

**ARTICLES OF INCORPORATION  
OF  
WHISPERING OAKS PHASE II  
AND RECREATION CENTER, INC.**

The undersigned incorporator or incorporators, desiring to form a corporation (hereinafter referred to as the "Corporation"), pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 as amended (hereinafter referred to as the "Act"), execute the following Articles of Incorporation.

**ARTICLE I**

**NAME**

The name of the Corporation is Whispering Oaks Phase II Recreation, Inc. d/b/a Whispering Oaks II Homeowner's Association and Clubhouse.

**ARTICLE II**

**ADOPTION**

These Articles of Incorporation creating Whispering Oaks Phase II Recreation Center, Inc. d/b/a Whispering Oaks II Homeowner's Association and Clubhouse, and the Code of By-Laws corresponding thereto, are adopted simultaneously with the execution of a certain Covenants and Restrictions with Design Guidelines (hereinafter "Covenants"). The Covenants are recorded in the Office of the Recorder of Clark County, as Instrument No. 200422373, under date of 13 September, 2004, and are incorporated herein by reference and all of the covenants, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these Articles and the Code of By-Laws. The definition and terms, as defined and used in the Covenants, shall have the same meaning in these Articles and the Code of By-Laws.

**ARTICLE III**

**PURPOSES AND POWERS**

Section 1. Type of Corporation. This is a public benefit, **Indiana Nonprofit**, corporation.

Section 2. Purpose and Powers. The purpose of the Corporation shall be to provide for the maintenance, repair, replacement, administration, operation, preservation, and ownership of the Whispering Oaks Phase II **Common Area and** Recreation Center (**hereinafter referred to as "the Property"**) as shown on the Plat of Whispering Oaks Phase II Subdivision, recorded as Instrument No. 200422373, in the Office of the Recorder of Clark County, Indiana, and of such other areas that may come within its jurisdiction and authority, and to promote the health, safety,

and welfare of the users of such Common Areas and Recreation Center, and to perform such other functions as may be designated to it and to:

- (a) Exercise all of the powers and privileges and perform all of the duties and obligations of the Corporation as set forth in the Covenants, as the same may be amended from time to time and the Code of By-Laws.
- (b) Establish, levy, collect, and enforce payment by any lawful means, any charges or assessments made against members or others pursuant to the terms of the Covenants; to pay all expenses in connection with such collection and all office and other expenses incident to the conduct of the business of the Corporation, including any license fees, taxes, or other governmental charges levied or imposed against the Common Area or the Property of the Corporation.
- (c) Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Corporation in accordance with the provisions of the Covenants.
- (d) Borrow money, and with the consent of ~~two thirds (2/3) of the Members~~ more than 50% of the entire membership, pledge, deed in trust, or hypothecate any and all of its real or personal property as security for money borrowed or debts incurred.
- (e) If required, exercise the jurisdiction and authority over ~~the owners of, and the ownership of, the Common Area and the Property.~~
- (f) Have and exercise any and all powers, rights, duties, and privileges which are given the Corporation in the Covenants.
- (g) Have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of the State of Indiana by law may now or hereafter have or exercise.

#### ARTICLE IV

##### *Period of Existence*

The period of during which the Corporation shall continue is perpetual.

#### ARTICLE V

##### *Resident Agent and Principal Office*

Section 1. Resident Agent. The name and address of the Resident Agent in charge of the Corporation is listed with the Indiana Secretary of State.

Section 2. Principal Office. The address of the Principal Office of the Corporation is 6434 21<sup>st</sup> Century Drive, Charlestown, Indiana 47111.

## ARTICLE VI

### *Membership*

Section 1. Members. The classes of the Members are as follows:

(a) Class "A" Members. Every ~~person or entity~~ single owner, single representative of multiple owners, or single representative or agent of an entity who is an Owner in accordance with the definition of Owner in the Covenants shall be a Class "A" Member of the Corporation and any member approved pursuant to the rules and regulations set forth by the Board of Directors.

(b) Class "B" Members. A builder or development company who owns one or more Lots in the Subdivision planned to be developed and sold as designated on the recorded Plat.

Section 2. Rights, Preferences, Limitations, and Restriction of Classes. All Members shall have the same rights, privileges, duties, liabilities, limitations, and restrictions as the other Members. All Members shall abide by the Articles of Incorporation, the Code of By-Laws, the rules and regulations adopted by the Board of Directors and all covenants, restrictions and other provisions contained in the Covenants.

Section 3. Voting Rights of Members. All Members shall have the voting rights as established in the By-Laws ~~Covenants~~.

