

The Fairway at the Hawthorne uses same covenants as Hamilton Proper

EXHIBIT B

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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.

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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.

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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

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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

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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

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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:

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Total Acreage Owned
Within Country
Club(s) _____ x Club Basis = Assessment
(Dollars)

Total Acreage of
Country Club(s)

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

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

Article III General

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

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

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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

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

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

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

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

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

By:


Harold D. Garrison
General Partner

[SEAL]

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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, appeared Hamilton Proper Partners Land Partnership, L.P., by Harold D. Garrison, its general partner, and acknowledged the execution of the foregoing instrument on behalf of said limited partnership.

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

Robin E. Greenwalt
NOTARY PUBLIC
Marion Co
My Commission Expires: 3/29/93



This instrument prepared by:

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

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EXHIBIT A

COMMERCIAL PROPERTY

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

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

Subject to all legal easements and rights of way.

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BY-LAWS

OF

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HAMILTON PROPER COMMUNITY ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

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

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

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

Article II

Association: Membership, Meetings, Quorum, Voting, Proxies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Meetings.

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

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

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

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

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

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

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

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

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

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

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

C. Powers and Duties.

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

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

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

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

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

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

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

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

(f) making and amending rules and regulations;

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

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

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

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

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

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

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

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

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

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