

CODE OF BY-LAWS OF
WHISPERING OAKS
RECREATION CENTER, INC.

ARTICLE 1

Identification and Applicability

Section 1.1. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Covenants with restrictions and with Design Guidelines ("Covenants"). The Covenants are incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Covenants shall have the same meaning in these By-Laws. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Corporation.

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

ARTICLE 2

Meeting of Corporation

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

Section 2.2. Annual Meetings. The annual meeting of the members of the Corporation shall be held on 2nd Tuesday of February in each calendar year. At the annual meeting the Members shall (subject to the provisions of Section 3.2 thereof)

elect the Board of Directors of the Corporation in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.3. Special Meetings. A special meeting of the Members of the Corporation may be called by resolution of the Board of Directors or upon a written petition of Members who have not less than a majority of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

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

Section 2.5. Voting and Conduct of Meetings.

(a) Number of Votes. Each Member shall be entitled to cast one (1) vote for each Lot he owns on each matter coming before the meeting as to which he is entitled to vote, except as to the Declarant which shall have ten (10) votes for each lot owned.

(b) Multiple Member. Where the Member of a Lot constitutes or consists of more than one person, or is a partnership, there shall be only one voting representative entitled to all of the Percentage Vote allocable to that Lot. At the time of acquisition of title to a Lot by a multiple

Member or a partnership, those persons constituting such Member or the partners shall file with the Secretary of the Corporation an irrevocable proxy appointing one of such persons or partners as the voting representative for such Lot, which shall remain in effect until all of such parties constituting such multiple Member or the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Member no longer owns such Lot. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.5, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Lot.

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

(d) Proxy. A Member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Corporation prior to the meeting.

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

consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE 3

Board of Directors

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

Section 3.2. Initial Board of Directors. The initial Board of Directors ("Initial Board") shall be appointed by Declarant. Notwithstanding anything to the contrary contained in or any other provisions of, these By-Laws or the Covenants or the Act or the Statute, (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Member, by acceptance of a deed to a Lot in Whispering Oaks Subdivision, or by acquisition of any interest in a Lot by any type of juridic acts, inter vivos or causa mortis, or otherwise, or upon becoming a Member hereof, shall be deemed to have appointed Declarant as such Member's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Member's right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Covenants, these By-Laws, the Act, or otherwise. This appointment of Declarant as such Member's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Member granting the same.

Section 3.3. Additional Qualifications. Where an Member consists of more than one person or is a partnership, corporation, company, trust or other legal entity, then one of the persons constituting the multiple Member, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot in Whispering Oaks

Subdivision may be represented on the Board of Directors by more than one person at a time.

Section 3.4. Term of Office and Vacancy. Subject to the provisions of Section 3.2 hereof, two (2) members of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided in Section 3.2 hereof. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date two (2) members of the Board of Directors shall be elected for a three (3) year term, two (2) for a two (2) year term, and two (2) for a one (1) year term so that the terms of one-third (1/3) of the Directors shall expire annually. There shall be separate nominations for the office of each Director to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 3.2 hereof as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Members if a Director is removed in accordance with Section 3.5 of this Article III. The Directors so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the Percentage Vote at a special meeting of the Members duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Members nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Members and until his successor is duly elected and qualified.

Section 3.6. Duties of the Board of Directors. The Board of Directors shall provide for the administration, the maintenance, upkeep and replacement of the property and assets of the Corporation, and the collection and disbursement of the Assessment. After the applicable date, the Board may on behalf of the Corporation employ a reputable and recognized

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

(1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a majority of the Percentage Vote.

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

(3) Budget. The proposed budget for the current fiscal year shall be presented to the Members for approval or amendment.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by any Member from those persons eligible to serve. Voting for the Board of Directors will be by any method approved by the Board of Directors. Each Member may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. The foregoing provisions are subject to the provisions of Section 3.2 hereof.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the Percentage Vote.

(6) Adjournment.

