

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

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

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

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

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

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

Section 3.14. Access to Golf Club. Access to the Golf Club, if any, within or adjacent to the Property is strictly subject to the terms, conditions, rules and procedures established by the respective owners of the Golf Club, as more particularly described in Article XVIII of this Declaration. No Owner or occupant gains any right to enter to use, or to require the continued existence or operation of those facilities by virtue of ownership or occupancy of a Lot.

Article IV

Membership and Voting Rights

Section 4.1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. The owner(s) of the Golf Club shall not be Members of the Association, and shall not be entitled to vote except as specifically provided herein or in the By-Laws.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-

Laws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provision of this Declaration and the By-Laws.

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

(a) Class A. Class A membership shall be all Owners with the exception of the Class B Member, if any.

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

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class B. The Class B Member shall be the Declarant. The rights of the Class B Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class B Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class B Control Period as hereinafter defined. The Class B Control Period shall begin as of the date of this Declaration and extend to the earlier of: (i) the date on which ninety percent (90%) of the Lots have been sold or conveyed to persons (other than Declarant) or Builders holding title solely for purposes of development or sale. In making such calculation, the numerator shall be the total Lots sold and the denominator shall be the total Lots anticipated for sale and ownership in the Community as determined by Declarant as of that date; (ii) December 31, 2008; or (iii) the date on which Declarant determines that the Class B Control Period shall end and notice of such termination is filed by means of an instrument recorded with the Recorder of Hamilton County, Indiana. The Class B Membership shall terminate and become converted to Class A Membership upon the termination of the Class B control Period.

Section 4.3. Neighborhoods.

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

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

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

The senior elected officer of each Neighborhood Association or Neighborhood Committee shall serve as the Voting Member of such Neighborhood and shall cast all votes attributable to Lots in the Neighborhood on all Association matters requiring membership votes, unless otherwise specified in this Declaration or the By-Laws. The next most senior officer shall be the alternate Voting Member and may cast such votes in the absence of the Voting Member. The Voting Member may cast all such votes as it, in its discretion, deems appropriate. Notwithstanding the above, each Voting Member shall cast only one (1) equal vote for election of directors.

Initially, each portion of the Property which is intended to be subdivided for development as a separate Neighborhood by the Declarant, or which is described on a single plat or series of plats by a single name shall constitute a separate Neighborhood.

(b) Voting Groups. In order to attempt to guarantee representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able to elect the entire Board of Directors, excluding representation of others, the Declarant shall establish Voting Groups for election of directors to the Board. The Declarant shall establish Voting Groups not later than the date of expiration of the Class B Control Period by filing with the Association and in the public records of Hamilton County, Indiana, a Supplemental Declaration identifying each Voting Group and designating the Lots within each group. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Class B Control Period. Until such time as Voting Groups are established, Declarant, or in the event that Declarant fails to establish Voting Groups, all Lots shall be assigned to the same Voting Group. Each Voting Group shall be entitled to elect the number of directors specified in Section 3.6 of the By-Laws. Any other members of the Board of Directors shall be elected at large by all Voting Members without regard to Voting Groups.

Article V

Maintenance

Section 5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded as hereinafter provided. The maintenance shall include but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structure, and improvements, including all private streets, situated upon the Common Areas, landscaped easements along the primary loop road through the Property, medians of public streets within the Property entry features for the Windermere community, and such portions of any Additional Property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance with any Neighborhood, or other person or entity, by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Areas shall be a Common Expense to be allocated among all Lots as part of the Base Assessment. All costs associated with maintenance, repair and replacement of Exclusive common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Lots to which the Exclusive Common Areas are assigned notwithstanding that the Association may be responsible for performing such maintenance pursuant to contract or agreement hereunder.

The Association shall also be responsible for maintenance, repair and replacement of Property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those designated by Supplemental Declaration. This assumption of responsibility may take place whether by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Property. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public or property located outside the Development, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

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

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

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

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

Section 3.2. Owner's Responsibility. Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling in a manner consistent with the Community-Wide Standards and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

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

Section 3.3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Areas of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any signage, entry feature, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Although not required to do so, if any Neighborhood has responsibility, through contract or agreement, to maintain all or a portion of the Property within a particular Neighborhood pursuant to additional covenants affecting the Neighborhood, it shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Article XI, Section 11.4 of this Declaration.

