. 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 given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 10.7. Governmental Interests. The Association shall permit the Declarant reasonable authority to designate sites within the Property for fire, emergency, police, water, and sewer facilities, public schools and parks, post offices, libraries, and other public facilities.

Article XI

Assessments

Section 11.1. Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

Section 11.2. 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 11.8 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 Lots within a particular Neighborhood or Neighborhoods; and (c) Special Assessments as described in Section 11.5 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

Base Assessments shall be levied equally on all Lots. Neighborhood Assessments shall be levied equally against all Lots

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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 Lots in any Neighborhood, such assessments shall be levied only against the Lots 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 Lots shall be levied on a pro rata basis among only the benefitted Lots if so directed by the Neighborhood in writing to the Board of Directors. Special Assessments shall be levied as provided in Section 11.5 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 Lot against which shall also be the personal obligation of the Person who was the Owner of such Lot 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 convevance; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, who takes title to a Lot through foreclosure, or to any purchaser of such Lot at such foreclosure sale. In the event of co-ownership of any Lot all of such co-owners shall be jointly and severally liable for the entire amount of such assessments.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessments a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. 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 Twenty-Five ($25.00) 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. All assessments shall be pro rated from the date of closing for each Owner. Each Owner by acceptance of a deed to his or her Lot, 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, however, 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 Lot, the Board may revoke the privilege of paying in installments and require all annual assessments to be paid in full immediately.

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No Owner may waive or otherwise exempt himself from liability for the assessment provided for herein, including by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot; provided, however, that Declarant, its successors and assigns is exempt from liability for all such assessments, and any person who Declarant, by written contract, has exempted from such liability. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

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 11.3. 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 maintaining a reserve fund in accordance with a budget separately prepared.

The Base Assessment to be levied against each Lot 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.

The total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments. Upon the submission of the Additional Property or any portion thereof to the Development, assessments shall continue to be equal and shall be assessed as well against the Lots being added to the Development. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any funds received from owners of commercial property, within or adjacent to the Community pursuant to which the Association is maintaining any property outside the Community and receiving reimbursement for. In addition, the Board shall take into account the number of Lots subject to assessment under Section 11.8 hereof on the first day of the fiscal year for which the budget is prepared and the number of Lots 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 IX 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 11.2 above); provided, any such subsidy shall be

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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 Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Notwithstanding the foregoing in the event the Board fails for any reason to determine the budget for the succeeding year, then until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967-69=100), or its successor index, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 11.5 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees;

(ii) utility charges for utilities serving the General Common Areas and charges for other common services for the Development, including trash collection, snow removal, security service, if any such services or charges are provided or paid by the Association;

(iii) the cost of any policies of insurance purchased for the benefit of all Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

(iv) the expenses of maintenance, operation, and repair of the Association under the provisions of this Declaration including, without limitation, the General Common Area;

(v) the expenses of maintenance, operation, and repair of other amenities and facilities servicing the Development, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;

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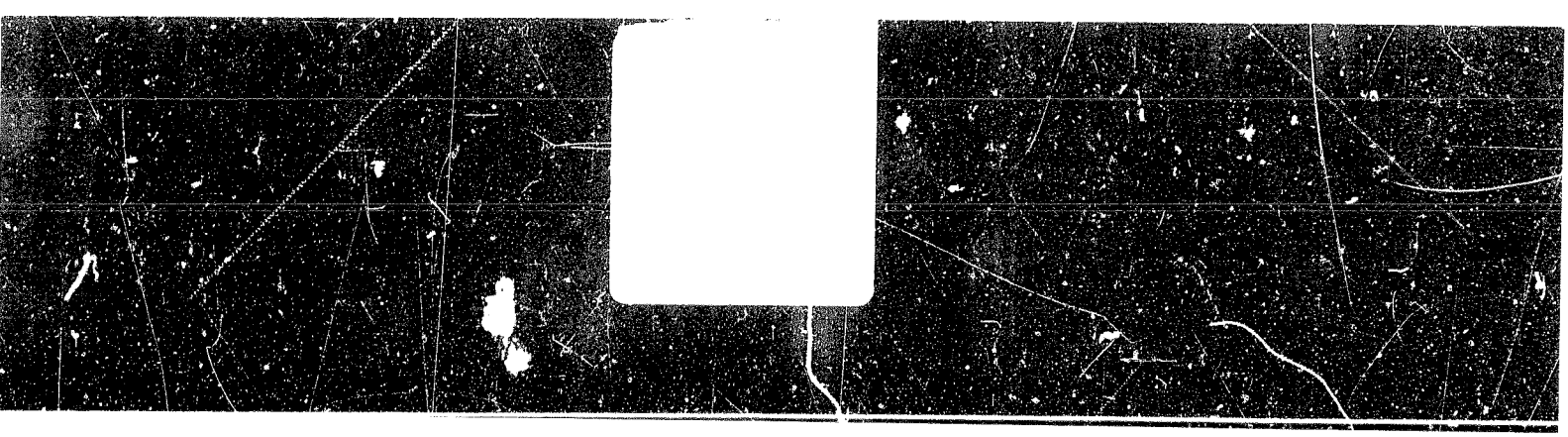

(vi) the expenses of the Architectural Standards Committee which are not defrayed by plan review charges;

(vii) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(viii) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;

(ix) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges nor separately assessed against Lots or Dwellings; and

(x) the establishment and maintenance of a reasonable reserve fund or funds (a) for inspections, maintenance, repair, and replacement of those portions of the General Common Areas which are the responsibility of the Association and which must be inspected, maintained, repaired, or replaced on a periodic basis, (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

Section 11.4. 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 11.2 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 Lot for the coming year to be delivered to the Lot Owner at least thirty (30) days prior to the beginning of the fiscal year.

