

COVENANTS AND RESTIRCTIONS

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

21st Century Developers, Inc. called Declarant, is the owner in fee simple of real property located in Clark County, State of Indiana, and know by official plat designation as Whispering Oaks Phase II, ("Whispering Oaks") a subdivision, to the County of Clark, pursuant to a plat recorded on 13 day of Sept 2004 in the Plat Book 13, page 66 as instrument NO. 200422373, 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, declarant declares 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. "Association." shall mean and refer to "Whispering Oaks Phâse II Homeowner's Association," its successors and assigns, and "Associations" shall mean "Whispering Oaks Phase II Homeowners Association" and "Whispering Oaks Recreational Center, Inc."

Section 2. "ACC." shall mean and refer to the Architectural Control Committee.

Section 3. "Board." Shall mean the Board of Directors for the Association.

Section 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 incorporated herein.

Section 5. "Declarant." shall mean 21st Century Developers, Inc.,

and declarant's successors, and assigns provided such successors or assigns acquire more than one undeveloped lot from Declarant for the purpose of development.

Section 6. "Lot." shall mean any plat of land shown on the recorded subdivision map.

Section 7. "Members." shall mean every person or entity who holds membership in the Association.

Section 8. "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.

Sections 9. "Development." shall mean the subdivision described above and such additions to such Development as may be brought within the jurisdiction of the Association or Development as provided for in this declaration.

ARTICLE TWO

DESIGN GUIDELINES

The intent of these Design Guidelines is to establish the standard of design for the Whispering Oaks 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 and are in addition to any requirements of Clark County. The Architectural Control Committee of Whispering Oaks 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 Architectural Control Committee from time to time. The Architectural Control Committee reserves the right to waive or vary any of the procedures or standard set forth in this document, at its sole discretion. The following is information which is required as part of the submittal for Architectural Approval for any improvement at Whispering Oaks.

Section 2.1 SCHEDULE. The Architectural Control Committee 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

submittals 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 Architectural Control Committee 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 Architectural Control Committee reserves the right to establish and collect fees for the review of applications. Fee, if any, will be provided through notice to applicants.

21st Century Developers, Inc. and its agents reserve the right to make any modifications to the Design Guidelines that it deems necessary without notice.

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 Architectural Control Committee 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 style wood fences are generally approved, provided such fences do not exceed 5 feet in height; provided, however, in no event shall any wood fence which abuts the retention facility exceed 48 inches in height. Stockade 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 even fence height restrictions are 5 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.
- 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.
2. The fencing of drainage, utility and landscape easements is prohibited.

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 BARNS AND ACCESSORY STRUCTURES. Generally requests for mini-barns, storage sheds, and accessory structures will be denied.

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 less than or equal to eighteen (18) inches in diameter and placed in an approved location prior to the dish's installation.

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 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.

Section 2.9 POOLS. The ACC prohibits the installation of aboveground or on-ground pools. Children's wading pools will be addressed on a case by case basis. No alteration to the existing grade of any lot may be done without prior approval of the ACC.

Section 2.10 POOL FENCING. Any application for construction of an in-ground pool will not be considered unless the application is accompanied by an application for an acceptable fence design. The design shall conform to state, county, or municipal regulations for such fencing. Generally, only wrought iron type fencing will be approved around a pool.

Section 2.11 POOL HOUSES. Pool houses must be approved by the ACC. Pool equipment must be screened from offsite view by solid and/or landscape screening.

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'X25') 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.

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. 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' builders 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 soddèd.

Section 2.18 LIGHTS AND MAILBOXES. The Declarant shall dictate 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 mailboxes and lights in good repair and shall not alter the mailboxes or lights either without ACC approval. The title owner at all times shall keep dusk to dawn lighting in good repair with working light bulbs. **Mailboxes to be wrought iron.**

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 approved subject to the following guidelines:

- A. The location of the structure prior to its 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. Repair, maintenance and operation of any approved flag pole is the responsibility of the owner.

