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DECLARATION 32.00  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**WHISPERING PINES**

THIS DECLARATION made this 14<sup>th</sup> day of October, 2004, by Whispering Pines Subdivision, LLC, an Indiana Limited Liability Company (hereinafter referred to as "Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will, along with contiguous real estate to be acquired by the Declarant in the future, all eventually be subdivided and known as "WHISPERING PINES" (hereinafter referred to as the "Development") and will be more particularly described in the plat thereof to be recorded in several sections in the Office of the Recorder of Hendricks County, Indiana; and

WHEREAS, Declarant is about to sell and convey the residential lots situated within certain areas of the platted Development and before doing so desires to subject and impose upon all real estate within said present and future platted areas of the Development, mutual and beneficial covenants and restrictions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future home owners therein and thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted lots and lands located within the Development, as they become platted, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in Whispering Pines, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said lots situated therein. All of the covenants, conditions and restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

1. Drainage and Utility Easements - There are strips and parcels of ground as shown on the plat marked Landscape, Drainage and/or Utility Easement ("L, DU & SE") which are hereby reserved for the use of landscaping, public utilities, including but not limited to drainage structures, swales and improvements, and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, laterals, ducts, swales, drains, lines, cables, wires, and the like, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities as the Declarant or the owner of record after sale, may deem necessary along, through, in, over and under the strips of land (easements) shown on this plat. The Declarant, and/or the Property Owner's Association shall have the right to negotiate and grant additional easement rights through and upon said reserved easement areas as are reasonable and necessary to benefit the residents and/or to reasonably resolve disputes involving a lot owner. However, no Lot Owner shall make any changes within the areas reserved as such easements without the permission of the Declarant and/or the Hendricks County Surveyor's Office, as applicable.

2. Builder and Grounds Maintenance - The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;
- c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;

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d) Cut down and remove dead trees;

e) Where applicable, prevent debris, foreign material, toxic, hazardous, or damaging materials or substances, from entering drainage areas, swales, and/or storm sewers;

f) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly or detracting from the value of the general neighborhood;

g) Regularly treat or cause to be treated the lawn areas against weed and insect infestation;

h) Comply fully with all provisions of these Covenants, the Zoning and Development Stipulations applicable to the development, including all Addendums and exhibits thereto (hereinafter collectively referred as the "Zoning Commitments"), and the rulings and decisions of the Declarant, the Association, and/or the Architectural Control Committee.

In the event that any owner of a lot shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Covenants and Restrictions, the Property Owners Association, the Declarant or the owner or owners of any lot in the immediate neighborhood shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such lot and the improvement(s) situated thereon, if any, conform to the requirements of these Covenants and Restrictions. The cost thereof shall be an expense of the lot owner, and if paid by another party shall be collectible from the lot owner via a lien which may be filed against said lot in the amount of said expense, plus interest, court costs and reasonable attorney fees related thereto. Neither the Declarant, nor the owner or owners of any lot in the immediate neighborhood, nor any of their agents, employees or contractors, shall be liable for any damage which may result from any such maintenance work performed hereunder.

3. Setback Lines - Front building setback lines ("BL") shall be established on the plat, but shall not be less than those set forth in the Zoning Commitments. The minimum rear yard and side yard shall not be less than the applicable standards and/or the Zoning Commitments. In the event a building is erected on more than one single lot, these restrictions shall be based on the lot width at the Building Line of the combined lots, and shall apply to the side lines of the extreme boundary of the multiple lots. In the event of a discrepancy between this Declaration and a recorded plat, this Declaration shall control.