Notwithstanding the foregoing, in the event the Board fails for any reason to determine the budget for the succeeding year, then until such time as a budget shall have been determined as

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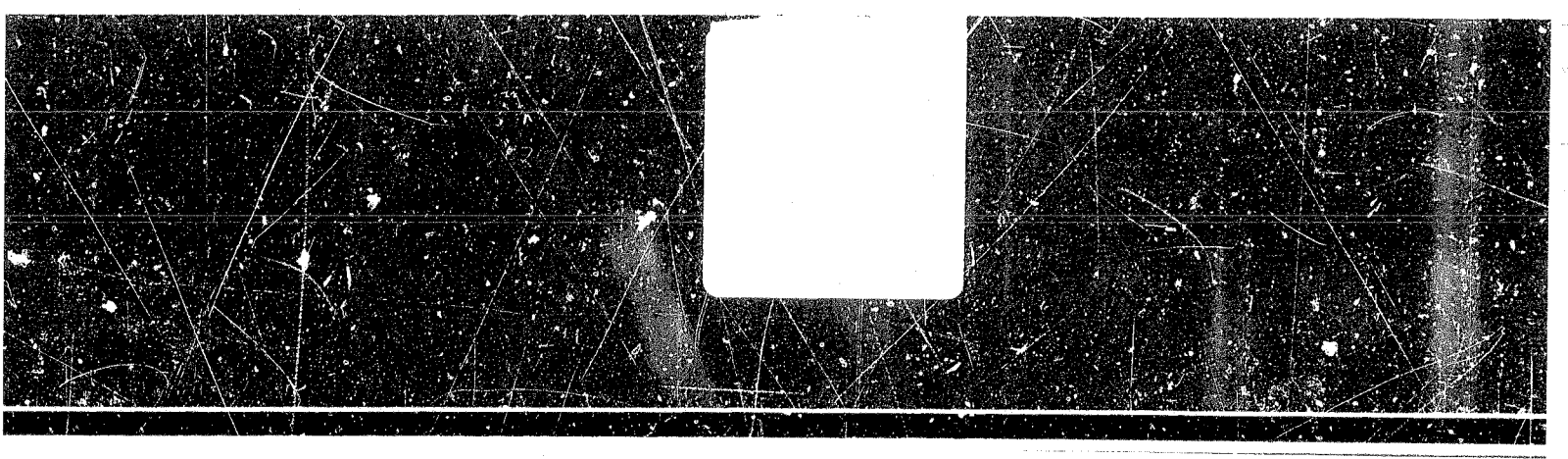

provided herein, the budget and annual assessments in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967-69=100), or its successor index, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been prepared as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 11.5 hereof.

Section 11.5. 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 Lot to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, and 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 Lots in any Neighborhood to reimburse the Association for costs incurred for a Neighborhood's violation of any rules and regulations or a Neighborhood's failure to maintain property that it is required to maintain, 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 11.6. Lien for Assessments. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments of priority 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, judgement, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following

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foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgement for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 11.7. 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 11.3 and 11.4 of this Article.

Section 11.8. Date of Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Declarant and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual Assessments and any outstanding Special Assessments shall be adjusted on a pro rata basis for such Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is first conveyed. Annual and Special Assessments for Lots in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the later of (i) the day on which such Lot is conveyed to a person other than Declarant or (ii) the day of the recording of the amendment to the Declaration so submitting such parcels and Annual and Special Assessment for each such Lot shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of Annual or Special Assessments on Lots which it or its affiliates own and which do not contain occupied residences (except as hereinafter provided), provided that Declarant covenants and agrees to pay Annual and Special Assessments for each Lot owned by Declarant or an affiliate and containing occupied residences. Upon Declarant no longer having the authority to appoint Directors of officers of the Association, Declarant shall be obligated only to pay assessments on Lots owned by Declarant.

Section 11.9. 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

reasonable attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due.

Article XII

Architectural Standards

Section 12.1. Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Property, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in Articles XII and XIII. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of Articles XII and XIII.

Nothing shall be erected on any Lot, 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 12.2 and 12.3 below. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for reviewing 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 Areas 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 12.2 and 12.3 of this Article XII. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

The committees established in Sections 12.2 and 12.3 of this Article XII may be merged by Declarant, in its sole discretion, during the Class B Control Period into one committee.

Section 12.2. New Construction Committee. The New Construction Committee (NCC) shall consist of at least three (3),

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but no more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred percent (100%) of the Property has 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 persons who are not Members of the Association. Members of the NCC may, or may not, be members of the Board of Directors and, if not members of the Board, may be compensated for serving as an NCC member and such costs shall be classified as a Common Expense.

The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines, variance rules and regulations, and application and review procedures. 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 Property 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 twenty-one (21) days after submission of completed plans, and any additional information having been requested by the NCC, the plans shall be deemed approved.

Section 12.3. Architectural Standards Committee. The Board of Directors may establish an Architectural Standards Committee (ASC) 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 ASC may include persons who are not Members of the Association. Members of the ASC may or may not be members of the Board of Directors.

The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The ASC shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice Chairman, shall be presiding officer at its meetings. The ASC shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3)members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority

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of these present in person or by proxy at a meeting of the ASC shall constitute the action of the ASC on any matter before it. The ASC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ASC in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense. Each member of the ASC may be paid a stipend or honorarium as from time to time determined by the Board.

The ASC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto; provided, however, the ASC 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 ASC has determined that such board or committee has in force review and enforcement procedures, and appropriate standards at least equal to those practices of the ASC. Such delegation may be revoked and jurisdiction reassumed by ASC at any time by written notice. Notwithstanding the above, the ASC shall not take any action or approve any plans inconsistent with the guidelines promulgated by the NCC, while NCC is in existence. The ASC shall promulgate detailed standards or procedures governing its areas of responsibility and practice, consistent with those of NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the ASC for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surrounding, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling, or to paint the interior of his Dwelling any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Dwelling visible from outside the Dwelling shall be subject to approval hereunder. In the event that the ASC fails to approve or to disapprove such plans or to request additional information within twenty-one (21) days after submission of completed plans, proposals, specifications or drawings and any additional information having been requested by the ASC, the plans shall be deemed approved.

Section 12.4. No Waiver of Future Approvals. The approval of either the NCC or ASC of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

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Section 12.5. 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 set forth by the NCC. Such variance 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 a recorded Plat, 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, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 12.6. 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 ASC may be excluded by the Board from the Property without liability to any person, subject to the notice and hearing procedures contained in Article III, Section 3.22 of the By-Laws.