## ARTICLE VII

### DIRECTORS

Section 1. Number of Directors. The number of Directors of the Corporation shall be fixed by the Code of By-Laws of the Corporation, but in no event shall the Code of By-Laws fix the number of Directors at less than ~~four (4)~~ eight (8) nor more than ~~ten (10)~~ twelve (12).

Section 2. Names and Post Office Addresses of the Directors. The names and post office addresses of the ~~initial~~ Board of Directors ~~are:~~ are listed with the Secretary of State of Indiana.

## ARTICLE VIII

### *Incorporators*

Section 1. Names and Post Office Addresses. The names and post office addresses of the incorporators of the Corporation are as follows:

## ARTICLE IX

### *Statement of Property and Estimate of Value Thereof*

At the time of incorporation, certain property as shown on Plat, recorded as Instrument No. 200422373 in the office of the Recorder of Clark County, Indiana, will be conveyed to the Corporation, the value of which is approximately \$ \_\_\_\_\_.

## ARTICLE X

### *Provisions for the Regulations and Conduct of the Affairs of the Corporation*

Section 1. Liability of Members. Neither the individual Members of the Corporation nor their individual property shall be subject to any liability for any debts of the Corporation.

Section 2. Code of By-Laws. The power to make, alter, amend, or repeal the Code of By-Laws and the rules and regulations for the conduct of the affairs of the Corporation, including the power to elect officers of the Corporation, shall be vested in the Board of Directors of the Corporation, shall be vested in the Board of Directors of the Corporation; provided, however, that no acts of the Board of Directors shall be inconsistent with or contradictory to these Articles of Incorporation, the Covenants, or any provision of law.

Section 3. Dissolution. The Corporation may be dissolved only with ~~the written consent of not less than two-thirds (2/3) of the Members~~ a vote in favor of at least two-thirds (2/3) of the entire membership. This standard for the approval of dissolution can only be amended by these same requirements (approval of at least two-thirds (2/3) of the entire membership).

Section 4. Amendment of Articles of Incorporation. Unless stated otherwise in these Articles, Amendment to the Articles of Incorporation shall require ~~the consent of at least two-thirds (2/3) of the Members~~ a vote in favor of more than fifty percent (50%) of the entire membership.

Section 5. No Private Benefit. No money or property received or held by the Corporation shall ever inure, directly or indirectly, to the private benefit of any Member, Director, or officer of the Corporation or any other person whomsoever, except for reasonable compensation for services actually rendered to the corporation.

Section 6. Distributing of Earnings and Assets. On dissolution of this corporation, any assets remaining after payment of its debts and obligations shall be transferred or distributed to the agency or corporation who shall take over the functions of the Corporation or shall be used to improve or add to the Common Areas or Recreation Center prior to such dissolution. No assets of the Corporation shall be distributed upon dissolution or otherwise to any incorporator, Member, donor, officer, or employee.

Section 7. Non-Liability of Directors. The Directors shall not be liable to the Members of the Corporation for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith, or gross negligence. The Corporation shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm, or Corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Articles of Incorporation or Code of By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation and that in all matters the Board is acting for and on behalf of the Corporation and as its agent. Every contract made by the Board or the Managing Agent on behalf of the Corporation shall provide that the Board of Directors and the Managing Agent, as the case may be, are acting as agent for the Corporation and shall have no personal liability thereunder.

Section 8. Additional Indemnity of Directors. The Corporation shall indemnify any person, his heirs, assigns, and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was Director, officer, or employee of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit, or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit, or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit, or proceeding, if it shall be found by a majority of the committee composed of the Directors not involved in the matter in controversy (whether or not a quorum) in their judgment reasonably exercised that such Director, officer, or employee was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in such action, suit, or proceeding against a Director, officer, or employee, no Director, officer, or employee shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director, officer, or employee relied on the books and records of the Corporation, or any accountant, attorney or other person, firm, or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

The rights of indemnification and reimbursement set forth above shall not be deemed exclusive of any other rights to which such officers, Directors, or employee may be entitled apart from the provisions of this Article.

Section 9. Reliance by Directors on Books of Account, etc. Each Director of the Corporation shall be fully protected in relying in good faith upon (a) the books of account of the Corporation, or (b) statements prepared by any of its officers and employees as to the value and amount of the assets, liabilities and net profits of the Corporation, or any of such items, or (c)

statements or advice made by or prepared by any attorney, other person, or firm, employed by the Corporation to render advice or service.

Section 10. Covenant Controls. In the event of any conflict between the provisions of these Articles and the Covenants, the provisions of the Covenants shall govern.