

**CODE OF BY-LAWS OF  
WHISPERING OAKS PHASE II HOMEOWNERS  
AND RECREATION CENTER, INC.**

**ARTICLE 1**

**Identification and Applicability**

Section 1.1. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Covenants with Restrictions and with Design Guidelines (“Covenants”). The Covenants 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 By-Laws. The definitions and terms as defined and used in the Covenants shall have the same meaning in these By-Laws. The provisions of these By-Laws shall apply to the Common Area and the Property and the administration and conduct of the affairs of the Association Corporation.

Section 1.2. Individual Application. All of the Members, future Members, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Lot in Whispering Oaks II Subdivision or any part of the Common Area or the Property, shall be subject to the restrictions, terms, and conditions set forth in the Covenants, these By-Laws, and the Act, and to any rules and regulations adopted by the Board of Directors as herein provided.

**ARTICLE 2**

**Meeting of Association**

Section 2.1. Purpose of Meetings. At least Annually, and at such other times as may be necessary, the meetings of the Members shall be held for the purpose of electing the Board of Directors (subject to the provision of Section 3.2 hereof), approving the annual budget, providing for the collection of Assessments, and for such other purposes as may be required by the Covenants, these By-Laws, or the Act.

Section 2.2. Annual Meetings. The Annual meeting of the Members of the Association Corporation shall be held on the 3<sup>rd</sup> Tuesday of February in each calendar year. At the Annual meeting the Members shall (subject to the provision of Section 3.2 thereof) elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.3. Special Meetings. A special meeting of the Members of the Association may be called by resolution of the Board of Directors or upon a written petition of at least fifty percent (50%) of the Members who have not less than a majority of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association

Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.4. Notice and Place of Meeting. All meeting of the members of the Association Corporation shall be held at any suitable place within thirty (30) miles of Clark County, Indiana, as may be designated by the Board of Directors. A written notice stating the date, time, and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association Corporation to each Member entitled to vote there at not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Members at the addresses of their respective Lots and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Association Corporation to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Association Corporation with its name and address in accordance with these By-Laws. Attendance at any meeting in person, by agent or by proxy shall constitute a waiver of notice of such meeting.

Section 2.5. Voting and Conduct of Meetings.

(a) Number of Votes.

(1) Each Class "A" Member shall be entitled to cast one (1) vote for each Lot he owns on each matter coming before the meeting as to which he is entitled to vote, except as the Declarant which shall have ten (10) votes for each lot owned. When more than one person constitutes the Owner of a particular Lot, all such persons shall, in aggregate, constitute one (1) Member of the Association, and all of such persons cumulatively have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. No vote may be divided. Each

(2) Class "B" Member shall be entitled to cast only one (1) vote regardless of how many lots he owns on each matter coming before the meeting as to which he is entitled to vote.

(b) Multiple Member. Where the Owner of a Lot constitutes or consists of more than one person, or is a partnership, there shall be only one voting representative entitled to the one (1) vote all of the Percentage Vote allocable to that Lot. In the case of a Multiple member or a partnership, those persons constituting such Member or the partners shall file with the Secretary of the Association Corporation a proxy appointing one of such persons or partners as the voting representative for such Lot, which shall remain in effect until all of such parties constituting such multiple Member or the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Member no longer owns such Lot. Such appointed voting representative may grant a proxy to another to vote in his/her place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.5, which shall not constitute a permanent relinquishment of his/her right to act as voting representative for the Lot.

(c) Voting by Corporation or Trust. Where a corporation, company, or trust is a Member or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation or company duly empowered by the Board of Directors of such corporation or company may cast the vote to which the corporation or company is entitled. The secretary of the corporation or company or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the corporation or company stating who is authorized to vote on behalf of said corporation, company, or trust.

(d) Proxy. A Member may vote either in person or by his duly authorized and designated representative ~~attorney-in-fact~~. The Member shall duly designate his representative ~~attorney-in-fact~~ in writing, delivered to the Secretary of the ~~Association Corporation~~ prior to the meeting pursuant to the Act.

