

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

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

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

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

9125216

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

**Article XIV**  
**Mortgage Provisions**

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

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

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

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

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

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

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

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

9125216

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

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

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

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

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

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

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

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

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

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

9125216

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

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

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

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

9125216

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

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

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

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

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

#### Article XV Declarant's Rights

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

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

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

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

#### Article XVI Country Clubs

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

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

9125216

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

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

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

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

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

9125216

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

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 23rd day of September, 19 91

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

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

Attest: [Signature] [SEAL]  
Its: GENERAL PARTNER

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STATE OF INDIANA

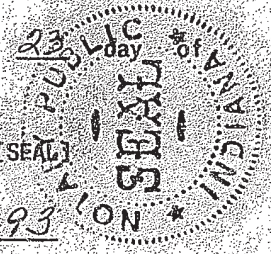
COUNTY OF MARION

TO WIT:

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

Given under my hand and official seal this 23 day of September, 19 91.

Robin E. Greenwalt [SEAL]  
NOTARY PUBLIC  
Marion County Resident  
My Commission Expires: 3-29-93



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

1939g -- 9/12/91

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EXHIBIT "A"

Land Initially Submitted

NEIGHBORHOOD: Chestnut Hill, Section 1

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

Commencing at a railroad spike set over a stone marking the Northwest corner of the Northwest Quarter of said Section 10; thence along the West line thereof, South 00 degrees 33 minutes 09 seconds West (astronomic bearing) 930.83 feet to the Point of beginning; thence North 51 degrees 12 minutes 05 seconds East 328.10 feet to a curve having a radius of 100.00 feet, the radius point of which bears North 51 degrees 12 minutes 05 seconds East; thence Easterly along said curve 90.33 feet to a point which bears South 00 degrees 33 minutes 09 seconds East from said radius point; thence North 89 degrees 26 minutes 51 seconds East 66.00 feet; thence North 00 degrees 33 minutes 09 seconds West 440.00 feet; thence North 55 degrees 13 minutes 52 seconds East 70.76 feet; thence North 34 degrees 46 minutes 08 seconds West 77.59 feet; thence North 55 degrees 13 minutes 52 seconds East 50.00 feet to a curve having a radius of 150.00 feet, the radius point of which bears South 55 degrees 13 minutes 52 seconds West; thence Northwesterly along said curve 7.14 feet to a point which bears North 52 degrees 30 minutes 10 seconds East from said radius point; thence North 52 degrees 30 minutes 10 seconds East 181.40 feet to a curve having a radius of 1230.00 feet, the radius point of which bears North 59 degrees 15 minutes 13 seconds East; thence Northerly along said curve 31.92 feet to a point which bears South 60 degrees 44 minutes 26 seconds West from said radius point; thence North 60 degrees 44 minutes 26 seconds East 60.00 feet to a curve having a radius of 1170.00 feet, the radius point of which bears North 60 degrees 44 minutes 26 seconds East; thence Southeasterly along said curve 408.41 feet to a point which bears South 40 degrees 44 minutes 26 seconds West from said radius point, and which point is the beginning of a compound curve having a radius of 850.00 feet, the radius point of which bears North 40 degrees 44 minutes 26 seconds East; thence Easterly along said curve 510.13 feet to a point which bears South 06 degrees 21 minutes 17 seconds West from said radius point; thence South 06 degrees 21 minutes 17 seconds West 60.00 feet to a point on the East line of the West Half of the Northwest Quarter of said Section 10; thence along said East line, South 00 degrees 32 minutes 16 seconds West 376.75 feet to the North line of a tract as described in a Warranty Deed to James C. and Mary Ann Hawk recorded as Instrument 8808558 in the Office of the Recorder of Hamilton County, Indiana; thence along the North line of said tract, South 89 degrees 26 minutes 51 seconds West 1335.57 feet to a point on the West line of the Northwest Quarter of said Section 10; thence along said West line, North 00 degrees 33 minutes 09 seconds East 50.00 to the Point of Beginning, containing 15.937 acres, more or less.

