

*Covenants  
Windermere  
Villas*

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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TABLE OF CONTENTS

Article I

Definitions . . . . .

Section 1.1.	"Additional Property"	. . . . .
Section 1.2.	"Annexation"	. . . . .
Section 1.3.	"Architectural Standards Committee"	. . . . .
Section 1.4.	"Area of Common Responsibility"	. . . . .
Section 1.5.	"Articles of Incorporation" or "Articles"	. . . . .
Section 1.6.	"Association"	. . . . .
Section 1.7.	"Base Assessment"	. . . . .
Section 1.8.	"Board of Directors" or "Board"	. . . . .
Section 1.9.	"By-Laws"	. . . . .
Section 1.10.	"Class B Control Period"	. . . . .
Section 1.11.	"Club Owner"	. . . . .
Section 1.12.	"Common Area"	. . . . .
Section 1.13.	"Common Expenses"	. . . . .
Section 1.14.	"Community-Wide Standard"	. . . . .
Section 1.15.	"Declarant"	. . . . .
Section 1.16.	"Declaration"	. . . . .
Section 1.17.	"Development"	. . . . .
Section 1.18.	"Dwelling"	. . . . .
Section 1.19.	"Exclusive Common Area"	. . . . .
Section 1.20.	"Foreclosure"	. . . . .
Section 1.21.	"General Common Area"	. . . . .
Section 1.22.	"Golf Club"	. . . . .
Section 1.23.	"Landscape Easement"	. . . . .
Section 1.24.	"Lot"	. . . . .
Section 1.25.	"Member"	. . . . .
Section 1.26.	"Mortgage"	. . . . .
Section 1.27.	"Mortgagee"	. . . . .
Section 1.28.	"Mortgagor"	. . . . .
Section 1.29.	"Neighborhood"	. . . . .
Section 1.30.	"Neighborhood Assessments"	. . . . .
Section 1.31.	"Neighborhood Expenses"	. . . . .
Section 1.32.	"Owner"	. . . . .
Section 1.33.	"Person"	. . . . .
Section 1.34.	"Property"	. . . . .
Section 1.35.	"Special Assessment"	. . . . .
Section 1.36.	"Supplemental Declaration"	. . . . .
Section 1.37.	"Voting Group"	. . . . .
Section 1.38.	"Voting Member"	. . . . .

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
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31  
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71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

Article II

Development . . . . .

Section 2.1.	Development of Property	. . . . .
Section 2.2.	Development of Additional Property	. . . . .
Section 2.3.	Golf Club	. . . . .
Section 2.4.	Subdivision Plat	. . . . .
Section 2.5.	Consent of Declarant	. . . . .