Section 12.7. Construction of Improvements. Dwellings may not be temporarily or permanently occupied until the exteriors thereof have been completed and a certificate of occupancy for such Dwelling has been issued. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, rabbit hut, or other similar yard structure be constructed or allowed to remain on any Lot.

Section 12.8. Responsibilities During Construction.

(a) Construction of a Dwelling on a Lot must be completed within nine (9) months from the date construction is commenced.

(b) When basement and/or foundation of Residence is constructed, stone shall be installed over the path of driveway and shall be level with curb at the lot line to avoid curb breakup.

(c) No track vehicles or heavy equipment vehicles shall be operated or unloaded on any street.

(d) During the construction period, the Lot shall be maintained in a clean and orderly manner at all times. All loose shingles, lumber, bricks, block, drywall, insulation, or other building material which can blow onto adjacent lots shall not be left lying around. Construction trash shall be contained in a trash fence and shall be removed from the Lot once per week or contained in a dump site provided by a trash disposal service which will empty the container as needed.

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(e) The Lot Owner shall be responsible for removal of dirt, mud or debris or other foreign material of any kind which may be deposited upon the road or easements from construction on the Lot. If such deposits occur, then the Lot Owner shall make provisions to remove such deposits within five (5) days or the committee may remove such deposits and charge the Lot Owner.

(f) No outside toilets shall be permitted on any lot during construction without prior approval of the NCC.

(g) All utility services including, but not limited to, water, power, sanitary sewers, telephone or cable, to the lot shall be shown on the plot plan and said services shall not undermine the curbs or alter the subsurface or surface drainage system.

(h) Upon completion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot are on which such construction has been completed.

Section 12.9. Architectural Approval. To preserve the architectural and aesthetical appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by an Owner, other than Declarant, with respect to the construction or affecting the exterior appearance of any Dwelling or with respect to any other portion of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the NCC or ASC, as the case may be, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the NCC or ASC as the case may be, as to the compliance of such plans and specification with such standards as may be published by the respective committees from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the respective committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".

The committees may establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designer, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make

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interior improvements and alterations within his Dwelling that do not affect the exterior appearance, without the necessity of approval or review by the committees. The committees shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. Following approval of any plans and specifications by the committees, representatives of the committees shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the committees shall determine that such plans and specification have not been approved or are not being complied with, the committees shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

Section 12.10. Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by an Owner other than Declarant, unless and until the plans therefore have been submitted to and approved in writing by the appropriate committee. The provisions of Section 12.9 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. The landscaping plan for any Lots adjacent to golf courses located on the Golf Club property shall, in addition, be subject to the rights, easements, and approval of Club Owner set forth in Article III, Section 3.15 hereof. The landscaping plan for each Lot must be carried out and completed within thirty (30) days months after the completion of the Dwelling unless such deadline would fall between December 1 and April 1 in which event the landscaping plan for such Lot shall be completed no later than May 1.

Section 12.11. Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the NCC or ASC shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article XII, nor loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

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Section 12.12. Building Restrictions. All Dwellings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, including, without limitation, the filing of a site plan with Hamilton County, Indiana, and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the appropriate committee (NCC or ASC). Any Owner that performs any grading, clearing, construction of impervious surface, or other construction activity in violation of the above or the rules, regulations, guidelines, or restrictions of the Town of Fishers, or otherwise violates the rules, regulations, guidelines, or restrictions of this Declaration, shall be liable to Declarant for any damages incurred by Declarant arising out of such violation and Declarant hereby expressly reserves the right to sue any such Owner for monetary damages and for specific performance of the above covenants and restrictions. In addition, the appropriate committee (NCC or ASC) is authorized to promulgate from time to time as part of the standards described in Sections 12.2 and 12.3 hereof additional restrictions applicable to the Development, including without limitation, restrictions relating to height of improvements above grade, roof pitch, and minimum square footage of living space in each Dwelling. No exterior portion of any building, structure or other improvement (excepting sidewalks and driveways) located on or with respect to any Lot shall be located other than as permitted by the applicable set-back line restrictions.

Article XIII

Use Restrictions

The Property 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). No trade or business of any kind, except as described below may be carried on. 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 Property, 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 B Member, so long as such membership shall exist.

Section 13.1. Use of Lots. Except as permitted by Section 13.28 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. No more than one (1) Dwelling shall be located on any Lot. The use of a portion of a Dwelling as an office by an Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 13.28 below.

Section 13.2. Exterior Appearance. No chain link fences shall be permitted within the Development, except with regard to maintenance areas within the Common Areas and wrought iron fences on the Golf Club property, tennis courts approved by the Architectural Standards Committee, and those fences erected by the Declarant. Further, no foil or other reflective material shall be used on any windows for sunscreen, blinds, shades, or other purpose nor shall any window-mounted heating or air conditioning units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other item be hung on any railing, fence, hedge, or wall. When not in use, all garage doors shall be kept closed.

Section 13.3. Parkway Trees. All Lots along designated streets shall require the installation and maintenance of Parkway Trees in accordance with rules and regulations hereafter set by the Declarant or the Association. Such rules shall specify the number of trees required based upon the size of the Lot, the species of the trees and the size of the required trees. It shall be the obligation of the Owner of each Lot to not only install and maintain such Parkway Trees but to replace the Parkway Trees if necessary. In the event an Owner fails to maintain or replace a Parkway Tree as required herein, the Association shall have the right to maintain and replace said tree and charge the cost of such to the Owner.

Section 13.4. Signs. No signs of any kind shall be erected within the Property, or permitted within any windows, without the written consent of the Board of Directors, except standard real estate "for sale" signs, entry and directional signs installed by Declarant and such signs as may be required by legal proceedings. No business signs, flags, banners or similar items advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs, within the Property, the Board reserves the right to erect signs as they, in their sole discretion, deem appropriate.

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Section 13.5. Parking and Prohibited Vehicles.

(a) **Parking.** Vehicles shall be parked only in the garages or on the driveways, if any, serving the Lots 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.

No Owners or other occupants of any portion of the Development shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) **Prohibited Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purpose, 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 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 Property 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 seven (7) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Property during daylight hours for such period of time as is reasonable necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with Article III, Section 3.22 of the By-Laws.