4. Use Restrictions - All lots in this subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof. Without prior approval of the Architectural Control Committee, no structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single family dwelling, one story or multi-storied, not to exceed thirty-five feet (35') in height. Plans for each residence must be submitted for review by Declarant, and are subject to Declarant's right to reject or approve same. There shall be no carports permitted; nor any side gravel or dirt drives. No structure shall be located in any drainage, sewer, or utility easement, other than a fence which shall be subject to removal at the Lot Owners expense, in order to access said easement area. There shall be no above ground swimming pools permitted. No antennas shall be permitted other than a satellite dish less than thirty inches (30") in diameter. No satellite dish shall be located on the front elevation of the home. No RV's, trailers, boats or boat trailers, or unlicensed vehicles may be stored outside. No side gravel drives or gravel parking areas shall be permitted.

a) Outbuildings - There shall be no outbuildings (with or without a permanent foundation) permitted.

5. Common Area, Lake, Landscaping and Retention Areas, Street Lights, Snow Removal - The Plat indicates Blocks of land and/or areas indicated as Common Areas, some of which contain ponds/lakes, landscaped areas, entry improvements and signage, common improvements, etc, which shall be conveyed by the Declarant to Whispering Pines HOA, Inc., the entity established as the property owner's association (hereinafter the "Association"), as hereinafter provided.

The ponds/lakes and drainage easements thereto shall become a part of the storm water drainage system of

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Whispering Pines and shall run to the applicable department for Hendricks County. No lot owner or other person, firm or corporation shall alter, impair or impede the drainage system and all lot owners shall be subject to regulation by the public authority having jurisdiction and by the Association as hereinafter set forth. The retention ponds/lakes shall be for drainage and passive recreational purposes only, and no wading, swimming, boating therein, nor ice skating thereupon, are permitted. However, fishing in one or more of the retention lakes MAY be permitted pursuant to rules and regulations established by the Association.

The Association, as hereinafter described, shall own identified Blocks and/or Common Areas and/or landscaped areas and, through its Bylaws and regulations, control the water quality and condition of any retention lake located thereupon. The landscaping contained upon such Common Areas, and any other improvements, including but not limited to any perimeter fencing on said Common Areas, the subdivision signage, other landscaped and/or common areas, and any structures related to the entrances, shall be regularly planted, replanted, and/or maintained by the Association for the beautification of Whispering Pines. Landscaping may be also be designed and installed by Declarant at various points within the Common Areas, the edge of the right-of-way and/or along the perimeter of the Development. The care and maintenance of any such landscaping shall all be the responsibility of the Association.

Any type of recreational facility or area which is conveyed to the Association, shall be managed, maintained, and be the full responsibility of the Association, subject to any restrictions imposed by Declarant at the time of transfer.

Decorative street lights may be installed by the Declarant/developer at the main entrance and street intersections within the subdivision, during the initial development of the subdivision. These lights shall be maintained by the Association, which shall also pay all utility costs related thereto.

The Association shall supplement the government supplied snow removal services as necessary, and shall pay all costs related to hiring private contractors as required.

6. **Property Owners Association** - A property owners association is or shall be created (the "Association"), as an Indiana nonprofit corporation to be named Whispering Pines HOA, Inc., prior to the completion of the subdivision. The Articles and Bylaws of the Association are incorporated herein as necessary, by reference.

7. **Power of Assessment and Collection** - The Association shall have all the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy uniform annual assessments and other special assessments against the lots within the Development as set forth herein and in the Bylaws of the Association.

8. **Membership and Voting Rights** - Every owner of a lot shall be a member of the Association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot, and a Class B member shall be the owner of any un-conveyed lot which is identified as a lot on either a recorded Plat or on a Plat which has been granted preliminary plat approval ("platted lot"). Each reference to a lot shall be deemed to be to either a conveyed lot, a platted lot, or an un-platted lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

8.1 **Class A**. Every person, group of persons or entity, other than the Declarant, who is a record owner of a fee interest in any conveyed lot shall, by this Declaration, be subject to assessment by the Association and shall be classified as a Class A member; provided, however, that any such person, group, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any lot, then the vote for the membership appurtenant to such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the event agreement is not reached, the vote attributable to such lot shall not be cast.

