

COVENANTS AND RESTRICTIONS

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

The Whispering Oaks Phase II Recreation Center, Inc. d/b/a Whispering Oaks II Homeowner's Association and Clubhouse, as owners in fee simple of real property located in Clark County, State of Indiana, and known by official plat designation as Whispering Oaks Phase II, ("Whispering Oaks II") a subdivision, to the County of Clark, pursuant to a plat recorded on 13th day of September 2004 in the Plat Book 13, page 66 as instrument No. 200423373, Recorder of Clark County, Indiana.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting such subdivision, class A members declare that all of the described real property and each part of such property shall be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which constitutes covenants running with the land and shall be binding on all parties having any right, title, or interest in the described property or any part of such property, their heirs, successors, and assigns, and shall inure to the benefit of each owner of such property.

ARTICLE ONE

DEFINITIONS

Section 1.1. "Association." shall mean and refer to "Whispering Oaks Phase II Recreation Center, Inc. d/b/a Whispering Oaks II Homeowner's Association and Clubhouse," its successors and assigns.

Section 1.2. "ACC." shall mean and refer to the Architectural Control Committee.

Section 1.3. "Board." shall mean and refer to the Board of Directors for the Association.

Section 1.4. "Common Area." shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of conveyance of the first lot is described as shown on the Plat which is incorporate herein.

Section 1.5. "Subdivision." shall mean the Whispering Oaks Phase II Development described above and such additions to such Development as may be brought within the jurisdiction of the Association as provided for in this declaration. (Added)

Section 1.6. "Lot." shall mean any plat of land shown on the recorded subdivision map.

Section 1.7. "Owner." shall mean the record owner, whether one or more persons or entities of a fee simple title to any lot that is part of the Development and shall include

contract sellers, but shall not include those holding title merely as security for the performance of an obligation.

Section 1.8. "Member." shall mean every single owner, single representative of multiple owners, or single representative or agent of an entity that owns a Lot. (Added)

Section 1.9. "Act." shall mean the State of Indiana code (I.C. 32-25.5-1, et. seq.). (Added)

ARTICLE TWO

~~DESIGN ARCHITECTURAL~~ GUIDELINES

The intent of these Design Guidelines is to establish the standard of design for the Whispering Oaks II Subdivision. These requirements are intended to assist builders and homeowners in the construction of site improvements on residential platted lots within Whispering Oaks. These Guidelines apply to all properties within Whispering Oaks II and are in addition to any requirements of Clark County. The ACC of Whispering Oaks II must approve all improvements prior to the commencement of construction. These Guidelines are intended to serve for the life of the Subdivision and accordingly may be amended by the ACC from time to time. The ACC reserves the right to waive or vary any of the procedures or standards set forth in this document, at its sole discretion. The following is information which is required as part of the submittal for ACC approval for any improvement at Whispering Oaks II.

Section 2.1 SCHEDULE. The ACC will render a decision within 30 days of receipt of a complete and accurate submittal of the request for approval, which request shall be in the form attached hereto as Exhibit A. No incomplete submittal will be reviewed. Any submittal, which is contrary to established guidelines, will be automatically denied ~~and the Architectural Control Committee requires no written denial.~~ The ACC will give the applicant written notice of approval or disapproval for all complete submittals. This approval must be received prior to the commencement of construction.

Section 2.2 DESIGN REVIEW FEES. ~~The ACC reserves the right to establish and collect fees for the review of application. Fee, if any, will be provided through notice to applicants.~~ (Deleted)

Section 2.3 FENCING. The ACC has the right to approve the design, materials and location of all fences prior to the installment thereof. The ACC reserves the right to inspect the fence at any time before, during or after construction to insure compliance with the approved fencing plan.

The ACC retains the sole and absolute right to dictate the use of a single fence design for installation along landscape easements.

A. FENCING REQUIREMENTS. The ACC will generally approve the following types of fences:

1. Non-stockade Non-split rail style wood fences are generally approved, provided such fences do not exceed 6 feet in height; and are planned to be sealed, stained, or painted; provided, however, in no event shall any wood fence which abuts the retention facility exceed 48 inches in height. Stockade Split rail style wood fences are prohibited.
2. Vinyl clad chain-link fences are generally approved, provided such fences do not exceed 48 inches in height unless such fences are used to surround pools, in which event fence height restrictions are 6 feet or as required by law. Plain chain-link fences are prohibited.
3. Wrought iron fences are generally approved provided such fences do not exceed 5 feet in height.
4. Vinyl fences are generally approved, provided such fences do not exceed 6 feet in height.