9125216

EXHIBIT "B"

Land Subject to Annexation

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

Beginning at a 1<sup>1</sup>/<sub>2</sub>" iron pipe marking the Southwest corner of the Northeast Quarter of said Section 4; thence North 00 degrees 10 minutes 51 seconds East (astronomic bearing) along the West line of the said Northeast Quarter Section 902.54 feet; thence North 89 degrees 38 minutes 25 seconds East parallel with the North line of the Southwest Quarter of the said Northeast Quarter Section 234.30 feet; thence North 00 degrees 10 minutes 51 seconds East parallel with the said West line 414.15 feet to the North line of the Southwest Quarter of the said Northeast Quarter Section; thence South 89 degrees 38 minutes 25 seconds West along the said North line 234.30 feet to the Northwest corner of the said Quarter Quarter Section; thence North 00 degrees 10 minutes 51 seconds East along the West line of the said Northeast Quarter Section 1769.06 feet to the Northwest corner of the Northeast Quarter of said Section 4; thence North 09 degrees 12 minutes 12 seconds East along the North line of said Northeast Quarter Section 200.34 feet to a Harrison monument marking the Southwest corner of the Southeast Quarter of Section 33, Township 18 North, Range 5 East; thence North 89 degrees 14 minutes 29 seconds East along the North line of the Northeast Quarter of said Section 4, 974.92 feet to the Northwest corner of a 3.00 acre tract of land conveyed to Arthur L. and Rosann Johnson per Warranty Deed recorded as Instrument #17554 in Deed Book 732, page 352 in the Office of the Recorder of Hamilton County, Indiana (the next five courses are along the boundary of said 3.00 acre tract); (1) thence South 00 degrees 45 minutes 31 seconds East 156.40 feet; (2) thence South 80 degrees 44 minutes 42 seconds East 110.06 feet; (3) thence South 04 degrees 20 minutes 24 seconds East 56.72 feet; (4) thence North 87 degrees 37 minutes 40 seconds East 489.50 feet; (5) thence North 02 degrees 00 minutes 26 seconds West 219.94 feet to the North line of the said Northeast Quarter Section; thence North 89 degrees 14 minutes 29 seconds East along the said North line 460.79 feet to the Northwest corner of a 5.99 acre tract of land conveyed to Ronald J. and Teresa L. Booth per Warranty Deed recorded as Instrument #0113762 in Deed Book 139, pages 705-708 in the said Recorder's Office (the next seven courses are along the boundary of said 5.99 acre tract); thence South 00 degrees 06 minutes 11 seconds West parallel with the East line of the said Northeast Quarter Section 594.34 feet to the approximate center line of Mud Creek (the next five courses are along the approximate center line of Mud Creek); (1) thence North 85 degrees 59 minutes 28 seconds East 39.30 feet; (2) thence South 52 degrees 06 minutes 09 seconds East 37.09 feet; (3) thence South 75 degrees 07 minutes 26 seconds East 55.19 feet; (4) thence North 88 degrees 10 minutes 05 seconds East 150.63 feet; (5) thence North 71 degrees 59 minutes 13 seconds East 160.49 feet to the East line of the said Northeast Quarter Section; thence North 00 degrees 06 minutes 11 seconds East along the said East line 379.73 feet to a stone (found-down 9 inches) marking the Northeast corner of the said Northeast Quarter Section; thence North 89 degrees 14 minutes 29 seconds East along the North line of the Northwest Quarter of the Northwest Quarter of said Section 3, 184.05 feet to a Harrison monument marking the Southwest corner of the Southwest Quarter of Section 34, Township 18 North, Range 5 East; thence North 89 degrees 53 minutes 49 seconds East along the North line of the Northwest Quarter of the Northwest Quarter of said Section 3, 300.40 feet to the Northwest corner of a 1.131 acre tract of land conveyed to Michael U. and Mary Sue Hurdle per Warranty Deed recorded as Instrument #0710250 in the said Recorder's Office (the next three courses are along the boundary of said 1.131 acre tract); (1) thence South 01 degrees 21 minutes 54 seconds East 216.81 feet; (2) thence North 89 degrees 18 minutes 54 seconds East 263.29 feet; (3) thence North 00 degrees 41 minutes 09 seconds East 214.09 feet to the North line of the said Quarter Quarter Section; thence North 89 degrees 53 minutes 49 seconds East along the said North line 574.01 feet to the Northeast corner of the said Quarter Quarter Section; thence continuing North 89 degrees 53 minutes 49 seconds East along the North line of the East Half of the Northwest Quarter of said Section 3, 168.94 feet to a 5/8 inch rebar set in a stone marking the Southwest corner of the East Half of the Southwest Quarter of Section 34,