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**8.2 Class B.** The Class B members shall be the Declarant, and shall be entitled to three (3) votes for each platted lot owned. Declarant shall have the automatic right to plat, record and sell said lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: 1) 90% of lots containing homes are deeded to homeowners; or 2) January 1, 2015. In the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, Class B memberships existing, if any, at time of cancellation, shall automatically become Class A memberships excepting such Class A memberships applicable to said lots shall not be subject to assessment or the lien of assessment until the lot is conveyed.

**9. Covenant Accepting Assessments** - Each owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: 1) annual assessments or charges imposed by the Association, and 2) special assessments for capital improvements, other reasonable expenses of the Association, or the collection of damages against certain lots and/or lot owners as herein and/or in the Bylaws. All such assessments are to be established and collected as provided herein and in the Bylaws of the Association.

**10. Commencement of Assessments/Dues** - Without regard to any other provisions to the contrary, each conveyed lot shall be subject to assessment as of the date of the initial conveyance of the Lot. The first year's assessment/dues shall be adjusted (pro-rated) according to the number of days remaining in the annual assessment period after the date of initial conveyance of the Lot; and shall be paid by the purchaser/builder at (or at the time of) the closing on the initial conveyance of the Lot. Separately, at (or at the time of) the initial closing on the transfer of the completed home and Lot (or the Lot only, if applicable) to the actual initial homeowner, the homeowner shall pay an additional one time fee or charge to the Association in the amount of One Hundred and Fifty and No/100 Dollars (\$150.00). Unless otherwise authorized by the Board, the Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period and provide the membership due notice thereof. Annual assessments may be made payable at more frequent periods than one (1) year by resolution of the Board of Directors of the Association.

**11. Declarant's Exemption from Assessments and Right to Collect Advances** - The Declarant, as owner of platted or unplatted lots, shall be exempt from any and all assessments. The Declarant shall advance any deficits in usual or ordinary expense until such time as the assessments upon lots with homes thereon is sufficient to meet such expense. However, the Declarant shall have the right to recover any such advances made by Declarant to cover such deficits, from the receipt/collection of any assessments which were assessed prior to date upon which control of the Association is actually turned over to the residents by the Declarant (hereinafter the "Turnover Date").

**12. Uniform Rates** - Both annual and special assessments shall be fixed at a uniform rate for all similarly situated lots, unless said special assessment(s) are necessary to reimburse the Association for funds spent in enforcement of these covenants against specific lot(s), whereupon said uniform rate requirement for similarly situated homes shall not apply, or as otherwise specified herein. Prior to the Turnover Date, those conveyed lots which do not contain a home may be assessed at a lower rate than conveyed lots containing a home; but in such case the annual assessment shall still be at a uniform rate for all similarly situated lots which do not contain a home. Upon the Turnover Date, the assessment for all conveyed lots which do not contain a home shall increase to the annual assessment applicable to conveyed lots containing a home; and such increase (which shall be due within thirty (30) days after the Turnover Date, shall be pro-rated according to the number of days remaining in the annual assessment period. After the Turnover Date, the annual assessments shall be uniform for all conveyed lots, without regard to whether or not each lot contains a home.

**13. Right to Increase Annual Assessments** - Because of uncertainties in usual and ordinary common property expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unusual, one-time, or unforeseeable operating expenses, the Board of Directors of the Association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by normal accounting procedures and an explanation of the amount and basis for the increase shall be distributed to the membership.

The maximum annual assessment per lot may be increased above the maximum percentage set forth above

only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose.