B. FENCING LOCATIONS. All fencing must be approved prior to the installation of a given fence. The following are guidelines regarding fencing locations, which generally will be approved by the ACC:

1. No fencing will be allowed forward from the back of the house. With respect to Corner lots, this includes the side yard facing the side street of the residence. Refer to City of Jeffersonville Fence Guidelines for location and height of fences on corner lots.
2. The fencing of drainage, utility and landscape easements is prohibited. Fencing may extend into easements with the understanding that any damage caused by utility work will be the responsibility of the homeowner to repair. Fencing may be installed up to the property line, but egress must be available for maintenance (i.e., gate installed in rear fence).

C. FENCING, INVISIBLE. Generally, requests for invisible fencing will be approved subject to the approval of the proposed fence location prior to installation. All controller boxes and other equipment shall be hidden from view.

Section 2.4 DOG KENNELS AND HOUSES. None allowed.

Section 2.5 MINI BARNES AND ACCESSORY STRUCTURES. Generally, requests for mini-barns, storage sheds, and accessory structures may be approved if they meet the following conditions ~~will be denied.~~

- A. Requested via written request to be approved by ACC.
- B. Must be constructed with quality materials and include a guard on bottom of unit to protect against scarring by weed eaters.
- C. No jacked-up units or units on stilts shall be approved.
- D. 2x4 construction.
- E. Constructed on and anchored to concrete foundation.
- F. No metal or vinyl siding. Structure must be constructed of quality materials for exterior siding to include Smart Siding, Hardi Siding, T1-11 (painted or stained), Cedar plank, brick, stone, manufactured stone or stucco, treated wood, or other quality material.

- G. Shingle roof.
- H. Windows to be prebuilt vinyl, wood, or wood clad.
- I. If stained, neutral colors and if painted, match trim of house.
- J. No logos.
- K. No lean-to roof or add-on buildings.
- L. No larger than 12'x10' and height not to exceed 10'.
- M. Must be maintained in good condition or will be considered and dealt with as a nuisance.

Section 2.6 ANNTENNAS-TELEVISION, RADIO AND SATELLITE. Generally, requests for the attachment of a TV or radio antenna to the exterior of the home or the placement of satellite dishes on a given lot will be denied unless the satellite dish is eighteen to thirty (18" – 30") inches in diameter and proposed to be placed in an approved location prior to the dish's installation. Placement should be in the least visible location, preferably not visible from the street. Wiring should be concealed as much as possible to minimize the length of visible wiring running along or down the outside of the home. When satellite dish is replaced or removed, the roof should be repaired to original condition.

Section 2.7 PORCHES, SCREENED-IN PORCHES, ROOM AND GARAGE ADDITIONS. Generally, requests for screened in porches and garage and room additions will be approved subject to the following guidelines:

- A. The additions shall be constructed with quality materials.
- B. The roofline shall follow the natural roofline of the home, or be approved by the ACC.
- C. The roof, siding, and trim shall match the colors of the primary residence.
- D. All detailed construction plans must be substantially similar to the outside of the primary residence.

Section 2.8 GAZEBOS. Generally, requests for the installation of Gazebos will be approved subject to the following guidelines:

- A. The gazebo shall be constructed of quality materials and shall be firmly anchored into the ground.
- B. The gazebo shall not exceed fifteen (15') in height.
- C. The ACC has the right to approve the design and location of the gazebo prior to construction.
- D. Any structure with a roof must have a building permit and be approved by the City of Jeffersonville.

Section 2.9 ABOVE-GROUND POOLS. The ACC prohibits installation of above-ground or on-ground pools with the exception of children's wading pools. Children's wading pools will be addressed on a case-by-case basis. Wading pools must be placed in back yard. No alteration to the existing grade of any lot may be done without prior approval of the ACC. Grass must be restored to original condition after pool removal.

Section 2.10 IN-GROUND POOL. In-ground pools may be approved with building permit and appropriate fence. The pool fence must meet ACC requirements and be properly permitted and inspected by City of Jeffersonville.

Section 2.11 POOL HOUSES. Pool equipment must be screened from view. Pool houses may be approved by the ACC with building permit from City of Jeffersonville. To be approved, pool houses must be placed on concrete foundation and constructed with same brick and shingles as used on the house.