(g) Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation if he is present. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in

professional property management agent (hereinafter called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

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

(b) procuring of utilities, removal of garbage and waste, and snow removal from the Property;

(c) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Property;

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

(e) assessment and collection from the Members of the Members' share of the Assessment;

(f) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Member at the same time as the notice of annual meeting is mailed or delivered;

(g) preparing and delivering annually to the Members a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Member simultaneously with delivery of the proposed annual budget for the current year;

(h) procuring and maintaining for the benefit of the Members, the Corporation and the Board the insurance coverages required under the Covenants and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable.

Section 3.7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(a) to employ a Managing Agent to assist the Board in performing its duties;

(b) to purchase for the benefit of the Members such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation.

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Property;

(e) to include the costs of all of the above and foregoing as Assessments and to pay all of such cost therefrom;

(f) to open and maintain a bank account of accounts in the name of the Corporation;

(g) to adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

Section 3.8. Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of a majority of the Percentage Vote, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Property damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Members at the annual meeting; and

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

Section 3.9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Percentage Vote. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be an Assessment.

Section 3.10. Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

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

Section 3.11. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken there at, shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.13. Non-Liability of Directors. The Directors shall not be liable to the Members or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend

each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Covenants or By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation and that in all matters the Board is acting for and on behalf of the Corporation as its agent. The liability of any Member arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his percentage interest as determined by the number of lots. Every contract made by the Board or the managing agent on behalf of the Corporation shall provide that the Board of Directors, are acting as agent for the Corporation and shall have no personal liability thereunder, except in their capacity as Members (if applicable) and then only to the extent of their Percentage Interest.

Section 3.14. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suite or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Percentage Vote that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statement or advice made by or prepared by the Managing Agent of the Corporation or any officer or empolyee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or

incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 3.15. Bond. The Board of Directors may require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be an Assessment.

ARTICLE 4

Officers

Section 4.1. Officers of the Corporation. The principal officers of the Corporation shall be the President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an assistant officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be preformed by the same person.

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

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

Section 4.4. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.5. The Treasurer. The Board shall elect from among the Directors a treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables, which may from time to time come into possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Corporation. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Corporation to the extent appropriate as part of its duties.

Section 4.6. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Directors, a assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE 5

Assessments

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

Section 5.2. Proposed Annual Budget. After the Applicable Date, annually, on or before the date of the annual meeting for the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Member at or prior to the time the notice of such annual meeting is mailed or delivered to such Members. The annual budget shall be submitted to the Members at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Members, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the Percentage Vote; provided, however, that in no event shall the annual meeting of the Members be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Assessments shall in addition include the establishment and maintenance of a Replacement Reserve Fund for capital expenditures and replacement and repair of the Property, which Replacement Reserve Fund shall be used for those purposes and not for usual and ordinary repair expenses of the Property. Such Replacement Reserve Fund for capital expenditures and replacement and repair of the property; shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan Corporations authorized to conduct business in Clark County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Members shall not constitute a waiver or release in any manner of the obligations of the Members to pay the Assessments as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Members as herein provided for such current fiscal year, the Members shall continue to pay Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.3. Assessments. The annual budget as adopted by the Members shall, based on the estimated cash requirement for the expenses in the current fiscal year as set forth in said

budget, contain a proposed assessment against each Lot based upon the number of lots of Whispering Oaks Phase II Subdivision plus additional members of the Corporation. Immediately following the adoption of the annual budget, each Member shall be given written notice of such assessment against his respective Lot (herein called the "Assessment"). In the event the Assessment for a particular fiscal year is initially based upon a temporary budget, such Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Members, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Members. The aggregate amount of the Assessments shall be equal to the total amount of expenses provided and included in the final annual budget. The Assessment against each Lot shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Assessment shall be made to the Board of Directors, or to a financial institution as directed by the Board of Directors; provided, however, Members may elect to pay monthly assessments quarterly, semiannually or annually, in advance.

