COVENANTS

FOR

WHITTINGTON ESTATES

HENDRICKS COUNTY
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR WHITTINGTON ESTATES

("Declaration"), made this ______ day of ______, 1994, by Whittington, Inc., an Indiana corporation. (hereinafter referred to as "Declarant").

WITNESSETH THAT

WHEREAS, Whittington, Inc., is the owner of certain real estate located in Hendricks County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, a Master Plan for the Real Estate to be developed by Declarant as Whittington Estates Planned Unit Development was recorded on [redacted] 1995, as Instrument No. [redacted] in the Office of the Recorder of Hendricks County, Indiana, in Book [redacted] Page [redacted]; and

WHEREAS, Declarant intends to sell and convey the residential facilities and Lots within Whittington Planned Unit Development and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate, and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas, Lakes, Recreation Areas, Landscape Easements and other improvements located on the real estate which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operations of Whittington/Planned Unit Development.

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.
ARTICLE I.

General Purpose of This Declaration

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all Lots within Whittington Planned Unit Development and to ensure desire high standards of maintenance of the Real Estate, to the benefit of all Owners within Whittington Estates/Historical Whittington.

ARTICLE II

Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1. Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Whittington to be appointed in accordance with this Declaration.

Section 2. Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot as determined and levied pursuant to the provisions of this Declaration.

Section 3. Association. "Association" means Whittington Homeowners' Association, Inc., an Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.
Section 4. Common Areas. "Common Areas" means certain areas not amenable to development which may be designated as Lakes, Recreation Area or Common Area on the Plat and which is intended for the common benefit of all Lots.

Section 5. Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, Recreation Areas, Landscape Easements, Drainage System, and any other cost or expense incurred by the Association for the benefit of the same.

Section 6. Declarant. "Declarant" means Whittington, Inc. or any other person, firm, corporation or partnership which succeeds to the interest of Whittington, Inc. as developer of Whittington Planned Unit Development hereby commits to the provisions and obligations of the Declarant herein and agrees and covenants herein shall be wholly binding and effective against Whittington, Inc. as the owner of the Real Estate and the Declarant, and/or successors to the interest of Whittington, Inc.

Section 7. Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose or expediting the drainage of surface and subsurface waters from, over, and across which the Common Areas, Easements, or Streets are located.

Section 8. Easements. "Easements" refer to those areas reserved as easements, excluding those referred to as Landscape Easements, on the Plat of Planned Unit Development.

Section 9. "Whittington" means the Real Estate as it is platted and recorded by Declarant in accordance with provisions of the Declaration.

Section 10. Landscape Easements. "Landscape Easements" refer to those areas reserved as Landscape Easements on the Plat of Whittington Planned Unit Development.

Section 11. Lot. "Lot" means any of the separate parcels numbered and identified on the Plat of Whittington Planned Unit Development.

Section 12. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 13. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of the Real Estate.
any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 14. Plat. "Plat" means the final plat for each and every recorded section of Whittington Planned Unit Development in accordance with the Master Plan.

Section 15. Recreation Area. "Recreation Area" means Common Area "A" where fitness trails established by the Association are located, as designated on the recorded plat which is intended for the common benefit of all Lots.

Section 16. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and replacement thereof or substitute therefor.

Section 17. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the recorded plat, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guest and invitees, to any or all Lots.

ARTICLE III.

General Restrictions

Section 1. Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owner shall maintain their Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

(d) Prevent the existence of any other condition that reasonably tends
to detract from or diminish the appearance of the Lot and/or home.

Failure to comply shall warrant the Declarant, authorized agents of Whittington or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

Section 2. Residential Purpose. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any Lot other than a dwelling not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

Section 3. Setbacks. No building shall be located on any lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded Plat.

Section 4. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

Section 5. Landscaping Easements. The landscaping within the Landscape Easements shall initially be determined by the Architectural Control Committee and developed by Declarant in accordance with the Landscape Plan for Whittington. The Declarant, prior to the incorporation of the Association, and the Association thereafter, shall maintain the Landscape Easements. The Landscape Easements located within the dedicated County Road right-of-way shall be subject to termination by the County if, in its discretion, the County determines that the Landscape Easements are not being properly maintained and/or constitute a hazard to the motoring public.