Section 2.12 BASKETBALL COURTS OR OTHER SPORT FACILITIES. Generally, requests for the installation of basketball courts or tennis courts will be approved subject to the following criteria being met.

- A. The ACC has the right to approve the design and location of the court prior to the construction thereof.
- B. The ACC will not approve basketball courts in excess of six hundred twenty-five square feet (25' X 25') or tennis courts in excess of standard size.
- C. The court shall be constructed of concrete or asphalt materials.
- D. Generally, no lighting will be permitted.
- E. ~~Generally, requests for other sports facilities will be denied.~~ Temporary basketball goals may not be placed on street or curb and must be weighted with sand or water inside the base (i.e., piling bags, wood, or any other material visibly atop the goal base is not permitted).

Section 2.13 VEGETATION. ~~A homeowner shall not permit the growth of weeds and volunteer trees and bushes on his lot and will keep his lot reasonably clear from such unsightly growth at all times.~~ Homeowner shall maintain lawn and landscaped areas including the treatment of weeds. Grass should be maintained at optimal height (3" – 6") to prevent weed germination. Bare spots should be reseeded in spring and/or fall. Sidewalks should be edged and grass growing between cracks in sidewalk and/or driveway removed. If a homeowner fails to comply with the restriction, the Association shall cause the weeds to be cut and the lot cleared of such growth at the expense of the homeowner thereof and the Association shall have a lien against the cleared lot for the expense thereof.

Section 2.14 SIGNAGE. All signage is subject to local and state regulations. ~~The Declarant and its' builders reserve certain sign rights as outlined herein.~~ All signage, except as follows, is subject to the approval of the ACC. ~~The Declarant and its' builder'are hereby exempted from this requirement.~~

No signage shall be located in such a place whereby it restricts or obstructs traffic visibility. No identification signage will be allowed within the right-of-way of a dedicated public street, nor in any area not specifically approved by the ACC.

Section 2.15 TEMPORARY SIGNAGE. All signage is subject to ACC approval; however, one (1) builder sign shall be allowed in the front yard of a primary residence. One (1) builder and one (1) realtor sign will be allowed subject to ACC approval as to placement, size and colors utilized.

Section 2.16 PROHIBITED SIGNAGE. The ACC generally will not approve the following signage:

- A. Signs advertising goods, services, or home occupations.
- B. Pennants, banners and portable signage not approved by the ACC.
- C. ~~During development, no entranceway signage shall be allowed except by the Declarant and its designated builders.~~
- D. No entranceway signage is allowed with exception of approval by the ACC.

Section 2.17 SOD. All front and side yards to back edge of the house must be sodded.

Section 2.18 LIGHTS AND MAILBOXES. ~~The Declarant shall dictate~~ The Subdivision has adopted a standard mailbox. The cost of each shall be the responsibility of the purchaser or builder of the home. The title owner shall be responsible to keep mailbox and lights in good repair and shall not alter the mailbox without ACC approval. All mailbox numerals shall be the same color, style, and size as the Subdivision standard and shall be displayed on both sides of the mailbox.

Section 2.19 PLAYGROUNDS. The ACC has the right to approve all requests for playground structures prior to their installation. Generally, requests for playground structures will be approve subject to the following guidelines:

- A. The location of the structure prior to is installation must be approved by the ACC.
- B. The structure shall be constructed of quality materials. Generally, requests for the installation of non-commercial metal playgrounds will be denied.
- C. The playground structure shall not exceed fifteen (15') in height.

Section 2.20 FLAG POLES. ~~Generally, requests for flag poles will be denied.~~ Attachment of flagpoles to the rear of the primary residence shall be allowed. Requests for a flag pole to fly an American Flag will generally be approved. However, all American Flags must follow the guidelines as set out in Public Law 109-243 by the 109th Congress. Repair, maintenance, and operation of any approved flag pole is the responsibility of the owner.

Section 2.21 OUTSIDE LIGHTING. The title owner shall keep dusk to dawn lighting in good repair with working light bulbs. Generally, requests for the installation of outside security lighting will be approved subject to the following conditions being met:

- A. Outside lights shall not exceed two standard floodlights with light bulbs not to exceed 150 watts and 90-watt Halogen bulbs.
- B. The following lights are not approved for outside security lighting – High Intensity Discharge (H.I.D.) lighting or Halogen lights in excess of 90 watts.
- C. No more than two double floodlights will be approved without specific approval form ACC.
- D. Landscape lighting shall be low-voltage type lighting and must be directed down. “Up” directed lighting and fixtures must be low-voltage.
- E. All exterior lighting (i.e. landscape, security, etc.) must fall within property limits. Lighting that is directed offsite shall be prohibited.