(e) Quorum. Except where otherwise expressly provided in the Covenants, these By-Laws, the Act or the Indiana Not-For-Profit Corporation Act of 1971, as amended (hereinafter referred to as the "Code" "Statute"), the Members (in person, by proxy, by electronic conferencing, etc.) representing at least forty percent (40%) of the entire membership ~~a majority of the Percentage Vote~~ shall constitute the quorum at all meetings. ~~The term majority of Members or majority of Percentage Vote, as used in these By-Laws, shall mean the Members entitled to more than fifty percent (50%) of the Percentage Votes in accordance with the member of each lot as set forth in the Plat of Whispering Oaks Subdivision, as such may be amended from time to time.~~

(f) Recreation Center Lot. The Recreation Center Lot, of which all Members are joint Owners, will not be entitled to a vote.

(g) Approved Voting Methods. Approved voting methods include, but are not limited to voting in person or by proxy by show of hands or by ballot, mail-in voting, and electronic voting.

(h) Conduct of Annual Meeting. The President of the ~~Association Corporation~~ shall act as the Chairman of all annual meetings of the ~~Association Corporation~~ if he is present. At all annual meetings, the Chairman shall call the meeting to order at the duly designated time and business will be conducted in accordance with Robert's rules of order in the following order:

(1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a ~~majority of the Percentage Vote~~ vote in favor of at least fifty percent (50%) of the votes cast when a quorum is represented. Approval of the minutes shall be in accordance with Robert's Rules of Order.

(2) Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the ~~Association Corporation~~ and answer relevant questions of the Members concerning the Assessments and financial report for the prior year and the proposed budget for the current year.

(3) Budget. The proposed budget for the current fiscal year shall be presented to the Members for amendment and/or approval. Approval of the budget shall be in accordance with Robert's Rules of Order.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by any Member from those persons eligible to serve. Nominations must be received at least twenty-one (21) days prior to the Annual meeting. Voting for the Board of Directors will be by any method approved by the Board of Directors. Each Member may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association Corporation at least twenty-one (21) seven (7) days prior to the date of the meeting; however, on a case-by-case basis, that such written request notice requirements may be waived at the meeting if agree by a majority of the Percentage Vote by a vote in favor of at least fifty percent (50%) of the votes cast if a quorum is present.

(6) Adjournment.

(i) Conduct of Special Meeting. The President of the Association Corporation or his delegate shall act as Chairman of any special meetings of the Association Corporation. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

## ARTICLE 3

### Board of Directors

Section 3.1. Management. The affairs of the Association Corporation shall be governed and managed by the Board of Directors (herein collectively call "Board" or "Directors" and individually called "Director"). The initial Board of Directors shall be composed of six (6) persons no fewer than eight (8) and no more than twelve (12) Directors. No person shall be eligible to serve as Director unless he is, or is deemed in accordance with the Covenants to be, a Member excluding a person appointed by Declarant as provided in Section 3.2 hereof.

#### Section 3.2. Additional Qualifications.

(a) Multiple Member, Partnership, Corporation, Company, Trust, or other Legal Entity. Where a Member consists of more than one person or is a partnership, corporation or company, trust, or other legal entity, then one of the persons constituting the multiple Member, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot in Whispering Oaks Subdivision may be represented on the Board of Directors by more than one person at a time.

(b) Background Checks. A legal background check shall be conducted on each person elected to the Board. Any felonies or other crimes involving fraud, financial malfeasance, drugs, or violence in the preceding ten (10) years shall be grounds for

disqualification. At their discretion, the Board shall have the authority to disqualify an elected person for other legal infractions not specifically aforementioned. If any elected person is disqualified by background check, the nominee who is next in line in votes received shall be considered elected to the Board.

(c) Hiatus between Terms. Members shall not serve consecutive terms as a Director and can only be appointed or re-nominated on or after the second Annual meeting from the time they finish a term or vacate their position on the Board.