Section 6. Un-operative Parked Vehicles. At no time shall any unlicensed, un-operative vehicle be permitted on any Lot Common Area, Street or Easement unless kept entirely within a garage.

Section 7. Trucks, Boats, Recreational Vehicles. No semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any Lot unless kept entirely within a garage.

Section 8. Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything by done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

Section 9. Outdoor Storage. No large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.
Section 10. Drainage Ditches. Drainage un-operative (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug-out, filled-in, tiled or otherwise changed without the written permission of authorized agents of Whittington. Property owners must maintain these un-operative as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by authorized agents of Whittington.

Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Whittington may cause said repairs to be accomplished and the bill said repairs will be sent to the affected property owner for the immediate payment. Failure to pay will result in a lien against the property.

Section 11. Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) professionally manufactured sign of not more than five square feet advertising the property for sale or rent.

Section 12. Childcare Services. No pre-school, babysitting business or such childcare services for more than six (6) children shall be allowed to operate upon any Lot.

Section 13. Mining Operations. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not bred, kept or maintained for any commercial use and are housed within a dwelling.

Section 15. Rubbish, Trash and Garbage. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

Section 16. Field Tiles. Any field tile or underground drain which is on any Lot must be allowed to perpetuate and all owners of the Lots in this Subdivision and their successors shall comply with the Indiana Drainage Code of 1965.
Section 17. Minimum Living Space. The minimum square footage of living space of dwellings within Whittington, exclusive of porches, garages or basements shall be no less than:

(a) 1,000 square feet for single story dwellings, and
(b) 800 square feet for the ground floor of two-story dwellings.

Section 18. Outbuildings. No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be maintained on any Lot.

Section 19. Driveways and Carports. All driveways must be paved with concrete, asphalt or other all-weather surface excluding gravel. No carports are permitted.

Section 20. Communication Devices. Satellite dishes, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited, excepting antennas attached to the dwelling which do not rise above the peak of the roof or satellite dishes less than 24 inches in dish size.

Section 21. Wells and Septic Tanks. No water wells shall be drilled on any Lot. Septic tanks shall be prohibited.

Section 22. Swimming Pools. Above-ground swimming pools are prohibited.

Section 23. Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to their construction. No such structures shall exceed six feet in height. No such structure shall be placed closer to the front Lot line than the front building setback line.

Section 24. Decorative Structures. No decorative structure, statue, or other structure may be placed on the Lot closer to the front Lot line than the front building setback line.

ARTICLE IV.

Section 1. The lakes shown on the Plat (hereinafter "Lakes") shall be included as Common Areas as referenced herein, to be maintained and controlled by the Association.
Section 2. The Association shall be responsible for formulating rules and regulations pertaining to the Lakes as well as creating an annual budget to assure adequate maintenance, upkeep and to repair of the Lakes property, said budget shall be included as part of the Owners, annual Assessment.

Section 3. Recreational use of the Lakes within the Whittington is prohibited.

Section 4. The Lake within the Recreation Area may be used only in the manner authorized by the Association which shall not be inconsistent with the provisions of this Declaration.

Section 5. No privately owned property of any kind shall be allowed to remain within the Lakes areas except when the Owner of such property is present.

Section 6. No docks or piers will be allowed except those which may be authorized by, constructed, owned, and operated by the Association.

Section 7. No Owner or third party shall do or permit another to do any act which could result in pollution of the Lakes, diversion of any water, raise the elevation of the water, significantly disturb the earth or the embankment of the Lakes areas, or any other conduct which could result in an adverse effect upon the water quality, embankment and adjacent property, drainage, or any other general condition of the Lakes.

Section 8. The Association, on behalf of the owners, or authorized agents of Whittington, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the Lakes or interference with the drainage system, together with any damages incurred, and upon recovery of judgement shall be entitled to cost, together with reasonable attorneys' fees.