Section 2.22 RETAINING WALLS. Any proposed retaining wall must be materially (i.e., stone, brick, etc.) and architecturally compatible with the exterior finishes of the residence and shall be approved by the ACC prior to installation. Retaining walls, which divert ground water onto adjoining properties or which otherwise substantially, change the existing drainage pattern will not be permitted.

Section 2.23 BUILDING MATERIALS; ROOF; BUILDER.

- A. The exterior building materials of all residential structures shall extend to minimum of twelve (12) inches above ground level and shall be wither brick, stone, brick veneer, dryvit or stone veneer or a combination of the same shall be approved by the ACC before installation.
- B. The roof pitch of any residential structure shall not be less than eight- (8) inches vertical for every twelve- (12) inches horizontal for all structures.
- C. The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of one (1) year and must have supervised the construction of, or built a minimum of six (6) homes. Declarant makes The Owners make this requirement to maintain high quality of construction within the Subdivision, and the ACC reserves the right to waive these standards of experience, based upon a reasonable showing of equivalent experience or other similar factors.

Section 2.24 MINIMUM FLOOR AREA.

- A. The ground floor area of a one (1) story house shall be a minimum of 1400 square feet, of a 1 ½ story home 1500 square feet, and of a two-story home 1700 square feet, exclusive of the garage (but not of any finished living space above the garage).
- B. Finished basement areas, garages and open porches shall not be included in computing total floor plan area of any residential structures, measured at the center line of the foundation, exclusive of any porches and garages.
- C. Any slab or crawlspace foundation must be built on a poured concrete foundation. No block shall be allowed.

ARTICLE THREE

COVENANTS AND RESTRICTIONS

These covenants and restrictions are as follows:

Section 3.1 Residential. All lots and dwelling units shall be used exclusively for residential purposes and for occupancy by a single family.

Section 3.2 Insurance. No owner shall permit anything to be done or kept in his Lot or on his Lot or on any of the Common Area which will result in a cancellation of insurance or increase in insurance to the Association or to any other Owner, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

Section 3.3 Nuisance. No nuisance shall be permitted on any Lot, in any unit, or elsewhere in the Subdivision. Without limiting the scope of the term “Nuisance”, it shall include anything which endangers life or health, or obstructs the reasonable, comfortable, and peaceful use of property, or its value, as well as that which give offense to the senses or violates the laws of decency. The Board of Directors’ determination as to what specific circumstances constitute a nuisance shall be conclusive. Examples of Nuisance: Basketball goal on ground or on curb; Dead or overgrown shrubbery and/or trees; Persistent visible clutter around the exterior of the home; Moldy fences or fence in need of repair or stain/seal/paint; Barking dogs. ~~In addition, barking dogs shall constitute a nuisance.~~

Section 3.4 Exterior Decoration. ~~With the exception of temporary, seasonal decorations,~~ no Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Unit or placed on the outside walls of any building. No awning, canopy, shutter, or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without prior consent of the ACC. ~~Seasonal decorations must be removed within thirty (30) days after the seasonal event.~~

Section 3.5 Business. No business of any kind shall be advertised at any residence ~~conducted on any residence with the exception of the business of the Declarant and transferees of Declarant developing the lots.~~

Section 3.6 Signs. No “for sale”, “for rent”, “garage sale”, or other signs for any purpose shall be placed upon any common area or upon any Lot other than the Lot which is for sale, for rent, or upon which the garage sale will be held, without the express consent of the Board. Any “for sale”, “for rent”, “garage sale”, or other yard signs, whether placed on any Lot or with the Board’s consent placed in the Common Area, shall be limited in size to what is commonly used in the residential real estate community, as determined by rules established by the Board. No more than one sign may be placed on any Lot without the prior consent of the Board. No banner or signs ~~(excluding seasonal decorations)~~ shall be hung from any home or elsewhere on any Lot for more than two (2) weeks without ACC approval ~~the prior consent of the Board.~~ Only realtor signs fall outside the purview of this restriction and those signs must be limited to the yard of the property that is for sale.