Section 3.3. Term of Office and Vacancy. Subject to the provisions of Section 3.2 hereof, two (2) members of the Board of Directors shall be elected . . . such first election after the Applicable Date. Generally, four (4) members of the Board of Directors shall be elected at each annual meeting of the Association. Each member of the Board of Directors shall be elected for a term of three (3) years. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Members if a Director is removed in accordance with Section 3.4 of this Article III. The Directors so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.4. Removal of Directors. A Director or Directors may be removed with or without cause by vote of a majority of the Percentage Vote a vote in favor of at least fifty percent (50%) of the entire membership. In such case, his successor shall be elected at the same meeting from eligible Members nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Members and until his successor is duly elected and qualified.

Section 3.5. Duties of the Board of Directors. The Board of Directors shall provide for the administration, the maintenance, upkeep, and replacement of the Common Area, the Property, and assets of the Association, and the collection and disbursement of the Assessment. After the applicable date, The Board may, on behalf of the Association Corporation, with approval of more than fifty percent (50%) of the membership, employ a professional property management agent (hereinafter called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) Protection, surveillance and replacement of the Common Area or the Property, provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association Corporation, the Board, or Managing Agent must provide any on-site or roving guards, security service, or security system for protection or surveillance, and the same need not be furnished;

(b) Procuring of utilities, removal of garbage and waste, and snow removal from the Common Area and the Property;

(c) Landscaping, painting, decorating, furnishing, maintenance, and upkeep of the Common Area and the Property;

(d) Surfacing, paving, and maintenance of private streets, parking areas, and sidewalks;

- (e) Assessment and collection from the Members of the Members' share of the Assessment;
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Member at the same time as the notice of annual meeting is mailed or delivered;
- (g) Preparing and delivering annually to the Members a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Member simultaneously with delivery of the proposed annual budget for the current year;
- (h) Procuring and maintaining for the benefit of the Members, the Association Corporation and the Board the insurance coverages required under the Covenants and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable.

Section 3.6. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a Managing Agent to assist the Board in performing its duties with approval of more than fifty percent (50%) of the membership;
- (b) To purchase for the benefit of the Members such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association Corporation;
- (d) To employ, designate, discharge, and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, keep, repair, and replacement of the Common Area and/or the Property;
- (e) To include the costs of all of the above and foregoing as Assessments and to pay all of such cost therefrom;
- (f) To open and maintain a bank account or accounts in the name of the Association;
- (g) To adopt, revise, amend, and alter from time to time rules and regulations with respect to use, occupancy, operation, and enjoyment of the Common Area and the Property;

Section 3.7. Limitation on Board Action. ~~After the Applicable Date,~~ The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of a majority of the Percentage Vote by a vote in favor of at least fifty percent (50%) of the entire membership, except that in the following cases such approval shall not be necessary:

- (a) Contracts for replacing or restoring portions of the Common Area or the Property damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Members at the annual meeting; and

(c) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Members.

Section 3.8. Compensation. ~~No Director shall receive any compensation for his services as such except to such extent as may be authorized by a majority of the Percentage Vote.~~ A Director may receive reasonable compensation for his services actually rendered to the Association expressly approved by the Directors and their selection process of vendors or for the reimbursement of expenses that are documented by receipt of same. In either case, such services must be an approved budget line item. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be ~~an Assessment~~ included in the annual budget.

Section 3.9. 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. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting and post a public notice on the website.

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Clark County, Indiana, or any of the contiguous counties, as shall be designated in the notice.

Section 3.10. Waiver of Notice. Before any meeting of such Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken there at, shall, as to such Director constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.11. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.12. Non-Liability of Directors. The Directors shall not be liable to the Members or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual misconduct, bad faith, or gross negligence. The Association Corporation shall indemnify and hold harmless and defend 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 Association Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Covenants or 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 Association Corporation and that in all matters the Board is acting for and on behalf of the Association Corporation as its agent. The liability of any Member arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his percentage interest as determined by the number of Lots. Every contract made by the Board or the Managing Agent on behalf of the Association Corporation shall provide that the Board of Directors, are acting as agent for the Association Corporation and shall have no personal liability thereunder, except in their capacity as Members (if applicable) and then only to the extent of their Percentage Interest.