Section 13.6. 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 Lot or Golf Club. Every Owner shall cause all occupants of his or her Lot 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

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occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

Section 13.7. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any portion of the Property, except that dogs, cats or other usual and common household pets not to exceed a total of four (4) may be permitted in a Lot, subject to rules and regulations adopted by the Association through its Board of Directors. However, those pets which are permitted by any Owner or occupant to roam free, or, in the sole discretion of the Association, or Neighborhoods, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the Owner of any portion of the Property, shall be removed from the Property 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 Lot, including all Common Areas, be confined on a leash held by a responsible person. No pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same.

Section 13.8. Quiet Enjoyment. No portion of the Property 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 Property 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 Property. 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 Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No electric insect killers may be used. The Declarant, or the Association, may order the relocation of any wood piles which are unsightly. No basketball goals shall be attached to any Dwelling and backboards shall be made only of transparent materials.

Section 13.9. 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 Lot. The pursuit of hobbies or other activities, 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 Property. Nothing which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Development or which result in

a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used , or placed within the Development. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Development shall be liable to the Association for the actual costs of removal thereof or the sum of $150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 13.10. Antennas. Unless entirely contained within the interior of a building, 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 Property, including any Lot, without the prior written consent of the Board or its designee. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Development, provided however that the Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Property, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 13.11. Garbage Cans, Tanks, Etc. All mechanical equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located adjacent to the Lot. No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers.

Section 13.12. Subdivision of Lot and Time Sharing. No Lot 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 plat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

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

Section 13.13. Firearms. The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B"

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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 13.14. Pools. No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, nothing herein shall preclude installation and use of in ground pools, hot tubs or spas with prior approval pursuant to Article XII of this Declaration.

Section 13.15. Irrigation. All sprinkler and irrigation systems shall be subject to approval in accordance with Article XII of this Declaration. Provided, however, this Section 13.15 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 submit Additional Property in accordance with Article IX, Section 9.1.

Article 13.16. Tents, Trailers and Temporary Structures. Except as may be permitted by the Declarant or the NCC during initial construction within the Property, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot 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 the Declarant.

Section 13.17. Drainage, Water Wells and Septic Systems. 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. No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot, except for wells maintained solely for irrigation purposes. All such irrigation wells must receive the prior written approval of the ASC.

Section 13.18. 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 XII 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 13.19. Traffic Regulation and 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 wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Development shall be subject to the provisions of the laws of the State of Indiana and Hamilton County concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the state of Indiana and Hamilton County and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers licensed to operate motor vehicles by the state of Indiana or by any other state in the United States may operate any type of motor vehicle, including golf carts, within the Development. In order to operate a golf cart in the Development, the Owners or users thereof shall have complied with any regulations and requirements for the operation thereof as may be required by the Association and the Club Owner. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Development.

Section 13.20. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Property, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 13.21. Air Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Lot.

Section 13.22. 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 XII of this Declaration; provided, however, each Owner must continually maintain at its own expense dusk to dawn photo cell lighting on the exterior of its Dwelling of a design established by the Declarant or the Association.

Section 13.23. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot 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 XII hereof.

Section 13.24. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XII of this Declaration.

Section 13.25. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Property, if any, shall be aesthetic amenities only, and no other 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 Golf Club of lakes, ponds, or streams within the Golf Club 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 Property. No docks, piers, or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Declarant of the Association.

Section 13.26. Playground. Any playground or other play areas or equipment furnished or erected within the Property by the Association 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 any use thereof. No playground equipment, tree houses, or similar structures shall be erected on any Lot without prior approval pursuant to Article XII hereof. All playground equipment shall be of a treated wood material and no metal playground equipment shall be allowed. Lots bordering the Golf Club will be required to screen any playground equipment with approved shrubbery or hedging.

Section 13.27. Fences. No hedges, walls, dog,runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article XII of this Declaration.

Section 13.28. Business Uses. No garage sale, moving sale, rummage sale or similar activity shall be conducted by an Owner within the Property without the approval of the Association. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling may conduct business activities within the Dwelling 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 Dwelling; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

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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 involve 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 therefore. Notwithstanding the above, the leasing of a Lot or Dwelling shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to the Golf Club or any commercial property within the Development nor shall it apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Property or its use of any Lots or Dwellings which it owns within the Property.

Section 13.29. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association and the Golf Club shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 13.30. Leasing of Lot and Dwelling.

(a) **Definition.** "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot and Dwelling 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.** Lots and Dwellings may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots and Dwellings or assignment of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Lot or Dwelling. All leases shall be in writing and shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board of Directors. Prior to the commencement of any such lease, the Owner shall provide the Secretary of the Association and the managing agent of the Association, if any, with copies of such lease, together with such additional information as may be required by the Board. 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

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his or her Lot and Dwelling to comply with the Declaration, By-Laws, 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 foregoing, such occupants of a Lot and Dwelling are fully bound and liable for any violation of the Declarations, By-Laws and rules and regulations adopted pursuant thereto.

Section 13.31. Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 13.32. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwellings or the developing of Lots and Dwellings, Common Areas, and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 13.32 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and Dwellings and for related activities.

Section 13.33. Golf Course Areas. Owners of Lots adjacent to all golf course fairways and greens, as well as their families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would distract from the playing qualities of any golf courses located on the Golf Club property. Such prohibited activities shall include, but not be limited to, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos, or musical instruments, running or walking on the fairways, picking up balls, or similar interference with play.

Article XIV

Rulemaking

Section 14.1. Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots and

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Dwellings, and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, cancelled, or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or holds the unexpired option to submit the Additional Property or any portion thereof to the Development.

Section 14.2. Authority and Enforcement.

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power, after fifteen (15) days written notice to Owner or Occupant of said violation, and failure by said Owner or Occupant to cure the violation:

(i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or Occupant who is guilty of such violation;

(ii) to suspend an Owner's right to vote in the Association; and

(iii) to suspend an Owner or Occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. An Owner or Occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Declarant, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages, injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants,

restrictions, rules or regulations, declaratory relief, the enforcement of any lien created by these covenants, restrictions, rules, or regulations, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Declarant, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Declarant or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

Article XV

General Provisions

Section 15.1. Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association as provided by Section 4.2 of the Declarations and Article III of the By-Laws. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors of the Association in accordance with these provisions. Upon the expiration of the period of Declarant's right to appoint and remove directors of the Association, such right shall pass to the Voting Members, as more specifically set forth in Article III of the By-Laws. At such time, Declarant shall deliver to the new Board of Directors all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

Section 15.2. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, 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 representative, 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 more than 75% 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. The number of ten (10) year renewal periods shall be unlimited.