Section 3.7 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Dwelling Unit or on any Lot or any of the Common Area. Pet dogs, cats, or customary household pets may be kept in the Dwelling Unit, provided such pet is not kept, bred, or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner, and the Association shall not be liable for any injury or damage to persons or property, including the Common Area, caused by the pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time, including, without limitation, a restriction on the number of pets, the prohibition of particular species or breeds, and the prohibition of pets in particular areas of the Subdivision. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, ~~after affording the owner ample opportunity to remedy the situation, shall be permanently removed from the Subdivision within ten (10) days after written notice from the Board.~~

Section 3.8 Disposal of Litter. The Lots and Common Area shall be kept free and clear of rubbish, debris, and other unsightly materials. No Owner or guests of an Owner, nor any builder, contractor or subcontractor, shall litter or dispose of trash improperly anywhere within the Subdivision.

Section 3.9 Unlawful Usage. No Dwelling Unit or Lot or any portion of the Common Area shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Subdivision, or which might be a nuisance, annoyance, inconvenience or damage to other equipment, machines, or vehicles, loud voices, excessive amounts of light, vibration, or unpleasant odors.

Section 3.10 Laundry. No Clothes, sheets, blankets, rugs, laundry, or other things shall be hung out or exposed on, or so as to be visible from, any street or any part of the Common Area or from neighboring properties. No temporary or permanent clothesline for drying clothes, sheets, blankets, rugs, laundry, or other things shall be permitted.

Section 3.11 Garage Sale. No garage sale, moving sale, rummage sale, or similar activity and no trade or business may be conducted in or from any Lot, except with the prior approval of the Board. The Board may establish rules generally permitting such sales, or permitting such sales on a limited basis.

Section 3.12 No Water Wells. No water wells shall be drilled on any of the Lots, without prior approval of the Board, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots, without the approval of the Board and of the governing public health agency or other civil authority.

Section 3.13 Water Usage. No person shall draw water or other materials from the lakes (if any) or other water retention ponds or add water, except for storm water drainage approval by the Declarant or by the ACC, or other materials, whether by dumping or otherwise, to the lakes and other water retention ponds without the prior approval of the Board as to quality and quality of materials.

Section 3.13 Parking. The Board may prohibit or limit parking on the streets of the residential subdivision, but in no event No boat, recreational vehicle, motor home, trailer, or disabled vehicle may be parked on the street or in the driveway for more than 24 hours without notification and approval of the ACC. Parking on the street is discouraged. Overnight parking in the driveway is mandatory. The only time vehicles are allowed to park overnight on the street is when the driveway is full.

Section 3.14 No Industry. No industry, trade, or other commercial or religious activity, educational or otherwise, whether designed for profit, altruism or otherwise, shall be conducted, practiced or permitted upon any Lot or elsewhere within the Subdivision, except within such rules and regulations as are established by the Board, and except that an Owner or resident may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the

Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real estate; (c) the business activity does not involve ~~persons coming onto the Real Estate who do not reside on the Real Estate or~~ door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as any be determined in the sole discretion of the Board.

Section 3.15 Observe Rules and Regulations. All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rule 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.

Section 3.16 No Crops. No Lot may be used for growing crops, except the size and location guidelines established by the ~~Board. The Board~~ ACC who shall have the right and authority to ~~prohibit~~ limit the growing of crops ~~entirely~~.

Section 3.17 Common Area Uses. The Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Section 3.18 No Short Term Leases. No Owner may rent or lease his Dwelling Unit for transient or hotel purposes or for any purpose for a period of less than ~~six~~ twelve (12) months without prior approval of the Board.

Section 3.19 Leases. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease, for a period of at least ~~six~~ twelve (12) months, which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease.

Section 3.20 No Partial Improvements. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage, without approval from the ACC. Also, any improvement or addition to an existing structure shall be completed within three months from the time of commencement, except with the approval of the ACC.

Section 3.21 ~~No Dumps~~ Trash Cans. ~~Trash cans should be placed at curb the night before or morning of pickup and should be returned to storage same day as pickup. Trash cans must be stored out of sight, either in back yard or in garage. No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage, or other waste shall be kept in sanitary containers out of public view. Rubbish and garbage containers shall not be permitted to remain conspicuous except on days for trash collection.~~

Section 3.22 Fines. Fines for Violation of Covenants. The Board of Directors may assess a fine or penalty, not exceeding fifty dollars (\$50.00) per incident, against any Owner

violating the Covenants and Restrictions in the Declaration or in the Plat Covenants or any rule established by the Board. A continuing violation may be assessed an additional fine, not exceeding fifty dollars each week until corrected, at the discretion of the Board. Any such fine will be considered to be a special assessment against the Owner and the Owner's Lot or Dwelling Unit.