In the event the Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget: (a) if the Assessment based upon the final annual budget adopted by the Members exceeds the amount of the Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or (b) if the Assessment based upon the temporary budget exceeds the Assessment based upon the final annual budget adopted by the Members, such excess shall be credited against the next payment or payments of the Assessment coming due, until the entire amount of such excess has been so credited; provided, however, that if an Member had paid his Assessment either quarterly, semi-annually, or annually in advance, then the adjustments set forth under (a) above or this subparagraph (b) shall be made by a cash payment by, or refund to, the Member on the first day of the second month following the determination of the Assessment based upon the annual budget finally adopted by the Members.

The Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Assessment may not have been made by that date. The fact that a Member has paid his Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Member or his successor as Member of such Lot from payment of the Assessment for such Lot as finally determined, and such Member and his successor as Member of such Lot shall be jointly and severally liable for the Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 8.2 hereof prior to the final determination and adoption of the annual budget and Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments of Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Members for the same.

Section 5.4. Special Assessments. From time to time Assessment, and expenses covered by the Assessment of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and with the approval of the Members, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Covenants.

Section 5.5. Failure of Member to Pay Assessments.

(a) No Member may exempt himself from paying Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the property or by abandonment of the Lot belonging to him. Each Member shall be personally liable for the payment of all regular and Special Assessments. Where the Member constitutes more than one person, the liability of such persons shall be joint and several. If any Member shall fail, refuse or neglect to make any payment of any Assessments or Special Assessments when due, the lien for such Assessment on the Member's Lot may be filed and foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of a Member to make timely payments of any Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Member and any occupant of the Lot shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot, and the board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for an on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including, but not limited to, reasonable attorneys' fees, from the Member of the respective Lot.

(b) Notwithstanding anything contained in this Section or elsewhere in the Covenants and these By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu therefore, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Assessment or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Members from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such

foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments or Special Assessments, thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments or Special Assessment, the lien for which has been divested as aforesaid, shall be deemed to be a Assessment, collectible from all Members (including the party acquiring the subject Lot from which it arose), as provided in the Act.

Section 5.6. Assessments Prior to Applicable Date. During the period that the Declarant is developing the Subdivision, it is difficult to accurately allocate the expenses Lots. The purpose of this section is to provide the maintenance and upkeep of property and for the payment of the expenses during the period prior to the Applicable Date. Accordingly, and notwithstanding any other provisions contained in the Covenants, these By-Laws, the Act or otherwise, prior to the Applicable Date, the annual budget and all Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Members; provided, however, the Assessments shall be determined in accordance with the provisions contained in this Section 5.6.

The Corporation may enter into a management agreement with Declarant (or a Corporation or other entity affiliated with Declarant) hereinafter referred to as Management Agent or Managing Agent for a term of two (2) years, with right to extend for two (2) additional terms of two (2) years each under which Management Agent will provide supervision, fiscal and general management, and maintenance of the property and in general perform all duties and obligations of the Corporation. Such management agreement may be renewed for an additional two (2) year or less periods, but shall not extend beyond the Applicable Date. Such management agreement will be subject to termination by Management Agent or by the Corporation at any time prior to the expiration of its term upon ninety (90) days' written notice to the other party in which event the Corporation shall thereupon and thereafter resume performance of all its duties, obligations and functions.

So long as the management agreement remains in effect, the Assessment shall be paid by Members to Management Agent. The Declarant, their successor in interest, or Management Agent shall guarantee that until the later of (a) the termination of said management agreement, or (b) December 31, 2008, the annual Assessment shall not exceed \$300.00 for lot owners and \$450.00 for non-lot owners (the Guaranteed Charge). After December 31,

2008 (assuming that management has not been terminated), and so long thereafter as said management agreement remains in effect, and Management Agent continues to perform such functions, Management Agent guarantees that the Assessment shall not exceed the amount of the Guarantee Charge, plus an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items—all cities) published by the United States Government over such index as existed in the month of May, 2004. The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index. Such adjustments to the Guaranteed Charge shall be made annually on January 2 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Said charge shall during such guaranteed period entirely defray the Member's obligation for his share of Assessment or shall be the Member's entire Assessment. Management Agent shall be responsible for any deficiency during such guaranteed period; provided, however, that this guarantee is not intended to include and does not include major physical alterations or unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments.