9/25/216

EXHIBIT B

Page 2

Township 18 North, Range 5 East; thence North 89 degrees 40 minutes 28 seconds East along the North line of the East Half of the said Northwest Quarter Section 173.92 feet to the Northwest corner of a tract of land per Memorandum of Land Contract recorded as Instrument #8910734 in the said Recorder's Office (the next three courses are along the boundary of said tract); (1) thence South 00 degrees 08 minutes 49 seconds West 254.77 feet-measured (254.1 feet-deed); (2) thence North 89 degrees 51 minutes 49 seconds East 857.14 feet; (3) thence North 00 degrees 08 minutes 49 seconds East 250.10 feet-measured (254.1 feet-deed) to the North line of the East Half of the said Northwest Quarter Section; thence North 89 degrees 40 minutes 28 seconds East along the said North line 134.30 feet to the Northwest corner of the Northeast Quarter of said Section J; thence concluding North 89 degrees 40 minutes 28 seconds East along the North line of the said Northeast Quarter Section 162.14 feet to the Southeast corner of the Southwest Quarter of Section 34, Township 18 North, Range 5 East; thence North 89 degrees 36 minutes 31 seconds East along the North line of the said Northeast Quarter Section 791.03 feet to the Northwest corner of a tract of land conveyed to Marlon C. Hensley as Trustee for Fall Creek Township per Warranty Deed recorded as Instrument #22851 in Deed Book 326, page 234 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence South 00 degrees 23 minutes 29 seconds East 349.20 feet; (2) thence North 89 degrees 36 minutes 31 seconds East parallel with the North line of the said Northeast Quarter 484.79 feet-measured (485.7 feet-deed) to the center line of Brooks School Road; thence South 09 degrees 21 minutes 57 seconds West along the said center line

2392.05 feet to the Northeast corner of a tract of land conveyed to Curtis J. Grasso per Warranty Deed recorded as Instrument #8627802 in Deed Book 362, pages 81-83 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence South 89 degrees 27 minutes 24 seconds West parallel with the South line of the said Northeast Quarter Section 896.72 feet-measured (895.95 feet-deed); (2) thence South 00 degrees 12 minutes 27 seconds West parallel with the West line of the said Northeast Quarter Section 353.14 feet-measured (353.12 feet-deed) to the South line of the said Northeast Quarter Section; thence South 89 degrees 37 minutes 24 seconds West along the said South line 329.87 feet to a stone (with "X" and "S3" cut in south side) marking the center of said Section J; thence South 89 degrees 21 minutes 14 seconds West along the South line of the East Half of the Northwest Quarter of said Section J; 1331.14 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said Section J; thence South 00 degrees 03 minutes 23 seconds East along the East line of the said Quarter Quarter Section 1317.31 feet to the Southeast corner of the said Quarter Quarter Section; thence South 89 degrees 29 minutes 05 seconds West along the South line of the said Quarter Quarter Section 1333.19 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 4; thence South 89 degrees 40 minutes 38 seconds West along the South line of the said Quarter Quarter Section 391.78 feet; thence North 27 degrees 33 minutes 52 seconds West along the extension of the Easterly line of Block "A" (Lake and Dam) in Geist Road-Minor Plat recorded in Plat Book 10, pages 78 and 79 in the said Recorder's Office 7.53 feet to the Southeast corner of said Block "A"; thence North 27 degrees 33 minutes 52 seconds West along the Easterly line of said Block "A" 477.69 feet to the Northeast corner thereof, which is the Southwest corner of a tract of land conveyed to Bradley and Cindy Stewart per Warranty Deed recorded as Instrument #8704506 in the said Recorder's Office (the next six courses are along the boundary of said tract); (1) thence North 27 degrees 33 minutes 52 seconds West 284.50 feet; (2) thence South 59 degrees 16 minutes 18 seconds West 73.00 feet; (3) thence North 71 degrees 43 minutes 42 seconds West 46.00 feet; (4) thence South 63 degrees 18 minutes 18 seconds West 70.00 feet; (5) thence South 43 degrees 16 minutes 18 seconds West 128.00 feet; (6) thence North 89 degrees 57 minutes 20 seconds West 45.00 feet to the East line of a tract of land conveyed to Richard and Linda Easterly per Warranty Deed recorded as Instrument #7049 in Deed Book 319, page 190 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence North 00 degrees 17 minutes 40 seconds East 60.00 feet to the Northeast corner thereof; (2) thence North 89 degrees 57 minutes 20 seconds West 80.00 feet to the Southeast corner of a tract of land conveyed to Richard and Agnes Lux per Warranty Deed recorded as Instrument #8619312 in Deed Book 359, page 422 in the said Recorder's Office; thence North 00 degrees 17 minutes 40 seconds East along the East line of said "Lux" tract 140.00 feet to the South line of a tract of land conveyed to Floyd and Carolyn Deal per Warranty Deed recorded as Instrument #8313422 in Deed Book 339, pages 605-607 in the said Recorder's Office (the next three courses are along the boundary of said tract); (1) thence South 09 degrees 57 minutes 20 seconds East 325.70 feet to the Southeast corner thereof; (2) thence North 17 degrees 05 minutes 02 seconds West 259.24 feet; (3) thence North 03 degrees 13 minutes 45 seconds West 328.98 feet-measured (326.6 feet-deed) to the North line of the Southeast Quarter of said Section 4; thence South 89 degrees 38 minutes 39 seconds West along the said North line 12.77 feet to the Southeast corner of a 5.06 acre tract of