Section 2.21 OUTSIDE LIGHTING. 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 double 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 from 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 structures shall extend to minimum of twelve (12) inches above ground level and shall be either brick, stone, brick veneer, dryvit or stone veneer or a combination of the same. However, Declarant recognizes that the appearance of other exterior building materials (such as wood siding) may be attractive and innovative, and reserves the right to approve in writing the use of other exterior building materials.
- 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 this requirement to maintain high quality of construction within the subdivision, and 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, exclusive of the garage.'
- B. The square footage of a 1 ½ story home 1500 square feet, exclusive of the garage, and on a two story home 1700 square feet, exclusive of the garage (but not of any finished living space above the garage).
- C. 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.
- D. 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, In addition, barking dogs shall constitute a nuisance.

Section 3.4 Exterior Decoration. 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 the prior consent of the ACC.

Section 3.5 Business. No business of any kind shall be conducted on any residence with the exception of the business of the Declarant and transferees of Declarant in 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 if 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 she common areas, 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 banners or signs shall be hung from any home or elsewhere on any Lot for more than one week, without the prior consent of the Board.

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, except 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 any 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, 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, inconvenient of damage to other equipment, machines or vehicles, loud voices, excessive amounts or 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 Areas or from neighboring properties.

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 3.14 Parking. The Board may prohibit or limit

parking on the streets of the residential subdivision, but in no event shall a recreational vehicle, motor home, trailer , boat, or disable vehicle be parked or stored overnight or longer on any street or lot in open public view.

Section 3.15 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 than 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 involve 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 3.16 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 3.17 No Crops. No Lot may be used for growing crops, except the size and location guidelines established by the Board. The Board shall have the right and authority to prohibit the growing of crops entirely.

Section 3.18 Common Area Uses. The Common Areas 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 3.19 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 months without prior approval of the Board.

Section 3.20 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 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 3.21 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 3.22 No Dumps. 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 3.23 Fines. Fines for Violation or 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 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 Unit.

ARTICLE FOUR

ASSESSMENTS

Section 4.1 Proposed Annual Budget After the Authority Transfer Date. The Board of Directors of the Associations shall submit a proposed Annual Budget and Assessment estimating the total amount of the expenses for the upcoming fiscal year, to each Owner in conjunction with the Associations' annual meeting. Once an Annual Budget is adopted, it shall be the basis for the Assessment for the upcoming fiscal year.

The Annual Budget may include an amount for the Replacement Reserve Fund for capital expenditures, and replacement and repair of the Common Areas.

An Annual Budget and Assessment shall be approved and adopted at each Annual Meeting of the Owners.

Section 4.2. Proposed Annual Budget Prior to the Authority Transfer Date. Prior to the Authority Transfer Date, the Declarant shall establish the amount and payment terms of Assessments based upon the same items of expense and considerations as provided in Section 4.1 above, without the prior approval of the Owners. The Assessments, including management fees and contributions towards the replacement reserve fund, shall not exceed One Hundred Dollars (\$100.00) per year, per lot for the Homeowners Association and Three Hundred Dollars (\$300.00) per year, per lot for the Recreation Center, in the first year after these Covenants are filed.

Prior to the Authority Transfer Date, the Declarant shall not be obligated to pay any management fee or contribution towards the replacement reserve fund for the Corporation, or any assessment of any kind or nature.

Section 4.3. 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.

Section 4.4. Maintenance, Repairs and Replacements to the Common Area. Maintenance, repairs, replacements and upkeep of the common area shall be furnished by the Associations, as a part of its duties, and the cost thereof shall constitute a part of the common expenses.

Section 4.5. Reserves. As a part of any regular or special assessment, the Associations may collect funds for a reserve for future expenses.

Section 4.6. Failure of Owner to Pay Assessments. 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 ¾%) 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 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 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 Corporation to be applied to the unpaid Regular Assessments or Special Assessments.

Section 4.7. 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.

ARTICLE FIVE

HOMEOWNERS ASSOCIATION AND RECREATION CENTER ASSOCIATION

Section 5.1. Homeowner's Association. There is established the Whispering Oaks Homeowner's Association ("Association"), an Indiana not-for-profit corporation.