14. Liens, Charges and Subordination - Every Lot Owner (except Declarant) shall pay all applicable assessments against their respective Lot(s), without regard to said Lot Owner's objections to the action or inaction of the Association and/or the Declarant. No Lot Owner may escape said liability by alleging that he did not use or enjoy the common area(s), recreational facilities, etc. Any charge levied or assessed against any lot, together with interest, reasonable attorney's fees and other charges and costs hereinafter provided, shall become and remain a lien upon that lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure, action personally against the liable lot owner, or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge and late charges at the time legal action is instituted, be obliged to pay the expense or costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting same. Every owner of a lot in the subdivision and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid; and shall be held to have conclusively covenanted to pay the Association all charges that the Association shall make pursuant to these Covenants and Restrictions.

The lien of 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. In addition, no sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association of the payment status of the assessments on a specified lot, and/or that certain assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and for the improvement and maintenance of the properties owned or operated by the Association.

15. Suspension of Privileges - Notwithstanding any other provision contained herein or in the Bylaws, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the facilities of the Association of any member or associate member; (i) for any period during which any of the Association's charges owed by the member or associate member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, Bylaws or rules and regulations of the Association.

16. Mortgagee Rights - Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned) or the Class A members have given their print written approval, the Association shall not:

16.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Development, common property or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Development by the Association shall not be deemed a transfer within the meaning of this clause.

16.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

16.3 By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof

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pertaining to the architectural design or exterior appearance of the homes on lots, the exterior maintenance of the dwellings on lots, the maintenance of common fences or common driveways or the upkeep of lawns and plantings in the Development.

16.4 Fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost).

16.5 Use hazard insurance proceeds for losses to common property for other than the repair, replacement or reconstruction of such improvements.

16.6 Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

16.7 First mortgagees of homes on lots may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

16.8 No provision of the constituent documents shall give an owner or any other party priority over any rights of first mortgagees of homes within the Development pursuant to their mortgages in the case of a distribution to homeowners of insurance proceeds or condemnation awards for losses to or a taking of common property.

17. Temporary Structures - No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence or for business purposes, except that used by Declarant or builder(s) during the construction upon and development of the property.

18. Nuisances - No farm animals, fowls, or domestic animals (maintained for food or for commercial purposes) shall be kept or permitted on any lot or lots in the subdivision. No noxious, unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which is, may be or may become an annoyance or nuisance. Other than those occasions when a dog or domestic animal ("pet") is on a leash being exercised and/or under the direct control of the owner or occupant of a dwelling in Whispering Pines, no pet shall be allowed outside the boundaries of its owner's lot. In addition, the owner or occupant of a dwelling shall only allow a pet in their possession to be out of their direct control outside of the dwelling, if such pet is either (1) kept within a securely fenced area in the rear yard, or; (2) on a secure leash or chain which restricts such pet to the rear yard at least ten feet away from any border of the lot.

19. Architectural Control - There shall be created an initial architectural control committee appointed by the Declarant. At that point in time when the Declarant elects to do so (no later than that point in time that the homes have been completed and sold to private homeowners on 90% of the lots), the initial committee shall turn over authority to the Association, which shall then appoint three (3) persons to serve as the architectural control committee from among its members. In any case, the Declarant shall retain sole right to approve plans for original construction of a residence on any lot until all the homes have been built on all the lots. The initial committee, and/or the replacement committee appointed after control is given over to the Association, is referred to hereinafter as the "Committee". The Committee shall regulate the external design, appearance, use, location and maintenance of lands which are subject to these Covenants and Restrictions, and the improvements thereon, in such a manner as to comply with the provisions of the Zoning Commitments and these Covenants and Restrictions, to preserve and enhance values, and to maintain a harmonious relationship among structures and the vegetation and topography.

19.1 Generally - No dwelling, building, fence, structure, addition, remodeling, reconstruction, or improvement of any type or kind shall be constructed or placed on any lot in the subdivision without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner or builder for the owner of the lot requesting authorization by the

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Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction improvement. Such plans shall include plot plans showing the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

19.2 Sight Visibility - Without prior Committee approval, and even then only if in compliance with applicable standards of Hendricks County and the Zoning Commitments, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five feet (25') from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten feet (10') from intersection of a street line with the edge of a driveway pavement or alley line. No tree or landscaping shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19.3 Fences, Walls and Screening - It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the Development. Undue obstruction of view of other amenities from adjoining properties will be taken into consideration by the Committee when reviewing fences for approval. The only fencing allowed shall be in the rear yard. Therefore, fences shall not be nearer to the front of a dwelling than the rear foundation line of the dwelling, with the exception of an area along one side of the home as reasonably necessary to connect to a side door or a the home or a garage service door.