9125216

EXHIBIT B

Page 3

land conveyed to Lawrence and Joann Strickler per Warranty Deed recorded as Instrument #8413360 in Deed Book 344, page 1013 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence North 00 degrees 21 minutes 21 seconds West 435.60 feet; (2) thence South 89 degrees 30 minutes 39 seconds West parallel with the South line of the Northeast Quarter of said Section 4, 286.81 feet to the Easterly corner of a 11.27 acre tract of land quitclaimed to Hils and Anna Nordell per Quitclaim Deed recorded as Instrument #8731576 in the said Recorder's Office (the next five courses are along the boundary of said tract); (1) thence North 00 degrees 20 minutes 00 seconds West 87.98 feet; (2) thence North 36 degrees 40 minutes 06 seconds West 324.05 feet; (3) thence North 47 degrees 56 minutes 57 seconds West 337.34 feet; (4) thence South 89 degrees 30 minutes 39 seconds West parallel with the South line of the said Northeast Quarter 231.63 feet; (5) thence South 00 degrees 11 minutes 21 seconds East 576.15 feet to the Northeast corner of a tract of land conveyed to Wayne and Patricia Gordon per Warranty Deed recorded as Instrument #84140 in Deed Book 340, pages 743-745 in the said Recorder's Office (the next two courses are along the boundary of said tract); (1) thence South 89 degrees 30 minutes 39 seconds West parallel with the said South line 400.00 feet; (2) thence South 00 degrees 21 minutes 21 seconds East 108.90 feet to the Northwest corner of a tract of land conveyed to Wayne and Patricia Gordon per Warranty Deed recorded as Instrument #14341 in Deed Book 322, page 489 in the said Recorder's Office; thence South 00 degrees 21 minutes 21 seconds East along the West line of said tract 326.70 feet to the South line of the said Northeast Quarter Section; thence South 89 degrees 30 minutes 39 seconds West along the said South line 405.91 feet to the point of beginning, containing 487.24 acres, more or less.

Subject to all legal easements and rights of way.

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

Commencing at the Southwest corner of the said Half Quarter Section; thence North 00 degrees 16 minutes 18 seconds East (astronomic bearing) along the West line thereof 1750.01 feet; thence North 89 degrees 41 minutes 19 seconds East parallel with the South line of the said Half Quarter Section 208.90 feet; thence North 00 degrees 16 minutes 18 seconds East parallel with the said West line 200.00 feet; thence North 39 degrees 41 minutes 19 seconds East parallel with the said South line 496.00 feet to the Point of Beginning; thence continuing North 89 degrees 41 minutes 19 seconds East parallel with the said South line 635.43 feet-measured (635.40 feet-deed) to the East line of said Half Quarter Section; thence South 00 degrees 17 minutes 40 seconds West along the said East line 817.33 feet to the Northeast corner of a tract of land conveyed to Ralph and Dawn Smith per Warranty Deed recorded as Instrument #859473 in Deed Book 349, pages 956 and 967 in the Office of the Recorder of Hamilton County, Indiana (the next three courses are along the boundary of said tract); (1) thence South 89 degrees 41 minutes 19 seconds West parallel with the said South line 340.00 feet; (2) thence South 00 degrees 17 minutes 40 seconds West parallel with the said East line 200.00 feet; (3) thence North 89 degrees 41 minutes 19 seconds East parallel with the said South line 340.00 feet to the said East line; thence South 00 degrees 17 minutes 40 seconds West along the said East line 433.50 feet to a point that is North 00 degrees 17 minutes 40 seconds East 500.00 feet from the Southeast corner of the said Half Quarter Section; thence South 89 degrees 41 minutes 19 seconds West parallel with the said South line 634.79 feet; thence North 00 degrees 16 minutes 09 seconds East 1450.81 feet to the point of beginning, containing 19.55 acres, more or less.