Section 5.2. Voting Rights. The Corporation shall have two (2) classes of membership. Class A members shall be all Owners of Lots in the Whispering Oaks Subdivision other than the Declarant.

The Declarant shall be a Class B member for each Lot titled in its name or in the name of the fee owner and for each lot planned within the Subdivision. The Whispering Oaks Subdivision is presently zoned for an approximate total of 500 lots, and this shall be the starting figure for lots in the name of the Declarant. This figure shall be reduced by sales of lots by Declarant, property withdrawn from these Covenants, or the recording of plats having fewer than the maximum number of lots permitted by the zoning approved for this Subdivision. In addition any builder authorized by Declarant shall also be a Class 2 member of any lots owned by such builder.

Section 5.3. Class A Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner. When more than one person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but 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.

Section 5.4. Class B. Members. The Class B Member shall have ten (10) votes for each Lot planned within Whispering Oaks, designated on the recorded Plat, and any additions or revisions thereto prior to the Authority Transfer Date, of which it is the Owner.

Section 5.5. Definition of 'Author of Transfer Date'. Class B membership shall terminate and become converted to Class A memberships (the "Authority Transfer Date"), upon the happening of the earliest of the following:

- (a) when the total of all Class A votes exceed the total of all Class B votes; or
- (b) January 31, 2020; or
- (c) When, in its discretion, the Declarant so determines and provides sixty days notice to the members.

Section. 5.6. Prior to the Authority Transfer Date. Prior to

Authority Transfer Date as defined above, the Declarant shall appoint all members to the Board of Directors of the Corporation and shall have full authority to establish rules and regulations for the Corporation and for the Subdivision. Directors appointed by the Declarant shall serve at the will of the Declarant and shall be considered Owners of the Corporation only for the purpose of serving on the Board.

The Board of Directors, prior to the Authority Transfer Date, shall not be required to hold Meetings, and if meetings are held, they shall not be required to be held in public, and notice to other Owners shall not be required. In addition, prior to the Authority Transfer Date, the board of Directors shall not be required to seek owner approval of the budget or the annual assessments.

Section 5.7. Builder's Obligation. The Declarant shall have the authority to require any person or company building a home on any Lot to escrow an amount up to five percent (5%) of the anticipated construction cost to assure proper completion of construction, regular and continual clean up of construction debris and the construction site, and periodic street cleaning of the Subdivision. However, imposition of this escrow requirement and enforcement of these requirements shall be within the sole discretion of the Declarant, and no Owner shall have any rights against the Declarant or to require an escrow to be deposited or to require clean up by any builder.

Prior to the Authority Transfer Date, neither Declarant nor home builders authorized by the Declarant will be required to pay any assessments to the Association.

Section 5.8. The Architectural Control Committee. Until sixty days after the Declarant has sold the last Lot or Unit in Whispering Oaks and any additions to Whispering Oaks, the Declarant shall have the right to appoint all members of the Architectural Control Committee. However, the Declarant may elect, from time to time, to transfer authority of the Architectural Control Committee to the owners (with or without also transferring authority for the New Construction Committee) prior to this time.

Section 5.9. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the exclusive right to manage or designate a Managing agent for the Real Estate and Common Areas and to perform all or any portion of the functions of the corporation until the Authority Transfer

Date. Declarant may at its option, engage the services of a Managing Agent, including a Managing Agent affiliated with Declarant, to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services. Declarant's contract with the managing agent shall be for a term of not more than three years, providing for early cancellation by Declarant, without cause and without penalty, with not more than 60 days prior notice.

Section 5.10. Declarant's Authority to Add Additional Sections. The Declarant may at any time prior to the Authority Transfer Date, supplement the property subject to these Covenants by filing an amended or additional Plat so described, which additional real estate shall automatically be subject to these Covenants and the Owners or Lots of such additional real estate shall automatically become members of the Association. In addition, the Declarant may, at any time prior to the Authority Transfer Date, add additional real estate to the Whispering Oaks Subdivision including additional lots, or land for additional common area, so long as such real estate is contiguous to, or will in the future, be contiguous to platted and developed real estate within the Whispering Oaks Subdivision. In the events that additional real estate is added by Declarant, the votes attributed to the lots in such new preliminary layouts or platted sections shall be counted for purposes of voting rights and for all other purposes from the date of recording of the amended Plat for such additional section.