Section 3.13. Additional Indemnity of Directors. The Association Corporation shall indemnify, hold harmless, and defend 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 a Director of the Association Corporation, against the reasonable expenses, including attorney's 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 provide 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 Association 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 instructed by legal authority a majority of the Percentage Vote that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication on any action, suit, or proceeding against a Director, no Director 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 relied on the books and records of the Association Corporation or statement or advice made by or prepared by the Managing Agent of the Association Corporation or any officer or employee thereof, or any accountant, attorney, or other person, firm, or corporation employed by the Association 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.

Section 3.14. Bond. The Board of Directors may require the Managing Agent, Treasurer, and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Association Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be an Assessment.

Section 3.15. Waiver of Dues. The annual assessment for owners each year shall be waived for any owner serving as a Board of Director. If the owner resigns before fulfilling their term, they shall pay any assessment in full for the period not served. This waiver shall not be for any special assessments that are required by any owner or member of the Whispering Oaks Phase II Recreation Center, Inc. d/b/a/ Whispering Oaks II Homeowner's Association and Clubhouse.



## ARTICLE 4

### Officers

Section 4.1. Officers of the Association Corporation. The principal officers of the Association shall be the President, Secretary, and Treasurer all of whom shall be elected by the Board. No single Director shall hold more than one of these named officer positions. The Directors may appoint assistant officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.2. Election of Officers. The officers of the Association Corporation shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an Association Corporation or a stock corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the members as he may deem necessary to assist in the affairs of the Association Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 4.5. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association Corporation and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.6. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association Corporation and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities, and other valuables, which may from time to time come into possession of the Association Corporation. He shall immediately deposit all funds of the Association Corporation coming into his hands within a reasonable time in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Association. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association Corporation to the extent appropriate as part of its duties.

Section 4.7. Assistant Officer. The Board of Directors may, from time to time, designate and elect from among the Directors, assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall delegate to the and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

## ARTICLE 5

### Assessments

Section 5.1. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Member a financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.2. Proposed Annual Budget. After the Applicable Date Annually, on or before the date of the annual meeting for the Association Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Member at or prior to the time of the notice of such annual meeting is mailed or delivered to such Members. The annual budget shall be submitted to the Members at the annual meeting of the Association Corporation for adoption and, if so adopted, shall be the basis for the Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Members, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the Percentage Vote vote in favor of at least a fifty percent (50%) of the votes cast when a quorum is represented; provided, however, that in no event shall the annual meeting of the Members be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Assessments and all sums assessed by the Association Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The Annual budget shall be expended against the line items for the current year. Any unexpended or unallocated budgeted funds at the end of the budget year shall be applied to any outstanding debts of the Association. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Members shall not constitute a waiver or release in any manner of the obligations of the Members to pay the Assessments as herein provide, whenever determined. Whenever, whether before or after the annual meeting of the Association Corporation, there is no annual budget approved by the Members as herein provided for such current fiscal year, the Members shall continue to pay Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.3. Reserves. The annual budget and the Assessments shall in addition include the establishment and maintenance of a Reserve Fund for capital expenditures and replacement and repair of the Common Area and/or the Property, which Reserve Fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area and/or the

Property. The annual budget shall include a line item allocating at least five percent (5%) of the budget towards the maintenance or replenishment of the Reserve Fund except in the case discussed below. The Reserve Fund shall not exceed a total balance of more than twenty percent (20%) of the annual budget at any time; therefore, once the Reserve Fund reaches twenty percent (20%) of the current budget, no further deposits will be made in that budget year unless the fund should fall below twenty percent (20%) due to expenditures. In addition, in the event that the Reserve Fund is at twenty percent (20%) of the budget at the end of a budget year, the next year's budget shall not require a line item for the Reserve Fund. Such Reserve Fund for capital expenditures and replacement and repair of the Common Area and/or the Property shall be maintained by the Association in a separate interest-bearing account or accounts with one or more banks or savings and loan Associations authorized to conduct business in Clark County, Indiana, selected from time to time by the Board.