7  
7  
7  
8  
8  
9  
9  
9

9248616

Article III

9

Property Rights . . . . . 9

Section 3.1. General . . . . . 9

Section 3.2. Exclusive Common Areas . . . . . 10

Section 3.3. Owner's Easement of Enjoyment . . . . . 10

Section 3.4. Park Area . . . . . 11

Section 3.5. Swim and Tennis Club . . . . . 11

Section 3.6. Access . . . . . 13

Section 3.7. Easements for Declarant . . . . . 13

Section 3.8. Utility and Public Service Easements . . . . . 13

Section 3.9. Drainage Easements . . . . . 14

Section 3.10. Landscape Easements . . . . . 14

Section 3.11. Sales and Construction Offices . . . . . 14

Section 3.12. Maintenance Easement . . . . . 15

Section 3.13. Easements for Golf Club Property . . . . . 15

    (a) Utility Easements . . . . . 15

    (b) Construction, Maintenance, and Repair . . . . . 15

    (c) Golf Course Maintenance . . . . . 16

    (d) Entry by Golfers . . . . . 16

    (e) Landscaping Plan Approval . . . . . 16

    (f) Change in Easement Size . . . . . 17

Section 3.14. Access to Golf Club . . . . . 17

Article IV

17

Membership and Voting Rights . . . . . 17

Section 4.1. Membership . . . . . 17

Section 4.2. Voting . . . . . 18

    (a) Class A . . . . . 18

    (b) Class B . . . . . 18

Section 4.3. Neighborhoods . . . . . 18

    (a) Neighborhoods . . . . . 18

    (b) Voting Groups . . . . . 19

Article V

20

Maintenance . . . . . 20

Section 5.1. Association's Responsibility . . . . . 20

Section 5.2. Owner's Responsibility . . . . . 22

Section 5.3. Neighborhood's Responsibility . . . . . 22

Article VI

23

Insurance and Casualty Losses . . . . . 23

Section 6.1. Insurance . . . . . 23

Section 6.2. Individual Insurance . . . . . 25

Section 6.3. Damage and Destruction . . . . . 25

Section 6.4. Disbursement of Proceeds . . . . . 27

Section 6.5. Repair and Reconstruction . . . . . 27

Article VII		27
No Partition . . . . .		27
Article VIII		28
Condemnation . . . . .		28
Section 8.1. Condemnation of Common Areas . . . . .		28
Section 8.2. Condemnation of Lots . . . . .		28
Article IX		29
Annexation of Additional Property . . . . .		29
Section 9.1. Annexation Without Approval of Class A Membership . . . . .		29
Section 9.2. Annexation with Approval of Class A Membership . . . . .		30
Section 9.3. Acquisition of Additional Common Area . . . . .		30
Section 9.4. Withdrawal of Property . . . . .		30
Section 9.5. Amendment . . . . .		30
Article X		31
Rights and obligations of the Association . . . . .		31
Section 10.1. General Common Areas . . . . .		31
Section 10.2. Duties and Powers . . . . .		31
Section 10.3. Agreements . . . . .		32
Section 10.4. Personal Property and Real Property for Common Use . . . . .		32
Section 10.5. Rules and Regulations . . . . .		32
Section 10.6. Implied Rights . . . . .		33
Section 10.7. Governmental Interests . . . . .		33
Article XI		33
Assessments . . . . .		33
Section 11.1. Purpose of Assessments . . . . .		33
Section 11.2. Creation of Assessments . . . . .		33
Section 11.3. Computation of Base Assessment . . . . .		35
Section 11.4. Computation of Neighborhood Assessments . . . . .		37
Section 11.5. Special Assessments . . . . .		38
(a) Entire Membership . . . . .		38
(b) Less Than All Members . . . . .		38
Section 11.6. Lien for Assessments . . . . .		38
Section 11.7. Reserve Budget and Capital Contribution . . . . .		39
Section 11.8. Date of Commencement of Annual Assessments . . . . .		39
Section 11.9. Subordination of the Lien to First Mortgages . . . . .		39
Article XII		40
Architectural Standards . . . . .		40
Section 12.1. Purpose . . . . .		40
Section 12.2. New Construction Committee . . . . .		40
Section 12.3. Architectural Standards Committee . . . . .		41

Section 12.4.	No Waiver of Future Approvals . . . . .	42
Section 12.5.	Variance . . . . .	43
Section 12.6.	Compliance with Guidelines . . . . .	43
Section 12.7.	Construction of Improvements . . . . .	43
Section 12.8.	Responsibilities During Construction . . . . .	43
Section 12.9.	Architectural Approval . . . . .	44
Section 12.10.	Landscaping Approval . . . . .	45
Section 12.11.	Approval Not a Guarantee . . . . .	45
Section 12.12.	Building Restrictions . . . . .	46