Section 5.11. Declarant and Builder Signs within the Subdivision. Notwithstanding any other provision in this declaration or in any Plat Covenants regulating signs, the Declarant, and any builder with written authority from the Declarant, at any time before the sale of the last lot within the Whispering Oaks Subdivision, may place identification, sales promotions and advertising signs in landscape easements, common areas and on lots or parcels owned by Declarant or by said Builders, of such size and quantity as Declaration, in its sole discretion, shall approve.

Section 5.12. Meeting of Owners. Meetings of Owners shall be as set forth in the By-Laws as set in the attachment hereto.

Section 5.13. Governing of Association. The Association shall be operated as set forth in the By-Laws attachment hereto, and made a part of.

Section 5.14. Recreation Center Association. There is also established the Whispering Oaks Recreation Center, Inc. ("Corporation"), an Indiana not-for-profit corporation which every owner of the Development as an owner is also a member of the Association.

Section 5.15. Voting Rights. The Corporation shall have two (2) classes of membership. Class A members shall be all Owners of Lots or Units in the Whispering Oaks Subdivision, other than the Declarant, and any other members which may include owners of lots in Whispering Oaks, Phase I, allowed to join in pursuant to the rules and regulations as set forth by the Board of Directors.

The Declarant shall be a Class B member for each Lot or Unit titled in its name or in the name of the fee owner and for each lot or unit planned within the Subdivision. In addition any builder authorized by Declarant shall also be a Class B member of any lots or units owned by such builder.

Section 5.16. Class A Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner. When more than one person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons cumulatively have only one (1) vote for such Lot or Unit, which vote shall be exercised as they among themselves determine. No vote may be divided.

Section 5.17. Class B. Members. The Class B Member shall have ten (10) votes for each Lot planned within Whispering Oaks, designated on the recorded Plat, and any additions or revisions thereto prior to the Authority Transfer Date, of which it is the Owner.

Section 5.18. Definition of "Authority of Transfer Date". The "Authority Transfer Date" shall be the same as Section 5.5 herein.

Section 5.19. Prior to the Authority Transfer Date. Prior to Authority Transfer Date as defined above, the Declarant shall appoint all members to the Board of Directors of the Corporation and shall have full authority to establish rules and regulations for the Corporation and for the Subdivision. Directors appointed by the Declarant shall serve at the will of the Declarant and shall be considered Owners of the Corporation only for the purpose of serving on the Board.

The Board of Directors, prior to the Authority Transfer Date,

shall not be required to hold Meetings, and if meetings are held, they shall not be required to be held in public, notice to other Owners shall not be required. In addition, prior to the Authority Transfer Date, the Board of Directors shall not be required to seek owner approval or the budget or the annual assessments.

Section 5.20. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the exclusive right to manage or designate a Managing agent for the Real Estate and Common Areas and to perform all or any portion of the functions of the Corporation until the Authority Transfer Date. Declarant may at its option, engage the services of a Managing Agent, including a Managing Agent affiliated with Declarant, to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services. Declarant's contract with the managing agent shall be for a term of not more than three years, providing for early cancellation by Declarant, without cause and without penalty, with not more than 60 days prior notice. Further, any leases entered into by the Declarant including, but not limited to street lights, shall be transferred and assumed by the Association upon the Authority Transfer Date.

Section 5.21. Declarant's Authority to Add Additional Sections. The Declarant may at any time prior to the Authority Transfer Date, supplement the property subject to these Covenants by filing an amended or additional Plat so described, which additional real estate shall automatically be subject to these Covenants and the Owners of Lots of such additional real estate shall automatically become members of the Association. In addition, the Declarant may, at any time prior to the Authority Transfer Date, add additional real estate to the Whispering Oaks Subdivision including additional lots or land to the Corporation. In the events that additional real estate is added by Declarant, the votes attributed to the Lots in such new preliminary layouts or platted sections shall be counted for purposes of voting rights and for all other purposes from the date of recording of the amended Plan for such additional section.