Section 5.4. Assessments. The annual budget as adopted by the Members shall, based on the estimated cash requirement for the budget, contain a proposed assessment against each Lot based upon the number of Lots of Whispering Oaks Phase II in the Subdivision plus additional members of the Corporation owned by Class "A" Members. Immediately following the adoption of the annual budget, each Member shall be given written notice of such assessment against his respective Lot (herein called the "Assessment"). In the event the Assessment for a particular fiscal year is initially based upon a temporary budget, such Assessment shall be revised within fifteen (15) days following adoption of the final annual budget by the Members, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Members. The aggregate amount of the Assessments shall be equal to the total amount of expenses provided and included in the final annual budget. The Assessment against each Lot shall be paid in advance in equal monthly installments, ... of the last month of such fiscal year in lump sum by the 1<sup>st</sup> day of May with such payments being Assessment shall be made to the Board of Directors or to a financial institution as directed by the Board of Directors.

In the event the Assessment for a particular fiscal year of the Association was initially based upon a temporary budget: (a) if the Assessment based upon the final annual budget adopted by the Members exceeds the amount of the Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year no later than 60 days after the approval of the final annual budget, or (b) if the Assessment based upon the temporary budget exceeds the Assessment based upon the final annual budget adopted by the Members, such excess shall be credited against the next payment or payments of the Assessment coming due, until the entire amount of such excess has been so credited; provided, however, that if an Member had paid his Assessment either quarterly, semi-annually, or annually in advance, then the adjustments set forth under (a) above or this subparagraph (b) shall be made by a cash payment by, or refund to, the Member on the first day of the second month following the determination of the Assessment based upon the annual budget finally adopted by the Members shall be refunded to each Member by a cash payment no later than 60 days of the approval of the final annual budget.

The Assessment for the current fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Assessment may not have been made by that date. The fact that a Member has paid his Assessment for the current fiscal year in whole or in part base upon a temporary budget and thereafter, before the annual budget and Assessment are finally determined, approved, and adjusted as herein provided, sells, conveys, or transfers his Lot or any interest therein, shall not relive or release such Member or his successor as Member of such Lot from payment of the Assessment for such Lot as finally determined, and such Member and his successor as Member of such Lot shall be jointly and severally liable for the Assessment as finally determined. Any statement of unpaid Assessments furnished by the Association Corporation pursuant to Section 5.6 hereof prior to the final determination and adoption of the annual budget and Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. ~~Monthly installments of Assessments shall be due and payable automatically on their respective due dates~~ The Assessment shall be due and payable no later than the first day of May without any notice from the Board or the Association Corporation, and neither the Board nor the Association shall be responsible for providing any notice or statements to Members for the same.

Section 5.5. Special Assessments. From time to time, expenses not covered by the Assessment of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and with the approval of the Members, the Board of Directors shall have the full right, power, and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Covenants.

Section 5.6. Failure of Member to Pay Assessments. No Member may exempt himself from paying Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Area and/or the Property and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area and/or the Property or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all regular and Special Assessments. If any Owner shall fail, refuse or neglect to pay any regular Assessment or Special Assessment when due, a late charge of twenty percent (20%) of the unpaid assessment amount or fifty dollars (\$50.00), whichever is greater, shall be added to the balance owed, plus interest of one and three-fourths percent (1  $\frac{3}{4}$ %) per month beginning thirty (30) days after the date due, and the following additional provisions shall apply:

- (a) A lien for any and all unpaid assessments on the Owner's Lot may be filed and foreclosed by the Board of Directors for and on behalf of the Association Corporation as a mortgage on real property or as otherwise provided by law;

- (b) The Board may bring suit to recover a money judgment for any unpaid regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same;
- (c) The Association Corporation may recover costs of collection (including fees charged by the Managing Agent) and attorney fees in addition to any other amount due;
- (d) Where the Owner constitutes more than one person, the liability of such persons shall be joint and several;
- (e) The Owner, the lessee of any residential unit, and any adult occupant of a residential Lot shall be jointly and severally liable for the payment;
- (f) The balance of installments for the current fiscal year shall become immediately due; and
- (g) The Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect any rentals for the benefit of the Association Corporation to be applied to the unpaid Regular Assessments or Special Assessments.