Article XIII 46

Use Restrictions . . . . .	46	
Section 13.1.	Use of Lots . . . . .	47
Section 13.2.	Exterior Appearance . . . . .	47
Section 13.3.	Parkway Trees . . . . .	47
Section 13.4.	Signs . . . . .	47
Section 13.5.	Parking and Prohibited Vehicles . . . . .	48
(a)	Parking . . . . .	48
(b)	Prohibited Vehicles . . . . .	48
Section 13.6.	Occupants Bound . . . . .	48
Section 13.7.	Animals and Pets . . . . .	49
Section 13.8.	Quiet Enjoyment . . . . .	49
Section 13.9.	Unightly or Unkept Conditions . . . . .	49
Section 13.10.	Antennas . . . . .	50
Section 13.11.	Garbage Cans, Tanks, Etc. . . . .	50
Section 13.12.	Subdivision of Lot and Time Sharing . . . . .	50
Section 13.13.	Firearms . . . . .	50
Section 13.14.	Pools . . . . .	51
Section 13.15.	Irrigation . . . . .	51
Section 13.16.	Tents, Trailers and Temporary Structures . . . . .	51
Section 13.17.	Drainage, Water Wells and Septic Systems . . . . .	51
Section 13.18.	Tree Removal . . . . .	51
Section 13.19.	Traffic Regulation and Sight Distance at Intersections . . . . .	51
Section 13.20.	Utility Lines . . . . .	52
Section 13.21.	Air Conditioning Units . . . . .	52
Section 13.22.	Lighting . . . . .	52
Section 13.23.	Energy Conservation Equipment . . . . .	52
Section 13.24.	Artificial Vegetation, Exterior Sculpture, and Similar Items . . . . .	53
Section 13.25.	Wetlands, Lakes and Water Bodies . . . . .	53
Section 13.26.	Playground . . . . .	53
Section 13.27.	Fences . . . . .	53
Section 13.28.	Business Uses . . . . .	53
Section 13.29.	On-Site Fuel Storage . . . . .	54
Section 13.30.	Leasing of Lot and Dwelling . . . . .	54
(a)	Definition . . . . .	54
(b)	Leasing Provisions . . . . .	54
(i)	General . . . . .	54
(ii)	Compliance with Declaration; By-Laws and Rules and Regulations . . . . .	54
Section 13.31.	Laws and Ordinances . . . . .	55
Section 13.32.	Sales and Construction Activities . . . . .	55
Section 13.33.	Golf Course Areas . . . . .	55

Article XIV		55
Rulesmaking . . . . .		55
Section 14.1. Rules and Regulations . . . . .		55
Section 14.2. Authority and Enforcement . . . . .		56

Article XV		57
General Provisions . . . . .		57
Section 15.1. Control by Declarant . . . . .		57
Section 15.2. Term . . . . .		57
Section 15.3. Amendment . . . . .		57
Section 15.4. Indemnification . . . . .		58
Section 15.5. Easements for Utilities, Etc. . . . .		59
Section 15.6. Interpretation . . . . .		59
Section 15.7. Right of Entry . . . . .		60
Section 15.8. Perpetuities . . . . .		60
Section 15.9. Litigation . . . . .		60
Section 15.10. Cumulative Effect; Conflict . . . . .		61
Section 15.11. Use of the Word "Windermere" . . . . .		61
Section 15.12. Security . . . . .		61
Section 15.13. Notice of Sale or Transfer of Title . . . . .		62
Section 15.14. Gender and Grammar . . . . .		62
Section 15.15. Severability . . . . .		62
Section 15.16. Rights of Third Parties . . . . .		62
Section 15.17. Not Trespass . . . . .		62
Section 15.18. Notices . . . . .		63

Article XVI		63
Mortgages Provisions . . . . .		63
Section 16.1. Notices of Action . . . . .		63
Section 16.2. Special FHLMC Provision . . . . .		64
Section 16.3. Other Provisions for First Lien Holders . . . . .		65
Section 16.4. Amendments to Documents . . . . .		65
Section 16.5. No Priority . . . . .		66
Section 16.6. Notice to Association . . . . .		66
Section 16.7. Amendment by Board . . . . .		66
Section 16.8. Applicability of Article XVI . . . . .		66
Section 16.9. Failure of Mortgagee to Respond . . . . .		67

Article XVII		67
Declarant's Rights . . . . .		67

Article XVIII		68
Golf Club . . . . .		68
Section 18.1. General . . . . .		68
Section 18.2. Conveyance of Golf Club . . . . .		68
Section 18.3. Rights of Access and Parking . . . . .		68
Section 18.4. Assessments . . . . .		59
Section 18.5. Architectural Control . . . . .		69
Section 18.6. Limitations on Amendments . . . . .		69
Section 18.7. Jurisdiction and Cooperation . . . . .		69

TABLE OF EXHIBITS

EXHIBIT	SUBJECT MATTER	PAGE FIRST APPEARING
A	Property Initially Subject to Declarations Legal Description of Lakeside Green, Section I  Legal Description of Heritage Green, Section I	1
B	Legal Description of Real Estate Subject to Possible Addition	1
C	By-Laws of Windermere Homeowners Association, Inc.	2
D	Legal Description of Nearby Property Owners	11

9248616

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WINDERMERE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "Declaration") is made this 24<sup>th</sup> 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 amenities 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.

9248616



## 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. "Ease 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 or 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 B 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

9248616

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. "Mortgages" 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.

## 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.



**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.

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

(2) 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

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 "B" (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 whatsoever 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.

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 designated 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, foliage, 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

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 from 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