Subject to all legal easements and rights of way.

9125216

## EXHIBIT B

Page 4

## ALSO:

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

Beginning at a railroad spike set over a stone marking the Southeast corner of the Southeast Quarter of said Section 4; thence South 89 degrees 44 minutes 53 seconds West (astronomic bearing) along the South line of the Southeast Quarter of the Southeast Quarter of said Section 4, 1340.44 feet to a railroad spike set over a stone marking the Southwest corner of the said Quarter Quarter Section; thence North 00 degrees 17 minutes 40 seconds East along the West line of the said Quarter Quarter Section 797.30 feet to the Southwest corner of a tract of land conveyed to Larry J. and Linda A. Hardin per Warranty Deed recorded as Instrument #4909 in Deed Record 311, pages 644 thru 646 in the Office of the Recorder of Hamilton County, Indiana (the next two courses are along said "Hardin" tract); thence North 89 degrees 13 minutes 40 seconds East 234.00 feet; thence North 00 degrees 17 minutes 40 seconds East 60.00 feet to the Southeast corner of a tract of land conveyed to Larry J. and Linda A. Hardin per Warranty Deed recorded as Instrument #10117 in Deed Record 288, page 199 in the said Recorder's Office; thence continuing North 00 degrees 17 minutes 40 seconds East along the East line of said "Hardin" tract 171.50 feet to the South line of a tract of land conveyed to Donald D. and Betty S. Garrity per Warranty Deed recorded as Instrument #8606864 in Deed Record 355, page 481 in the said Recorder's Office (the next two courses are along said "Garrity" tract); thence North 89 degrees 13 minutes 40 seconds East 415.00 feet; thence North 00 degrees 03 minutes 16 seconds West 287.74 feet to the South line of Block "A" (Lake and Dam) in Geist Road-Minor Plat recorded in Plat Book 10, pages 78 and 79 in the said Recorder's Office; thence South 89 degrees 53 minutes 32 seconds East along the said South line of Block "A" 280.00 feet to the Southeast corner thereof; thence South 27 degrees 33 minutes 52 seconds East along the extension of the Easterly line of said Block "A" 7.53 feet to the North line of the Southeast Quarter of the Southeast Quarter of said Section 4; thence North 89 degrees 40 minutes 58 seconds East along the said North line 391.78 feet to the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 3; thence North 89 degrees 29 minutes 05 seconds East along the North line of the said Quarter Quarter Section 1335.19 feet to the Southwest corner of the Northeast Quarter of the Southwest Quarter of said Section 3; thence North 00 degrees 03 minutes 23 seconds West along the West line of the said Quarter Quarter Section 1317.31 feet to the Northwest corner of the said Quarter Quarter Section; thence North 89 degrees 21 minutes 14 seconds East along the North line of the said Quarter Quarter Section 1331.14 feet to a stone (with "X" and "S3" cut in south side) marking the center of said Section 3; thence North 89 degrees 27 minutes 24 seconds East along the North line of the Southeast Quarter of said Section 3, 1194.67 feet (1194.6 feet-deed) to the centerline of Brooks School Road; thence South 05 degrees 27 minutes 40 seconds West along said centerline 710.35 feet; thence South 04 degrees 07 minutes 24 seconds West along said centerline 867.30 feet to a stone; thence South 02 degrees 51 minutes 32 seconds West along said centerline 1068.60 feet to a point on the South line of the Southeast Quarter of said Section 3; said point lies North 89 degrees 17 minutes 04 seconds East 1004.67 feet (1004.60 feet-deed) from the Southwest corner of the said Southeast Quarter Section; thence South 89 degrees 17 minutes 04 seconds West along the said South line 173.67 feet to a point which lies North 89 degrees 17 minutes 04 seconds East 831.00 feet from the Northwest corner of the Northeast Quarter of said Section 10; thence South 33 degrees 40 minutes 28 seconds West (along a line running in the general Southwesterly direction of Brooks School Road and lying Easterly thereof, and if extended, would intersect the West line of the said Northeast Quarter Section at a point South 00 degrees 31 minutes 23 seconds West 1254.00 feet from the Northwest corner of the said Northeast Quarter Section) 576.39 feet to the Northeast corner of a 3.100 acre tract of land conveyed to Mansur Development Corp. per Warranty Deed recorded as Instrument #8825060 in the said Recorder's Office (the next four courses are along said "Mansur" tract); (1) thence North 77 degrees 11 minutes 38 seconds West 375.35 feet; (2) thence South 01 degrees 56 minutes 24 seconds West 143.79 feet; (3) thence North 88 degrees 03 minutes 36 seconds West 243.61 feet; (4) thence South 01 degrees 56 minutes 24 seconds West 190.33 feet to the Southeast corner thereof; thence North 88 degrees 03 minutes 36 seconds West 1232.68 feet to the West line of the East Half of the Northwest Quarter of said Section 10; thence South 00 degrees 32 minutes 16 seconds West along the said West line 315.81 feet to the North line of a tract of land conveyed to James C. and Mary Ann Hauk per Warranty Deed recorded as Instrument #8808558 in the said Recorder's Office; thence South 89 degrees 26 minutes 51 seconds West along the North line of said "Hauk" tract 1335.57 feet (1346.50 feet-deed) to the West line of the Northwest Quarter of said Section 10; thence North 00 degrees 33 minutes 09 seconds East along the said West line 980.83 feet to the point of beginning, containing 279.626 acres, more or less.