Other than the fencing installed by Declarant, fencing which abuts the outside perimeter of the subdivision must be of a uniform style, design, color and height. Other than fencing installed by the Declarant, no fencing shall be installed on the exterior street side of any perimeter mounding. The Committee will discourage fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other lot owners. Approved fencing may be privately installed but must be constructed to professional levels of quality. Fences installed by nonprofessionals will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences or screens must be submitted to the Committee for approval. Cedar and/or vinyl ONLY shall be used as fence material.

19.4 Height Restriction - The Declarant is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the Development is damaged by the proliferation of fences of excessive height.

The Committee, therefore, may approve rear perimeter fences up to six (6) feet in height which otherwise meet these guidelines. The Committee will give consideration to a deviation in their height limit where the rear line of the lot abuts a public roadway or other clearly unique circumstance exists. The use of six foot (6') fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area may be permitted. The guidelines for specific fence height restrictions are as follows:

- a) Property fencing and walls shall not exceed six feet (6') above grade unless otherwise approved by the Committee.
- b) The Committee will not ordinarily approve a proposed fence which exceeds six feet (6') in height unless the rear line of that lot abuts a roadway or offers some other circumstances clearly unique to that lot.

c) Patio screens/privacy fences shall not exceed six feet (6') in height except for pools and other recreational fences as provided therein.

d) There shall be no fencing, walls or other structures erected and maintained in any area designated 100 year flood way upon Federal Flood Hazard Maps and the plats of Whispering Pines.

e) Other than fencing installed by the Declarant/developer, no fences shall be constructed or located within any drainage, utility or fence maintenance easement.

**19.5 Power of Disapproval** - The Committee may refuse to grant permission to construct, place or make any requested improvement when:

a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of the applicable restrictions and/or the Zoning Commitments.

b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures.

c) The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the other lot owners.

**19.6 Duties of Committee** - The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of the submitted material shall be retained by the Committee, or copies thereof in a reduced form, for its permanent files and the second copy returned to applicant. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

**19.7 Liability of Committee** - Neither the Committee, any thereof or the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to suitability or advisability of design, engineering, and/or method of construction or the materials used.

**20. Construction Standards** - Single family detached dwellings, and any additions thereto, shall be substantially similar to, or exceed, the minimum square footages of livable space, the roof pitch, the percentage of brick on the front elevation and/or the architectural character of the front elevation, as set forth in the Zoning Commitments, and also to following restrictions:

a) No heat pumps, air conditioning units or gas meters will be installed in or on the front of a dwelling.

b) No unfinished windows or doors will be allowed.

c) All gutters and down-spouts other than copper must be painted or coated.

d) All roof and fireplace flashing other than copper must be painted or coated.

e) All metal roof or range vents will be painted or coated to blend with roof color. Every effort should be made to locate such vents to the rear of the dwelling.

f) All basement and crawl space sump pumps must discharge in compliance with Hendricks County standards.

g) Every effort should be made to locate all plumbing vent stacks to rear of the dwelling, and to paint such stacks to match the roof or siding.



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- h) All basements shall be constructed of poured concrete walls.
- i) Any addition or reconstruction shall comply with the provisions of this Declaration.
- j) All garage doors shall include window lights or must be embossed with decorative design panels.
- k) All roof pitches shall be 6/12 minimum exclusive of porches, bump outs and dormers. Roof overhangs must extend twelve inches beyond the wall structure on all elevations.
- l) All roofs shall consist of dimensional shingles.