Section 3.23 Solar Panels. Must be approved by the ACC prior to installation. (Added)

ARTICLE FOUR

ASSESSMENTS (moved to By-Laws)

ARTICLE FIVE

HOMEOWNER'S ASSOCIATION (moved to By-Laws)

ARTICLE FOUR

ARCHITECTURAL CONTROL

Section 4.1 Purposes. The ACC shall regulate the external design, appearance, use and location of improvements on the Real Estate in such manner as to preserve and enhance values and to achieve and maintain a harmonious relationship of architectural design, structural improvements, landscaping, and the natural vegetation and topography.

Section 4.2 Architectural Control Guidelines. The Board of Directors shall have the authority to establish, amend, and revoke architectural Control Guidelines for the Association, which shall be binding upon all Owners and all others who in any way use, occupy, or benefit from the Subdivision, or any part thereof. The Architectural Control Guidelines shall not be inconsistent with any Covenant in this declaration or in the Plat Covenants and shall not be retroactively applied. The Architectural Control Guidelines may be enforced by the ACC or by the Board of Directors.

The Architectural Guidelines for the subdivision shall be established and amended by the Declarant, in its sole discretion, prior to the Authority Transfer Date. After the Authority Transfer Date, Any amendments to the Architectural Guidelines for the Subdivision shall be approved by a two-thirds majority vote of the Owners to be affected thereby any meeting at which a quorum of such owners is present or by mail in vote, as provided in Article 7 hereof. vote in favor of at least fifty percent (50%) of the entire membership. All affected Owners shall receive notice of any amendments to the Architectural Guidelines within reasonable time after their enactment.

Section 6.3. New Construction Committee. The New Construction Committee shall consist of one or more persons appointed by the Declarant to review, and approve or reject, all plans for new construction or residences constructed on any Lot and any other structures, including,

but not limited to, site plans, blueprints, specifications of materials, exterior colors, soil and natural landscaping preservation plans, landscape plans, and utility plans for all new construction within the Whispering Oaks II Subdivision. The New Construction Committee shall have authority over any changes during initial construction of a new residence, prior to initial occupancy, and the ACC shall have authority over any changes after initial occupancy of the residence.

After the completion of initial construction of a residence on each lot and the construction of all units planned within the Whispering Oaks Subdivision or at such earlier date as the Declarant, in its sole discretion shall determine, the Declarant shall assign the New Construction review responsibilities to the ACC. (Deleted)

Section 4.3 Architectural Design and Environmental Control. Subsequent to approval of new construction by the ACC and completion of construction pursuant to the approval, no additional structure or improvement including, but not limited to, accessory structures, fences, walls, mounds, ponds, pools, basketball goals and other permanent structures for sports and recreation shall be erected, placed, or altered on any Lot in this Subdivision until the building plans, specifications and plot plan showing the location, materials, and appearance of the planned improvement, including the exterior colors, have been submitted to and approved by the ACC regarding conformity and harmony of external design, topography, and finished ground elevations.

The destruction of trees and vegetation and any other such matter as may affect the environment and ecology of the Subdivision must also be approved in advance by the Committee. Exempted from the architectural approval requirement shall be items of landscape maintenance such as pruning of trees and removal of dead trees and limbs by any person or entity have responsibility for such maintenance.

Section 4.4 Composition of the Committee. The ACC will be composed of at least three Owners. All members of the Committee, including replacement members, will be appointed by and will serve at the will of the Board of Directors.

Section 4.5 Written Approval. The ACC's approval or disapproval of any properly submitted application shall be in writing. In the event that written approval is not sent by the ACC within thirty (30) days from the date of submission of a completed application and any additional documentation requested by the ACC, and so long as the request is not prohibited by the Architectural Guidelines then in effect, it shall be deemed that the ACC has approved the presented plan.

Section 4.6 Additional Approvals. Under no circumstances shall approval of the ACC be deemed to replace any required governmental approval or be deemed to constitute a representation or assurance by the ACC that the planned structure or improvement meets the requirements of any law, regulation or ordinance or meets any structural or safety requirements of standard.