Section 15.3. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this

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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 Lots; (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 acquire or purchase mortgage loans on the Lots; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, so long as it still owns any property described in Exhibits "A" or "B" for development as part of the Property, the Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no materially 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 sixty-seven percent (67%) of the total Class A votes in the Association, including sixty-seven percent (67%) 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 XVI 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 15.4. 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 judgement, 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 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 15.5. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B", the Association, and the designees of each (which may include, without limitation, Hamilton County, Indiana, and any utility), blanket easements upon, across, over and under all of the Property as more specifically set forth in Article III, Section 3.8 of this Declaration.

Without limiting the generality of the foregoing, there are hereby reserved for the Indianapolis Water Company, its successors and assigns, easements across all Lots and the Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. 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 Property, except as may be approved by the Board of Directors.

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 Property 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 Property.

The Board shall have by a two-thirds (2/3) vote the power to dedicate portions of the Common Areas to Hamilton County, Indiana, or to any other local, state, or federal governmental entity, for utility or other purposes subject to such approval requirements as may be contained in Section 16.2 of this Declaration.

Section 15.6. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this

Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records of Hamilton County, Indiana. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

Section 15.7. Right of Entry. The Association shall have the right, but not the obligation, to enter onto any Lot 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 Owner or Occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling 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 15.8. 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 on until twenty one (21) years after the death of the last survivor of the now living descendants of George H. Bush, President of the United States of America.

Section 15.9. 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 Article 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. However, this Section shall not apply 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.

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Section 15.10. 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 of assessments created in favor of the Association.

Section 15.11. Use of the Word "Windermere". No Person shall use the word "Windermere" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the terms "Windermere" in printed or promotional matter where such term is used solely to specify that particular property is located within Windermere, and the Association and the Golf Clubs shall be entitled to use the word "Windermere" in their respective names.

Section 15.12. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property 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 PROPERTY, NOR BE HELD LIABLE FOR PROPERTY, NOR BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, 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 ARCHITECTURAL STANDARDS COMMITTEES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM OR SECURITY SERVICE DESIGNATED BY OR INSTALLED ACCORDING TO THE GUIDELINES ESTABLISHED BY THE DECLARANT OR THE NEW CONSTRUCTION OR ARCHITECTURAL STANDARDS 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, HOLDUP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR 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 LOT, 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 LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND DWELLINGS AND TO THE CONTENTS OF LOTS AND DWELLINGS 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,

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TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OF 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 PROPERTY.

Section 15.13. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, 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 Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

Section 15.14. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 15.15. 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 the 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 15.16. Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and the Club Owner and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant, Mortgagees and Club Owner as herein provided, the Owner shall have the right to extend, modify, amend, or otherwise change the provision of this Declaration without the consent, permission, or approval of any adjoining Owner or third party.

Section 15.17. Not Trespass. Whenever the Association, the Declarant, the New Construction Committee, the Architectural

Standard Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

Section 15.18. Notices. Notices required hereunder shall be in writing and shall be hand delivered or sent by United States Mail, postage prepaid. All notices to Owners shall be sent or delivered to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Windermere Partners
3685 Priority Way, South Drive
Suite 100
Indianapolis, Indiana 46240

or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or such other address as Declarant may from time to time notify the Association. All notices to Club Owner shall be delivered or sent to Club Owner at Declarant's address provided above or to such other address as Club Owner may from time to time notify the Association Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

Article XVI

Mortgagee Provisions

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

Section 16.1. 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 Lot 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 Property or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments of charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a

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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 Lot 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 16.2. 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 of 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 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 any Owner of a Lot. (A decision, including contracts, by the Board of provisions of any declaration subsequently recorded on any portion of the Property regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration was otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme or regulation or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and Dwellings 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 loss 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 become or have become a charge against the Common Area and may pay overdue premiums on

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

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

Section 16.4. 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 16.3(a) and (b) of this Article, or to the addition of land in accordance with Article IX.

(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 any land subject to this declaration, and the approval of the eligible holder of first mortgages in Lots to which at least sixty seven (67) percent of the votes of Lots 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 any land subject to this Declaration, and the approval of eligible holders of first Mortgages on Lots to which at least fifty one (51) percent of the votes of Lots subject to a Mortgage, shall be required to materially amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association with respect to any of the following:

(i) voting;

(ii) the manner of assessments, assessment liens, or subordination of such liens;

(iii) the necessity of reserves for maintenance, repair, and replacement of the Common Area;

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(iv) insurance or fidelity bonds;

(v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of the Property other than in the ordinary course;

(vii) expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association contrary to what is set forth in these Declarations;

(viii) boundaries of any Lot except as provided for herein or by plat;

(ix) leasing of Lots or Dwellings;

(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 Lot;

(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 Lots.

Section 16.5. No Priority. No provision of this Declaration or the By-Laws give or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot 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 16.6. 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 Lot.

Section 16.7. 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 16.8. Applicability of Article XVI. 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.

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Section 16.9. Failure of Mortgagee to Respond. Any Mortgagee who receives notice of 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 XVII

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; provided, however, Declarant may assign any and all of its rights to the Association upon the end of the Class B Control Period. Nothing in this Declaration shall be construed to require Declarant or any successors 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 Lots 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, convenient, or incidental to the construction or sale of such Lots, 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 Lots owned by the Declarant 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 similar instrument affecting any portion of the Property 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 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 of this Declaration is recorded, or (b)

upon recording by Declarant of a written statement that all sales activity has ceased.