21. **Driveway and Sidewalks** - All driveways shall be paved simultaneously with construction of the dwellings; and the width of the drive, type of construction and materials must be in compliance with Hendricks County standards and approved in advance by the Committee. Prior to occupancy of the dwelling, all lots must have a sidewalk across the front (and side on corner lots) property line constructed to Hendricks County standards and approved in advance by the Committee. Sidewalks at property lines are to meet flush with no abrupt change in grade from one lot to another.

22. **Mailboxes and Lights** - All mailboxes shall be of uniform design and colors, with an ornamental post, in accordance with the standards set forth by the Committee; and shall be installed by the builder simultaneously with the construction of the dwelling. All homes shall have a garage light on both sides of the garage door which may be connected to an optional post light in the front yard, all of which will operate by photocell or similar device from dusk to dawn.

23. **Signs** - Except for marketing and permanent signs that the Declarant may place at the project entrance or entrances, signage placed by the builders at the entrance or on the model lots, and the provisions contained in Paragraph 28 of these Covenants, no sign of any kind shall be displayed to the public view on any lot; except that one sign of not more than six (6) sq. ft. in size may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

24. **Garbage and Refuse Disposal** - No lot shall be used or maintained as dumping ground for trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in public view.

25. **Private Swimming Pools** - Only permanent in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring lots. All fencing shall conform to state, county and municipal regulations and the provisions of these Covenants and Restrictions, and shall be of harmonious design to the dwelling and adjoining properties. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

26. **Enforcement of Restrictions** - In the event there shall be any violation or attempted violation of any of these covenants and/or restrictions, it shall be lawful for the undersigned, the Association, or for any person owning any real property in this subdivision, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Declarant nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these covenants and restrictions.

No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these covenants and restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these covenants and restrictions.

27. **Additional Acquired Property** - This Declaration shall apply to all sections of Whispering Pines, as each section is platted; including but not limited to any additional real estate which is added to the development after the date of this Declaration. Any and all plat(s) for any section(s) of Whispering Pines shall be subject to this Declaration simply by reference to the originally recorded Declaration, as amended, in each such Plat. However,

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even in the absence of such reference, unless otherwise provided for such sections, all sections of Whispering Pines shall be deemed subject to this Declaration.

28. General Provisions - The Declarant may amend these Covenants and Restrictions at any time prior to the conveyance of 100% of the lots, subject to those mortgagees' rights set forth in paragraphs 14 and 16 above. In addition, these Covenants and Restrictions may be amended at any time by the owners of at least two-thirds of the owners of lots subject to these Covenants and Restrictions, subject to those mortgagees' rights set forth in paragraphs 14 and 16 above, provided however, that until all of the lots are sold in this subdivision any such amendment of these Covenants and Restrictions shall require prior written approval of the Declarant. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph and recorded in the Hendricks County Recorder's Office.

29. Home Constructed on a Ravine - The owner of any lot in Whispering Pines releases and holds harmless the County of Hendricks, State of Indiana, for any potential erosion to any lot in Whispering Pines which may be caused by the construction of a home thereon or for any other causation, foreseeable or unforeseeable.

30. Effect of Becoming an Owner - The owners of any lot subject to these Covenants and Restrictions, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every covenant, restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of Declarant with respect to these Covenants and Restrictions; and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Declarant and to and with the owners and subsequent owners of each of the lots affected by these Covenants and Restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

31. Titles - The underlined titles preceding the various paragraphs and subparagraphs of the Covenants and Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Covenants and Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

32. Severability - Every one of the covenants and restrictions is hereby declared to be independent of, and severable from, the rest of the covenants and restrictions and of and from every other one of the covenants and restrictions, and of and from every combination of the covenants and restrictions.

Therefore, if any of the covenants or restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the covenants and restrictions.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 19th day of October, 2004.