Article VI

Insurance and Casualty Losses

Section 6.1. Insurance. The Association, Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the General Common Areas. If a blanket all-risk coverage policy is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to casualty insurance on the General Common Areas, the Association may, upon request of a Neighborhood, and shall if so specified in a Supplemental Declaration affecting the Neighborhood, obtain and continue in effect adequate blanket all-risk casualty insurance, if reasonably available, on Exclusive Common Areas within the Neighborhood. If all-risk insurance is not reasonably available, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate and shall provide coverage for the full replacement cost of all structures to be insured. The costs thereof shall be charged to the owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment, as defined in Article I hereof.

The Association shall have no insurance responsibility for any part of any Golf Club property.

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

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association and shall be included in the Base Assessment, as defined in Article I and as more particularly described in Article XI, Section 11.2. Notwithstanding the foregoing, however, in the discretion of the Board of Directors, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted thereby. The Policies may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be

allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as first identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Indiana which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) All policies on the General Common Areas shall be for the benefit of the Association and its Members; all policies secured at the request of a Neighborhood on the Exclusive Common Areas shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Mortgagees, as their interest may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement.

(f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association, the Association's Board of Directors, the Neighborhoods, the Owners and their respective tenants, servants, agents, and guests, including without limitation, the Association's Manager;

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

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

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or Mortgagee;

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

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

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

In addition to other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors, and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Associations funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgement but, if reasonable, available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Lots, plus reserves on hand. Bonds should contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least fifteen (15) days prior written notice to the Association of any cancellation, substantial modifications or non-renewal.

Section 6.2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon meeting the same requirements as set forth in Section 6.1 of this Article VI for insurance on the Common Areas, except Owners may have reduced limits on the coverage. The Board of Directors may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owners shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XII of this Declaration and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction which

are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the lot in a neat, safe, and attractive condition consistent with the community-wide standard.

A Neighborhood may have more stringent requirements regarding the standards for rebuilding or reconstructing structures on the lots within the Neighborhood and the standard for returning the lots to their natural state in the event the structures are not rebuilt or reconstructed.

Section 4.3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance or obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the General Common Area or to the Exclusive Common Area of any Neighborhood shall be repaired or reconstructed unless the Voting Members representing at least seventy five (75%) percent of the total Class A vote of the Association, if General Common Area, or the Lot Owners representing at least seventy five (75%) percent of the total vote of the Neighborhood whose Exclusive Common Area is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the General Common Area or Exclusive Common Area of a Neighborhood shall be repaired or reconstructed. If there is no reconstruction, and there is no Neighborhood, then any insurance proceeds would revert to the Association.

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

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

Section 6.4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed for payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the General Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) and their Mortgage(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgages of a Lot and may be enforced by such Mortgagee.

Section 6.3. Repair and Reconstruction. If the damage or destruction to the General Common Area or to the Exclusive Common Area of a Neighborhood for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against all Owners on the same basis as provided for Base Assessments; provided, however, if the damage or destruction involves the Exclusive Common Area of a Neighborhood Association, only the Owners of Lots in the affected Neighborhood shall be subject to assessment therefore. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VII

No Partition

Except as is permitted in the declaration or amendments thereto, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provision of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VIII

Condemnation

Section 8.1. **Condemnation of Common Areas.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty seven (67%) percent of the total Class A vote in the Association (or, in the case of Exclusive Common Areas, of the Class A vote attributable to Lots benefitted by the Exclusive Common Area) and of the Declarant, as long as the Declarant owns any Property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association (or Neighborhood Association, if any, in the case of Exclusive Common Areas) as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any Property described in Exhibits "A" and "B" of this declaration, and Voting Member representing at least seventy five percent (75%) of the total Class A vote of the Association (or, in the case of Exclusive Common Areas, of the Class A vote attributable to Lots benefitted by the Exclusive Common Areas) shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors or the Association (or Neighborhood Association, if any, in the case of Exclusive Common Areas). If such improvements are to be repaired or restored, the above provisions in Article VI hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

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

remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to the condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivisions, building, and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe and sightly condition referred to above, of deeding the remaining portion of the Lot to the Association (at no cost to the Association) as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.