Article XVIII

Golf Club

Section 18.1. General. Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Golf Club. Rights to use the Golf Club 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 Golf Club. The owners of the Golf Club 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 Golf Club, including, without limitation,eligibility for and duration of use rights, categories of use and extent 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 18.2. Conveyance of Golf Club. 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 ownership or operation of the Golf Club and no purported representation or warranty in such regard, whether 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 Golf Club 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 Golf Club, (b) the conversion of the Golf Club membership structure, or (c) the conveyance, pursuant to contract, option, or 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 or conveyance.

Section 18.3. Rights of Access and Parking. The Golf Club and their members (regardless of whether such members are Owners hereunder), their guests, invitees, and the employees, agents, contractors, and designees of the Golf Club shall at all times have an easement of access and use over all roadways located within the Property reasonably necessary to travel from and to the entrance to the Property and to and from the Golf Club, respectively, and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary for the operation, maintenance, repair, and replacement of the foregoing. Members of the Golf Club and permitted members of the public shall have the right to park their vehicles on the roadways located within the Property at reasonable time before, during, and after golf tournaments and other similar functions held by or at the Golf Club.

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Section 18.4. Assessments. The Golf Club shall not be obligated to pay assessments to the Association except as may specifically be provided in any subsequent agreement between the Golf Club and the Association for the sharing of maintenance costs.

Section 18.5. Architectural Control. Neither the Association, the ASC, nor any Neighborhood Association or committee or board thereof, shall approve or permit any construction, addition, alteration, change or installation on or to any Lot which is adjacent to the Golf Club property, without giving the Golf 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 Golf Club shall then have fifteen (15) days to approve or disapprove the proposal in writing delivered to the appropriate committee or association, stating in detail the reasons for any disapproval. The failure of the Golf Club to respond to the aforesaid notice within the fifteen (15) day period shall constitute a waiver of the Golf Club's right to object to the matter so submitted. 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. This Section shall not be deemed to require notice to or approval by the Golf Club of the design or plan of any Dwelling on a Lot except with respect to the landscaping plan presented for that Lot.

Section 18.6. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Golf Club, 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 Golf Club. The foregoing shall not apply, however, to amendments made by the Declarant.

Section 18.7. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Golf Club shall cooperate to the maximum extent possible in the operation of the Property and the Golf Club. 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 XII 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 Golf Club without the prior written consent of the Golf Club.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant has executed this Declaration this 8th day of December, 1992.

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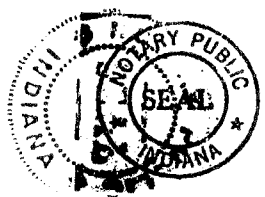
WINDERMERE PARTNERS,
an Indiana Partnership, by The
Precedent, Partner

By: _____
Timothy C. Peterson

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, on this 8th day of December, 1992, appeared Windermere Partners, represented by its Managing Partner, Timothy C. Peterson, and acknowledged the execution of the foregoing instrument on behalf of said partnership.

Given under my hand and official seal this 8th day of December, 1992.



_____
Notary Public

Printed Lynn R. Busby
Notary Public State of Indiana
Marion County
My Commission Expires May 17, 1993

County of Residence: _____

My Commission Expires: _____

This instrument prepared by J. Randall Aikman, Attorney-at-Law.

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"EXHIBIT A"

LEGAL DESCRIPTION
LAKESIDE GREEN SECTION I

Part of the South Half of Section 8, Township 17 North, Range 5 East, of the Second Principal Meridian, in Fall Creek Township, Hamilton County, Indiana and described as follows:

Beginning at the Southwest Corner of the Southeast Quarter of said Section 8; thence North 00 degrees 37 minutes 31 seconds West (an assumed bearing) 40.00 feet;
thence North 89 degrees 23 minutes 57 seconds East 229.79 feet;
thence North 44 degrees 23 minutes 50 seconds East 49.50 feet;
thence North 00 degrees 36 minutes 16 seconds West 197.00 feet;
thence North 06 degrees 36 minutes 52 seconds East 79.58 feet;
thence North 00 degrees 36 minutes 16 seconds West 85.05 feet;
thence South 39 degrees 23 minutes 44 seconds West 170.00 feet;
thence North 84 degrees 53 minutes 38 seconds West 50.25 feet;
thence South 89 degrees 23 minutes 44 seconds West 146.93 feet;
thence North 80 degrees 40 minutes 25 seconds West 71.37 feet;
thence North 73 degrees 48 minutes 54 seconds West 71.39 feet;
thence North 67 degrees 16 minutes 01 seconds West 71.39 feet;
thence North 58 degrees 49 minutes 30 seconds West 61.06 feet;
thence North 26 degrees 30 minutes 00 seconds East 120.00 feet;
thence North 09 degrees 04 minutes 48 seconds East 52.40 feet;
thence North 26 degrees 30 minutes 00 seconds East 120.00 feet;
thence North 63 degrees 30 minutes 00 seconds West 169.83 feet;
thence North 14 degrees 16 minutes 05 seconds East 113.47 feet;
thence North 09 degrees 10 minutes 00 seconds West 120.00 feet;
thence North 04 degrees 07 minutes 44 seconds East 51.38 feet;
thence North 09 degrees 10 minutes 00 seconds West 120.00 feet;
thence North 82 degrees 17 minutes 39 seconds East 143.56 feet;
thence South 73 degrees 36 minutes 11 seconds East 74.01 feet;
thence North 16 degrees 17 minutes 45 seconds East 110.00 feet;
thence South 73 degrees 42 minutes 15 seconds East 556.47 feet to a non-tangent curve from which the radius point bears South 69 degrees 56 minutes 40 seconds East; thence Southwesterly along said curve an arc distance of 219.96 feet to a point from which the radius point bears North 89 degrees 23 minutes 44 seconds East, said curve having a radius of 610.00 feet;
thence South 00 degrees 36 minutes 16 seconds East 648.66 feet;
thence South 07 degrees 49 minutes 25 seconds East 79.58 feet;
thence South 00 degrees 36 minutes 16 seconds East 197.00 feet;
thence South 45 degrees 36 minutes 10 seconds East 49.50 feet;
thence South 00 degrees 36 minutes 03 seconds East 40.00 feet to the South Line of the Southeast Quarter of said Section 8;
thence South 89 degrees 23 minutes 57 seconds West along said South Line 399.77 feet to the point of beginning and containing 14.72 acres more or less.