WHISPERING PINES SUBDIVISION, LLC

By: [Signature]  
Printed: BRUCE SKLARE MEMBER

STATE OF INDIANA )  
COUNTY OF HAMILTON ) SS:

Before me, a Notary Public in and for County and State, personally appeared BRUCE SKLARE, known to me to be the MEMBER of Whispering Pines Subdivision, LLC, who acknowledged execution of the foregoing Declaration for and on behalf of said company, and who, having been duly sworn, stated that the representations therein contained are true.

c)

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Witness my hand and notarial seal this 19<sup>th</sup> day of October, 2004.

My Commission Expires:

7/23/2008



*Jerry L. March*

Notary Public, Signature  
Jerry L. March

Notary Public, Printed  
MARION

County of Residence

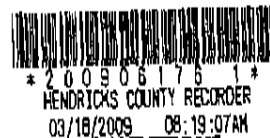
This instrument prepared by: David A. Retherford, Attorney at Law, 8801 Southeastern Ave., Indpls. IN - 46232



I AFFIRM, UNDER THE PENALTIES FOR PERJURY,  
THAT I HAVE TAKEN REASONABLE CARE TO REDACT  
EACH SOCIAL SECURITY NUMBER IN THIS  
DOCUMENT, UNLESS REQUIRED BY LAW.

NAME RON SCHWEIGER

c)



**SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHISPERING PINES**

The Declaration of Covenants, Conditions, and Restrictions of Whispering Pines, which was executed on or about October 19, 2004 and recorded on or about October 26, 2004 as Instrument No. 200400033146 in the Office of the Recorder of Hendricks County, Indiana, and which was amended by a First Amendment on September 29, 2008, by Instrument # 200822692, by Whispering Pines Subdivision, LLC (hereinafter referred to as Declarant), is hereby amended as follows:

1. Pursuant to the requirement of Article 28 of the Declaration, the Declarant hereby states that 100% of the lots have not yet been conveyed, and that this amendment is made by Declarant pursuant to the unilateral rights to amend which are reserved in favor of the Declarant until that point in time that 100% of the lots are conveyed.

2. The following amendments are hereby made to the designated provisions of the Declaration:

A. Paragraph 19.3. The first sentence of the second paragraph in said section, which reads as follows: "Other than the fencing installed by Declarant, fencing which abuts the outside perimeter of the subdivision must be of a uniform style, design, color, and height" is hereby deleted in its entirety, and is replaced with the following sentence. "All fencing which abuts the outside perimeter of the subdivision must be approved by the architectural committee, cannot be any type of chain link fence, and cannot be taller than six feet."

IN WITNESS WHEREOF, the Amendments have been executed by the Declarant this 13 day of January 13, 2009.

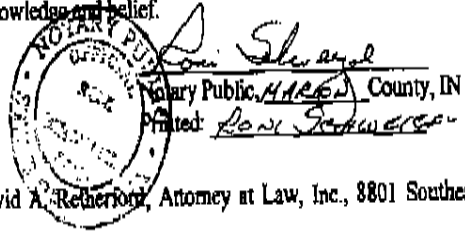
WHISPERING PINES SUBDIVISION, LLC  
An Indiana Limited Liability Company

By: Bruce Sklare  
Bruce Sklare, as Member

STATE OF INDIANA )  
COUNTY OF MARION )

On this 13 day of January, 2009, before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, known to me to a member of Whispering Pines Subdivision, LLC an Indiana Limited Liability Company, who acknowledged the execution of the foregoing Second Amendment to the Declaration of Covenants, Conditions and Restrictions of Whispering Pines, and who, having been duly sworn, stated that the representations contained therein are true to the best of his knowledge and belief.

My Commission Expires:  
3-15-2009



This Instrument Prepared By: David A. Recherford, Attorney at Law, Inc., 3801 Southeastern Avenue, Indianapolis, IN - 46239

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.  
David A. Recherford

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