Subject to all legal easements and rights of way.

9125216

EXHIBIT B

Page 5

ALSO:

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

Commencing at the Northwest corner of the east half of the Northwest Quarter of Section 3 Township 17 North, Range 5 East; thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 342.86 feet to the true point of beginning; thence North 90 degrees 00 minutes 00 seconds East on and along the North line of said East Half 957.14 feet; thence South 00 degrees 14 minutes 57 seconds West parallel with the West line of said East Half 254.1 feet; thence South 90 degrees 00 minutes 00 seconds West parallel with the North line of said East Half 857.14 feet; thence North 00 degrees 14 minutes 57 seconds East parallel with the West line of said East Half 354.1 feet to the point of beginning; subject to all applicable easements and rights-of-way of record.

ALSO:

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

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

ALSO:

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

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

9125216

EXHIBIT B

Page 6

ALSO:

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

ALSO:

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

Commencing at a stone marking the Northwest corner of the said Northeast Quarter Section; thence North 89 degrees 45 minutes 40 seconds East along the North line of the said Northeast Quarter Section 831.00 feet; thence South 34 degrees 09 minutes 04 seconds West (along a line running in the general Southwesterly direction of Brooks School Road and lying Easterly thereof, and if extended, would intersect the West line of the said Northeast Quarter Section at a point South 01 degrees 00 minutes 00 seconds West 1254.00 feet from the Northwest corner of the said Northeast Quarter Section) 576.39 feet to the Place of Beginning; thence continue South 34 degrees 09 minutes 04 seconds West (along said line) 309.65 feet; thence North 87 degrees 35 minutes 00 seconds West 449.36 feet; thence North 02 degrees 25 minutes 00 seconds East 190.33 feet; thence South 87 degrees 35 minutes 00 seconds East 243.61 feet; thence North 02 degrees 25 minutes 00 seconds East 143.79 feet; thence South 76 degrees 43 minutes 02 seconds East 375.35 feet to the place of beginning, containing 3.100 acres, more or less.

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

9125216



EXHIBIT "C"

DECLARATION OF EASEMENTS AND  
COVENANT TO SHARE COSTS

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

BACKGROUND STATEMENT

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

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

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

Article I  
Easements

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

9125216

purpose of storm water drainage and retention of storm water runoff from the Commercial Property.

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

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

## Article II Obligation To Share Costs

### Section 1. Responsibility for Assessments.

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

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

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

### Section 2. Maintenance Property.

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

9125216

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

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

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

Article II.  
Obligation To Share Costs

Section 1. Responsibility for Assessments.

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

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

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

Section 2. Maintenance Property.

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

9125216

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

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

Section 3. Computation of Assessments.

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

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

$$\frac{\text{Total Acreage Owned by Commercial Owner Within Commercial Property}}{\text{Total Acreage of Commercial Property}} \times \text{Commercial Basis (Dollars)} = \text{Assessment}$$

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

9125216

Total Acreage Owned  
Within Country  
Club(s)

x

Club Basis  
(Dollars)

= Assessment

Total Acreage of  
Country Club(s)

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

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

### Article III General

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

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

9125216

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

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

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

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

9125216

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

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

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

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

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

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

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

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