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LEGAL DESCRIPTION
HERITAGE GREEN SECTION I

Part of the South Half of Section 8, Township 17 North, Range 5 East, of the Second Principal Meridian, in Fall Creek Township, Hamilton County, Indiana and described as follows:

Commencing at the Southeast Corner of the Northwest Quarter of the Southeast Quarter of said Section 8; thence North 00 degrees 06 minutes 46 seconds East (an assumed bearing) along the East Line of said Northwest Quarter a distance of 345.61 feet to the Northeast Corner of a tract of land titled to Fred S. and Sarah C. Richwine as found in the Office of the Recorder of Hamilton County, Indiana in Deed Record 315, page 786, said point also being the point of beginning of this description; thence continue North 00 degrees 06 minutes 46 seconds East along said East Line a distance of 115.00 feet;
thence North 89 degrees 53 minutes 14 seconds West 40.00 feet;
thence South 45 degrees 06 minutes 46 seconds West 35.36 feet;
thence North 89 degrees 53 minutes 14 seconds West 413.05 feet to a tangent curve from which the radius point bears South 00 degrees 06 minutes 46 seconds West; thence Southwesterly along said curve an arc distance of 95.71 feet to a point from which the radius point bears South 18 degrees 47 minutes 49 seconds East, said curve having a radius of 290.00 feet;
thence North 09 degrees 49 minutes 37 seconds West 160.71 feet;
thence North 07 degrees 39 minutes 13 seconds West 50.03 feet;
thence North 09 degrees 34 minutes 16 seconds West 130.00 feet;
thence South 75 degrees 56 minutes 45 seconds West 86.76 feet;
thence South 66 degrees 58 minutes 49 seconds West 86.76 feet;
thence South 58 degrees 00 minutes 53 seconds West 86.76 feet;
thence North 68 degrees 07 minutes 12 seconds West 302.26 feet;
thence South 66 degrees 27 minutes 58 seconds West 70.13 feet to a non-tangent curve from which the radius point bears South 14 degrees 46 minutes 04 seconds East; thence Southwesterly along said curve an arc distance of 92.96 feet to a point from which the radius point bears North 58 degrees 42 minutes 23 seconds East, said curve having a radius of 50.00 feet;
thence South 77 degrees 51 minutes 03 seconds West 138.15 feet;
thence South 10 degrees 57 minutes 14 seconds East 52.35 feet;
thence South 73 degrees 53 minutes 58 seconds West 150.94 feet;
thence South 84 degrees 57 minutes 12 seconds West 50.83 feet;
thence South 75 degrees 12 minutes 49 seconds West 150.00 feet;
thence South 19 degrees 08 minutes 15 seconds East 87.25 feet;
thence South 27 degrees 17 minutes 35 seconds East 82.10 feet;
thence South 29 degrees 54 minutes 04 seconds East 220.43 feet;
thence South 41 degrees 07 minutes 39 seconds East 98.47 feet;
thence South 28 degrees 11 minutes 21 seconds West 40.88 feet to the North Line of LAKESIDE GREEN SECTION I;
thence South 73 degrees 42 minutes 15 seconds East along said North Line 556.47 feet to a non-tangent curve from which the radius point bears South 69 degrees 56 minutes 40 seconds East; thence Northeasterly along said curve an arc distance of 260.95 feet to a point from which the radius point bears South 45 degrees 26 minutes 02 seconds East, said curve having a radius of 610.00 feet;
thence North 44 degrees 33 seconds 58 minutes East 261.58 feet to a tangent curve from which the radius point bears South 45 degrees 26 minutes 02 seconds East; thence Northeasterly along said curve an arc distance of 166.94 feet to a point from which the radius point bears South 00 degrees 06 minutes 46 seconds West, said curve having a radius of 210.00 feet;
thence South 89 degrees 53 minutes 14 seconds East 413.05 feet;
thence South 44 degrees 53 minutes 14 seconds East 15.11 feet to the North Line of said tract of land titled to Fred S. and Sarah C. Richwine;
thence North 89 degrees 23 minutes 44 seconds East along said North Line 54.32 feet to the point of beginning and containing 15.79 acres more or less.

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LEGAL DESCRIPTION

All of Section 8, Township 17 North, Range 5 East, of the Second Principal Meridian, in Fall Creek Township, Hamilton County, Indiana.
also;
The North Half and the Southwest Quarter of Section 9, Township 17 North, Range 5 East, of the Second Principal Meridian, in Fall Creek Township, Hamilton County, Indiana; excepting therefrom that property described in Exhibit "A".

EXHIBIT "B"

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BY-LAWS

OF

WINDERMERE HOMECWNERS ASSOCIATION, INC.

ARTICLE I

Name, Principal Office and Definitions

Section 1.1. Name. The name of the Association shall be Windermere Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 1.2. Principal Office. The principal office of the Association in the State of Indiana shall be located at such place in Marion County, Indiana, or Hamilton County, Indiana, as the Board of Directors of the Association shall determine from time to time.

Section 1.3. 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 Windermere (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 2.1. 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 2.2. 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 Property or as convenient thereto as possible and practical.

Section 2.3. 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 thirty (30) days but not more than ninety (90) days before the close of the Association's fiscal year on a date and at a time set by the Board of Directors.

Section 2.4. 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

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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 twenty-five percent (25%) 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 2.5. 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.

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 2.6. 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 a 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 a waiver of notice of all business transacted thereafter unless objection to the call or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 2.7. 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 percent (25%) 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 2.8. 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 2.9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates.

Section 2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totalling more than fifty percent (50%) of the total number.

Section 2.11. 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 2.12. 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 2.13. 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 3.1. 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.

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Section 3.2. Directors During Class B Control. Subject to the provisions of Section 3.6 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 during the Class B Control Period as defined in Section 4.2(b) of the Declarations.

Section 3.3. Right to Disapprove Actions. This Section 3.3 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 3.8, 3.9, and 3.10 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

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prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 3.4. 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 3.6 below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 3.5. 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 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 3.6. 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 thirty percent (30%) of the Lots on 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 sixty percent (60%) of the Lots on the Property described in Exhibits "A" and "B", or whenever the Class B Member earlier determines, the Board shall

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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 the Class A 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 3.7. 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

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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.