Five percent (5%) of the Assessment shall be designated as a Reserve Replacement Fund for repairs or replacement Property that must be repaired and replaced on a periodic basis.

That portion of the Assessment collected by the Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and, if required, applied to the replacement of the Property. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Association at the Applicable Date.

Payment of the Assessments prior to the Applicable Date with respect to each Lot shall commence on the date of conveyance by Declarant to such new owner, or as to Member upon their being acceptable as Member. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Assessments shall be paid the first day of each calendar month during the period prior to the Applicable Date.

In consideration of this guarantee by Management Agent, it is agreed by Member upon acceptance of the Deed that Management

Agent shall only be required to contribute such sum to the maintenance, operation and administration expenses of the Common Areas as may be required to maintain and operate those portions of the Property which from time to time have been submitted by Déclarant to the Covenants. Each Member hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement and to adhere to and abide by the same.

Section 5.7. Maintenance and Repairs. If, due to the willful, intentional or negligent acts or omissions of an Member or of a Member of his family, or of a guest, tenant or other occupant or visitor of such Member, damage shall be caused to the Property, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Assessment, then such Member shall pay for damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. Maintenance, repairs and replacements to the Property shall be subject to the rules and regulations adopted from time to time by the Board.

ARTICLE 6

Restrictions, Entry, and Rules and Regulations

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

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

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

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

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

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

ARTICLE 7

Amendment to By-Laws

Section 7.1. Subject to any contrary, overriding or superseding provisions set forth herein or in the Covenants, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Covenants. Amendments to these By-Laws shall be considered as amendments of the Covenants and shall be recorded in the office of the Recorder of Clark County, Indiana. Notwithstanding anything to the contrary contained herein or in the Covenants, there shall be no amendment of the Covenants or these By-Laws prior to the Applicable Date without the consent and approval of Declarant.

ARTICLE 8

Mortgages

Section 8.1. Notice to Corporation. Any owner who places a first mortgage lien upon his Lot or the Mortgagee shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Covenants, these By-Laws or the Act shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification

of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Covenants, these By-Laws or the Act shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of the Covenants, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

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

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

ARTICLE 9

Miscellaneous

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

Section 9.2. Membership Certificates. Each member of the Corporation shall receive a certificate from the Corporation, signed by the president or vice-president, and secretary or assistant secretary thereof, stating that he is a member of the Corporation. Such certificates shall be nontransferable and a member's certificate shall become void and of no force and effect upon sale by an owner of his Lot. Such membership certificates shall be in a form and style determined by the Board.

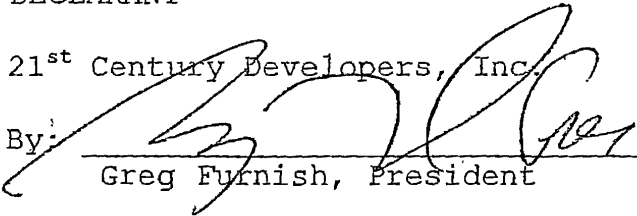
Section 9.3. Personal Interests. With the exception of the Declarant, or a related entity, no member of the Corporation shall have or receive any earnings from the Corporation, except a member who is an officer, director or employee of the Corporation may receive fair and reasonable compensation for his services as officer, director or employee, and a member may also receive principal and interest on moneys loaned or advanced to the Corporation.

So adopted this 28 day of Jan, 2004⁵ _{qr}

DECLARANT

21st Century Developers, Inc.

By:



Greg Furnish, President

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