Section 5.22. Meeting of Owners. Meetings of Owners shall be as set forth in the By-Laws as set in the attachment hereto.

Section 5.23. Governing of Corporation. The Corporation shall be operated as set forth in the By-Laws attached hereto, and made a part hereof.

ARTICLE SIX

ARCHITECTURAL CONTROL

Section 6.1. 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 6.2. 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 she Authority Transfer Date. After the Authority Transfer date, any amendments to the Architectural Guidelines 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. 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 of 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 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.

Section 6.4. Architectural Design and Environmental Control. Subsequent to approval of new construction by the New Construction Committee and completion of construction pursuant to the approval, no additional structure or improvement- including by 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 6.5. Composition of the Committee. The ACC will be composed of at least three members. All members of the Committee, including replacement members, will be appointed by and will serve at the will of the Declarant.

Within sixty days after the Declarant provides notice to the Owners to appoint directors and take over control Of the Committee, the Board of Directors of the ACC shall appoint three or more Owners to serve on the ACC.

UNTIL SUCH TIME, THE DECLARANT SHALL HAVE COMPLETE AUTHORITY AND CONTROL OVER ARCHITECTURAL AND ENVIRONMENTAL DESIGN. During the time that the Declarant has Architectural control, a majority of the ACC members may designate one or more representatives to evaluate and approve specific applications, so that the ACC is not required to meet to review each application.

Section 6.6. 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 6.7. 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 6.8. 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 6.9. Exercise of Discretion. Declarant intends that the members of the ACC exercise discretion in the performance of their duties consistent with the provisions of this 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 6.10. 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. After the Declarant has transferred authority for all Architectural control to the Owners, 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 the serving.

- D. After the Declarant has transferred authority for all Architectural control to the Owners, members of the ACC shall be appointed to serve a three year term and may serve no more than two consecutive terms.
- E. After the Declarant has transferred authority for all Architectural control to the Owners, 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. Prior to the date that the Declarant has transferred authority for all Architectural Control to the Owners, the Declarant may remove any member of the ACC with or without cause.
- 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 SEVEN

LOSS TO COMMON AREAS

Section 7.1 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 this 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 this 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 areas or improvements

which-have been damaged or destroyed are not used and useful to the Subdivision or the portions or the Subdivision for which such common areas or improvements were intended to serve, or where the common areas 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 EIGHT

AMENDMENT OF COVENANTS

Section 8.1 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 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 of not less than fifty percent (50%) in the aggregate of the votes of all Owners.

Section 8.2 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 of 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, the approval of at least seventy percent (70%) of all Owners.

Section 8.3 Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right

and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement these Covenants at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to add or delete land or lots of from the Subdivision, (d) to bring these Covenants into compliance with any statutory requirements, (e) to correct clerical errors or ambiguities in these Covenants or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of Real Estate.

Section 8.4 Amendment Prior to the Applicable Date.

Notwithstanding anything to the contrary contained herein or in these Covenants, there shall be no amendment of these Covenants prior to the Applicable Date without consent and approval of Declarant.

Section 8.5 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 NINE

MISCELLANEOUS PROVISIONS

Section 9.1 Limitation on Time to Build or Rebuild. Any party

other than the Declarant who secures title to 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 year 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 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 Declarant to the owners of said Lot within in 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 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 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 months of the loss and shall complete the rebuilding within nine months of the loss. Failure to rebuild within these time allowances, or any time allowances extended by the Committee, shall have either the Declarant, the Association, or the applicable Subdivision Association the option to purchase outlined in this Section.

Section 9.2 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 9.3 Association's Right to Purchase. The Association shall have the right to purchase Lots, either from the Declarant or 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 9.4 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 9.5 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 regulations 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 9.6 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 9.7 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 9.8 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 9.9 Interpretation. Any reference 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 are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing these Covenants or any provision hereof.