B. Meetings.

Section 3.8. 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 3.9. 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 3.10. 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 or 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 3.11. 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 3.12. 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 3.13. 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 3.14. 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 3.15. Open Meetings. Subject to the provisions of Section 3.16 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than

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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, including but not limited to such matters as pending or threatened litigation or personnel matters.

Section 3.16. 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 3.17. 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, by way of explanation, but not limitation:

(a) preparation and adoption, in accordance with Article XI of the Declaration, of annual budgets in which there shall be established the contribution by 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 Lot'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 Common Areas;

(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 Common Areas 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 Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Lot 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 Property.

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Section 3.18. 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 3.17 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

Section 3.19. 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; anything 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 Lot 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 change 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 Lot, the Association shall provide for an audited financial statement. During the Class B Control Period, the annual report shall include certified financial statements.

Section 3.20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, or restoration of the General Common Areas 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 XI, Section 11.5, 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 percent (5%) 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 percent (51%) of the Members other than the Declarant and the Declarant's nominees.

Section 3.21. Rights of the Association. With respect to the Common Areas 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 Property. 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

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at anytime, with or without cause, upon not more than ninety (90) days notice to the other party.

Section 3.22. Enforcement.

(a) Upon the violation by any Owner or Occupant of the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder, the Board shall have the power, after fifteen (15) days written notice to Owner or Occupant of said violation, and failure by said Owner or Occupant to cure the violation: (1) to cause the Association to correct the violation at its own cost and expense (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regualtions), which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or Occupant who is guilty of such violation; (2) to suspend an Owner's right to vote in the Association; or (3 to suspend an Owner's right (and the right of such Owner's family, guest, and tenants) to use any recreational facilities located in the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and/or any additional period thereafter, not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation of threatened violation of any of the covenants and restrictions contained in the Declaration and the provisions contained in the Articles of Incorporation and these By-Laws, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Association, acting through its Board of Directors, against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages, injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules, and regulations, declaratory relief, the enforcement of any lien created by the covenants, restrictions, rules, or regulations, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Association to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter. Provided, however, that no action shall be brought against the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

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Article IV

Officers

Section 4.1. 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 4.2. 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 4.3. Removal. An officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4.4. 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 4.5. 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 4.6. Agreements, Contracts, Deeds, Leases, Checks. 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.

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Article V

Committees

Section 5.1. 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 5.2. 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 percent (51%) 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 Lots within that Neighborhood at an annual meeting of such Owners. The first annual meeting shall be called within sixty (60) days after conveyance of ten percent (10%) of the total number of anticipated Lots in the Neighborhood to persons other than a builder or developer. The Owners of Lots within the Neighborhood holding at least one-third (1/3) of the total votes of Lots in the Neighborhood, represented in person or by proxy, shall constitute a quorum at any meeting of the Neighborhood. The Owners of Lots within a Neighborhood shall have the number of votes assigned to their Lots 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 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, and 3.16 of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Lots 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.

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Article VI

Miscellaneous

Section 6.1. 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 6.2. 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 6.3. 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 6.4. 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 Lot, 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 Lot at the office of the Association or at such other place within the Property 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.

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Section 6.5. 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 substituted, at the address of the Lot 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 may be designated by notice in writing to the Members pursuant to this Section.

Section 6.6. Amendment. Prior to the conveyance of the first Lot, 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, rules, or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (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 Lots; or (d) is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, so long as it still owns property described in Exhibits "A" or "B" of the Declaration for development as part of the Property, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any rights of any Owner.

Thereafter and otherwise, these By-Laws may be amended upon the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent (75%) of the total Class A votes in the Association, including seventy-five percent (75%) 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 XVI 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 in that clause. Any amendment to be effective must be recorded in the public records of Hamilton County, Indiana.

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CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Windermere Homeowners 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 _____ day of December, 1992.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of December, 1992.

_____
Secretary

EXHIBIT "C"

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LEGAL DESCRIPTION

A Part of the Southeast Quarter of the Southeast Quarter of Section 8, Township 17 North, Range 5 East, of the Second Principal Meridian, in Fall Creek Township, Hamilton County, Indiana and more particularly described as follows:

Beginning at the Southeast Corner of said Section 8; thence South 89 degrees 23 minutes 57 seconds West (an assumed bearing) along the South Line of the Southeast Quarter of said Southeast Quarter 1328.02 feet to the Southwest Corner of said Southeast Quarter; thence North 00 degrees 06 minutes 46 seconds East along the West Line of said Southeast Quarter 1316.29 feet to the Northwest Corner of said Southeast Quarter; thence North 89 degrees 23 minutes 50 seconds East along the North Line of said Southeast Quarter 277.53 feet; thence South 00 degrees 26 minutes 34 seconds East 180.17 feet; thence North 89 degrees 24 minutes 19 seconds East 1045.59 feet to the East Line of said Southeast Quarter; thence South 00 degrees 02 minutes 47 seconds East along said East Line 1135.98 feet to the point of beginning and containing 35.74 acres more or less. This real estate includes the property commonly referred to as Bucks Subdivision and Lot 5 in Fall Creek Terrace.

Also Included;

A part of the West Half of the Southeast Quarter of Section 8, Township 17 North, Range 5 East, in Hamilton County, Indiana, more particularly described as follows:

Beginning at a point on the East Line of said Half Quarter Section 1301.90 feet North of the Southeast Corner thereof; thence North 00 Degrees 06 Minutes 46 Seconds East upon and along said East Line 360.00 feet; thence South 89 Degrees 23 Minutes 43 Seconds West parallel to the North Line of said Half Quarter Section 484.04 feet; thence South 00 Degrees 06 Minutes 46 Seconds West parallel with the East Line of said Half Quarter Section 360.00 feet; thence North 89 Degrees 23 Minutes 43 Seconds East parallel with the North Line of said Half Quarter Section 484.04 feet to the place of beginning, containing 4.00 acres more or less, subject to all legal highways, rights-of-way, and easements of record.

This Instrument Recorded 12-8 1992
Sharon K. Cheny, Recorder, Hamilton County, Indiana

EXHIBIT "D"

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