Section 4.7 Alterations, Without Approval. The ACC and/or the Board of Directors shall have the right and authority to require the removal of any improvement which has been made without receiving the approval of the ACC or which is substantially different in appearance, size, color, materials, location, or otherwise, from what was approved by the ACC, including injunctive relief, and recovery of costs or removal, damages, reasonable attorney fees, and costs.

Section 4.8 Exercise of Discretion. The members of the ACC shall exercise discretion in the performance of their duties consistent with the provisions of the Article, and every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by such members. In a judicial proceeding challenging a determination by the ACC and in any action initiated to enforce this Declaration in which an abuse of discretion by the ACC is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the ACC, could only conclude that such determination constituted as abuse in discretion.

Section 4.9 Builders Obligation. The Association shall have the authority to require any person or company building a home on any Lot to be responsible for regular and continual clean-up of construction debris and the construction site, and periodic street cleaning of the Subdivision.

Section 4.10 Builder Signs within the Subdivision. Notwithstanding any other provision in this declaration or in any Plat Covenants regulating signs, at any time before the sale of the last Lot within the Whispering Oaks Phase II Subdivision, the builders may place identification, sales promotions and advertising signs in landscape easements, and on Lots or parcels owned by said builders, of such size and quantity as the ACC, in its sole discretion, shall approve.

Section 4.11 Miscellaneous Provisions.

- A. The ACC's approval of, or failure to object to, a requested improvement for one Lot shall not prevent it from objecting to a similar improvement for another Lot in the Subdivision, if it deems, in its sole discretion, that the requested improvement would be detrimental to the Subdivision or other Owners.
- B. Neither the members of the ACC nor their designated representatives will be entitled to any compensation for services performed on behalf of the ACC.
- C. A decision of the ACC may be appealed to the Board of Directors by the Applicant or by an adjoining Owner, which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors serving.
- D. Members of the ACC shall be appointed to serve a three- (3) year term and may serve no more than two (2) consecutive terms.
- E. Any member of the ACC may be removed by the Board of Directors with or without cause by a majority vote at a meeting duly called for such purpose.
- F. Members of the ACC have the right to inspect work being performed (at reasonable times with reasonable advanced notice) to insure compliance with these Restrictions and applicable regulations.

ARTICLE FIVE

LOSS TO COMMON AREA

Section 5.1 Restoration of Common Area. In the event of damage to or destruction of any portion of the Common Area or Easements due to fire or any other casualty or disaster, the Association shall, except as otherwise provided in the Section, promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction, and the balance shall be paid first from the reserve account and second, as assessments or Special Assessments.

For purposes of the Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture. However, the Board may elect to improve or update the improvements or damaged area, within discretion, so long as there are sufficient insurance proceeds, or funds in Reserve Accounts.

The Board of Directors may elect not to repair or reconstruct the Common Area and may apply the proceeds of insurance to other purposes consistent with these Covenants and where the Board of Directors determines that the Common Area or improvements which have been damaged or destroyed are not used and useful to the Subdivision or the portions of the Subdivision for which such Common Area or improvements were intended to serve, or where the Common Area or improvements which have been damaged or destroyed can not be economically restored with the funds available both from the insurance proceeds and from other funds reasonably available to the Associations for such purpose.

ARTICLE SIX

AMENDMENTS OF COVENANTS

Section 6.1 General Amendments. Except as otherwise provided in these Covenants, amendments of the Covenants shall be proposed and adopted in the following manner:

- A. Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- B. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by Owners having in the aggregate at least one-third (1/3) of the votes of all Owners.
- C. Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association attached hereto.
- D. Adoption. Any proposed amendment to these Covenants must be approved by a vote in favor of at least fifty percent (50%) of the entire membership of not less than fifty percent (50%) in the aggregate of the votes of all Owners.

Section 6.2 Special Amendments. No amendment to these Covenants shall be adopted which changes: (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same; or (2) the provisions of these Covenants with respect to reconstruction or repair or the Common Area in the event of fire or any other casualty or disaster; or (3) the provisions of these Covenants establishing the ACC and providing for its functions; or (4) the provisions of these Covenants with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, a vote in favor of at least two-thirds (2/3) of the entire membership ~~the approval of at least seventy percent (70%) of all Owners.~~

Section 6.3 Recording. Each amendment to the Covenants shall be executed by any two officers of the Association and shall be recorded in the office of the Recorder of Clark County Indiana and such amendment shall not become effective until so recorded.