In the event that any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot responsible for the maintenance and repair of such Lot, as the case may be, elects to restore the remainder of the Lot, such Owner making such election shall restore such remainder of such Lot as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of the Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work or restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

Article IX

Annexation of Additional Property

Section 9.1. Annexation Without Approval of Class A Membership. Declarant shall have the unilateral right and option, from time to time and at any time until all Property described on Exhibit "B" has been subjected to this Declaration or December 31, 2005, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", as more specifically set forth in Article II herein. Such annexation shall be accomplished by filing in the public records of Hamilton County, Indiana, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of Owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing or recording of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits

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

Section 9.2. Annexation with Approval of Class A Membership. Subject to the consent of the Owner thereof, the Association may annex real property other than that described on Exhibit "B", and following the expiration of the right in Section 2.2, any property described on Exhibit "B", to the provision of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing a majority of the Class A votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 9.1 of this Article.

Annexation shall be accomplished by filing of a record in the public records of Hamilton County, Indiana, a supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the Owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provision of the By-Laws dealing with regular or special meetings, as the case maybe, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 9.2 and to ascertain the presence of a quorum at such meeting.

Section 9.3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense as a Common Area for the benefit of its Members.

Section 9.4. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to this Article IX, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates or the Association from the provision of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Windermere desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Windermere.

Section 9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant or its affiliates own any property described in Exhibits "A" or "B" hereof.

Article I

Rights and obligations of the Association

Section 10.1. General Common Areas. The Association, subject to the rights of the Declarant and to the rights of the Owners set forth in this Declaration shall be responsible for the exclusive management and control of the Common Areas and other improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. Except to the extent otherwise required by the provision of the Official Code of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the power herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further action on the part of Owners.

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

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

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

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

the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances and to permit Hamilton County or any municipality having jurisdiction over the Property to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 10.6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

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

Article XI

Assessments

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

Section 11.2. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 11.3 of this Article. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; and (c) Special Assessments as described in Section 11.5 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

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

in the Neighborhood benefitting from the services supported thereby, provided that in the event of assessments for maintenance of Exclusive Common Areas assigned to less than all Lots in any Neighborhood, such assessments shall be levied only against the Lots to which such Exclusive Common Areas are assigned; and provided, further, in the event of assessments for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, such assessments for the use and benefit of particular Lots shall be levied on a pro rata basis among only the benefitted Lots if so directed by the Neighborhood in writing to the Board of Directors. Special Assessments shall be levied as provided in Section 11.5 below.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Indiana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, who takes title to a Lot through foreclosure, or to any purchaser of such Lot at such foreclosure sale. In the event of co-ownership of any Lot all of such co-owners shall be jointly and severally liable for the entire amount of such assessments.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessments a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Twenty-Five (\$25.00) Dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. All assessments shall be pro rated from the date of closing for each Owner. Each Owner by acceptance of a deed to his or her Lot, acknowledges that all Base Assessments and Neighborhood Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; provided, however, the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may revoke the privilege of paying in installments and require all annual assessments to be paid in full immediately.

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

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 11.3. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution maintaining a reserve fund in accordance with a budget separately prepared.

The Base Assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves.

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

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 11.2 above); provided, any such subsidy shall be

conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

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

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

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

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

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

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

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

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

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

(ix) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

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

Section 11.4. Computation of Neighborhood Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood or part thereof on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated as provided in Section 11.2 above.

The Board shall cause a copy of the applicable budget and notice of the amount of the Neighborhood Assessment to be levied on each Lot for the coming year to be delivered to the Lot Owner at least thirty (30) days prior to the beginning of the fiscal year.

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