Section 5.7 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (prorated to the date of sale or transfer). No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof nor relieve the Lot owner from personal liability for any prior assessments.

Section 5.8. Maintenance and Repairs. If, due to the willful, intentional, or negligent acts or omissions of a Member or of a Member of his family, or of a guest, tenant, or other occupant, or visitor of such Member, damage shall be caused to the Common Area and/or the Property, or if maintenance, repairs, or replacements shall be required thereby which would otherwise be at the Assessment, then such Member shall pay for damage and such maintenance, repairs, and replacements, as may be determined by the Association Corporation, unless such loss is covered by the Association's Corporation's insurance with such policy having a waiver of subrogation clause. Maintenance, repairs, and replacements to the Common Area and/or the Property shall be subject to the rules and regulations adopted from time to time by the Board.

Section 5.9 Real Estate Taxes. Real estate taxes for individual Lots and parcels are to be separately assessed and taxed to each Lot or parcel, and paid by the title owner thereof. Any real estate taxes or other assessments which are separately assessed against the Common Area shall be paid by the Association and treated as a common expense.

## ARTICLE 6

### Restrictions, Entry, and Rules and Regulations

Section 6.1. Restrictions on Use. The following restrictions on the use and enjoyment of the Lots, Common Area, and the Property shall be applicable to Whispering Oaks Phase II Subdivision and are in addition to those set forth in the Covenants and are subject to the Covenants.

(a) All owners and members of their families, their guests, or invitees, and all occupants of any Lot or other persons entitled to use the same and to use and enjoy the Common Area, the Property, or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area and the Property.

(b) No Member shall be allowed to plant trees, landscape, or do any gardening of the Common Area or the Property, except with express permission from the Board.

(c) No Member shall be allowed to place or cause to be placed in the Common Area or on the Property any furniture, packages, or objects of any kind, without the consent of the Board.

(d) The Common Area and the Property shall be used only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Section 6.2. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operating of the Common Area and the Property, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Members.

Section 6.3 Access Rights. Soon after the Clubhouse was opened, certain owners of lots in Whispering Oaks Phase I, were afforded the opportunity to have access right privileges to the Clubhouse facilities by paying the designated assessment as outlined by the Board. These owners are not Members of the Association, nor have voting rights, but have access right privileges governed by the same rules and regulations as Members of the Association. The owners who have an unbroken history of paying the annual assessment will continue to be afforded the opportunity to have these access right privileges.

## ARTICLE 7

### Amendment to By-Laws

Section 7.1. Subject to any contrary, overriding or superseding provisions set forth herein or in the Covenants, these By-Laws may be amended by a vote in favor of at least ninety percent (90%) of the votes cast at a meeting duly called and held or by some other approved voting method when a quorum is represented. ~~in the same manner, and subject to the same limitations and requirements, as General Amendments to the Covenants.~~ Amendments to these By-Laws shall be considered as amendments of the Covenants and shall be recorded in the office of the Recorder of Clark County, Indiana. ~~Notwithstanding anything to the contrary contained herein or in the Covenants, there shall be no amendment of the Covenants or these By Laws prior to the Applicable Date without the consent and approval of Declarant.~~

## ARTICLE 8

### Mortgages

8.1. Notice to Association Corporation. Any owner who places a first mortgage lien upon his Lot or the Mortgagee shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Covenants, these By-Laws or the Act shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Covenants, these By-Laws, or the Act shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of the Covenants, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

The Association Corporation shall, upon request of a Mortgagee who has furnished the Association Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Covenants or these By-Laws which is not cured within sixty (60) days.

Section 8.2. Notice of Unpaid Assessments. The Association Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments or Special Assessments against the Lot, which statement shall be binding upon the Association Corporation and the owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid Assessments in excess of the amount set forth in such statement except as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 5.4 5.3 hereof.

## ARTICLE 9

### Miscellaneous

Section 9.1. Fiscal Year. The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January in each year and end on the 31<sup>st</sup> of December next following.