ARTICLE SEVEN

MISCELLANEOUS PROVISIONS

Section 7.1 Limitation on Time to Build or Rebuild. Any builder or development company who acquires a Lot or parcel in the Subdivision agrees to commence construction of the intended residence or other development upon the Lot or parcel within two years of the date of purchase and complete construction of the residence or other development within one year from the date construction commences on said Lot or parcel. Extensions of these requirements may be granted in the sole discretion of the ACC Declarant.

Failure to honor this condition shall establish as Option to Purchase said Lot and improvements thereon for cash at an appraised price as hereinafter detailed exercisable by written notice from the Association to the owners of said Lot within sixty (60) days of expiration of the initial or extended period.

The appraised price shall be agreed upon within ten (10) days of the Lot owner's receipt of the above written notice and if agreement is not reached within such time, the Lot owner and the Association Declarant agree to submit the question of appraised value to professional appraisers and be bound by same.

Each party shall select an appraiser and the two appraisers shall select a third, and this third appraiser shall proceed to determine the value of the Lot and improvements. Both parties agree to name their respective appraiser within fifteen (15) days of the date of the aforesaid written notice. The appraisal shall be made within twenty-five (25) days of the date of the aforesaid written notice and the appraiser shall make his report in writing and furnish a copy thereof to each of the parties within five (5) days thereafter. The appraiser shall consider, in making his or her appraisal, the cost of completing construction according to the plans and the ordinary and usual costs of sale. Each party shall pay one-half (1/2) of the cost of this appraisal and shall be conclusively bound by the appraisers' determination.

In the event of any loss to a residence or accessory structure within the Subdivision, unless the Owner obtains approval from the ACC for an extension of time or permission not to rebuild, the Owner shall begin to rebuild within six (6) months of the loss and shall complete the rebuilding within nine (9) months of the loss. Failure to rebuild within these time allowances, or any time allowances extended by the Committee, shall afford the Association ~~have either the Declarant, the Association, or the applicable Subdivision Association~~ the option to purchase as outlined in this Section.

Section 7.2 Acceptance and Ratification. All present and future Owners, Mortgagees, tenants, and Occupants of any Lot shall be subject to and shall comply with the provisions of these Covenants, the Articles of Incorporation, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that such provisions are accepted and agreed to by such Owner, tenant, or occupant. All such provisions shall be covenants running with the land and shall be binding on any person having at a time any interest in a Lot or any portion of the Real estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof. All persons or other legal entities who may occupy, use enjoy, or control a Lot or any part of the Real Estate shall be subject to these Covenants, the Articles of Incorporation, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

Section 7.3 Association's Right to Purchase. The Association shall have the right to purchase Lots, either from any Builder, Owner, or foreclosure, sheriff's, or tax sale. The Association may use reserve funds, regular budget funds, or special assessment in order to do so.

Section 7.4 Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, or lessees. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy, or abandonment of his Lot or of the Common Area.

Section 7.5 Costs and Attorney's Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provisions of these Covenants, the Articles of incorporation, or the rules and regulation adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable Attorney's fees incurred in connection with such default or failure.

Section 7.6 Waiver. No Owner may exempt himself from liability for his contribution toward the Assessments, whether Assessment or Special Assessment, by waiver of the use or enjoyment of any of the Common Area by abandonment of his Lot.

Section 7.7 Severability Clause. The invalidity of any covenant, restriction, condition, limitation, or other provision of these Covenants, the Articles of Incorporation, or the Rules and Regulations adopted by the Board shall not impair or affect in any manner the validity,

enforceability, or effect of the rest of these Covenants, the Articles of Incorporation, or the Rules and Regulations, and each shall be enforced to the greatest extent permitted by law.

Section 7.8 Resolution of Disputes. Any dispute arising hereunder regarding the allocation of the budget requirements or assessments among Owners or the By-Laws and operation of the Association shall first be submitted, under the Indiana Rules for alternative Dispute Resolution, for mediation and if mediation is not successful within thirty days of the request of any party for mediation, then the dispute shall be submitted for binding arbitration. A mediator or arbitrator agreeable to the parties does not have to be an attorney.

Section 7.9 Interpretation. Any references to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate. The captions and titles of the various articles and sections of these Covenants shall not be used as an aid in interpreting or construing these Covenants or any provision hereof.

IN WITNESS WHEREOF, the undersigned, as the Association governing the above described real estate, has hereunto executed this Declaration this ____ day of _____, 2019.