ARTICLE V.
Declarant's/Association's Right to Guarantee Compliance
Section 1. In the event the Owner of any Lot in Whittington shall fail to maintain that Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from Owner. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may
result from any maintenance work performed hereunder at the time dwellings are constructed upon.

ARTICLE VI.
Architectural Control Committee

Section 1. Appointment Of Architectural Control Committee. The Board of Directors of the Association, or Declarant if the Association is not yet incorporated, shall appoint an Architectural Control Committee to be composed of three (3) members.

Section 2. Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within Whittington until the plans and specifications, locations and plot plan thereof in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

Section 3. Duties of Committee. The Committee shall approve or disapprove proposed improvements within (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. 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.

Section 4. Liability of Committee. Neither the Committee nor any agent thereof, not Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 5. Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.
ARTICLE VII.
Covenants for Maintenance Assessments

Section 1. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Lots within Whittington, and promoting the health, fencing, operating, and maintenance of the Common Areas and Landscape Easements and Drainage System, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas and Landscape Easements; provided that the Association shall not be responsible for the placement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

(a) A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided; and

(b) A pro-rata (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2. Liability for Assessments. Any Assessments, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on the Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon the Lot. Any such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor.

Section 3. Pro-rata Share. The pro-rata share of each Owner for purposes of this Article shall be the percentage obtained by dividing one by the total number of Lots within Whittington that have been conveyed by the Declarant to an Owner (*Pro-rata Share).

Section 4. Basis of Annual Assessment. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

Section 5. Basis of Special Assessment. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with the respect to such year are insufficient to pay the Common Expenses for such year, the
Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessment.

Section 6. Notice of Meetings. Written notice of any meeting called for the purpose of taking action to authorize Assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) in advance of the meeting.

Section 7. Fiscal Year, Date of Commencement of Assessments, Due Dates. The fiscal year of the Association shall be established by the Association and may be charged from time to time by action of the Association. The annual Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 8. Duties of the Association.

(a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and record shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners to their designated representatives as promptly as practicable and in the event not less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actually mailing of such notice.

(b) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessment has been levied and paid with respect to such requesting Owner’s or Mortgagee’s Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein state to have been paid.

(c) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws or this Declaration which is not cured within sixty (60) days.

(a) If any Assessment is not paid on the due date when due, then such Assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgement is obtained, such judgement shall include such interest, costs, and attorneys' fees.

Section 10. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

ARTICLE VIII.
Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to operated in accordance with The Article of Incorporation which have been filed or will be filed by Declarant.
Section 2. Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Whittington provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be member. The vote for such Lot shall be exercised as they among themselves determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 1999.

Section 3. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. General Duties of the Association. The Association is hereby authorized to act on behalf of, and in the name, place and stead of, the individual owners in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, and restrictions contained in this Declaration.

Section 5. Liability of Association. Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.
Section 6. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both Owners of at least two-thirds of the Lots and the Mortgagees of at least two-thirds of the Mortgagees requesting such action; provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant so long as Declarant owns at least ten (10) Lots within Whittington. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with the copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Hendricks County.

Section 7. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars ($1,000,000.00) for any single occurrence, occurring on or in connection with and all Common Areas and Landscape Easements. The Association shall also maintain in force adequate fire, and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officer, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Whittington plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be cancelled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal Nation Mortgage
Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, or such guidelines may be amended thereafter.

Section 8. Condemnation: Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas, provided, however, that upon request of any owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 9. Mortgages' Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE IX. General Provisions

Section 1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 2. Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, Covenants, and conditions, contained in this Declaration, and the same shall be mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such
Owner shall have any interest in any Lot, provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 5. Rights of Mortgagees. Except to the extent otherwise provided in Article VII no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. The provisions of Article VIII herein above not with standing, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

Section 6. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 7. Section Headings. Section headings used herein are used for convenience only and are not intended to be part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 8. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to in Article VII; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 9. Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after such time as Declarant owns fewer than twenty (20) Lots within Whittington.
Section 10. Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants, Conditions and Restrictions for Whittington Trace pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Hendricks County, Indiana",

and properly identifying the recording instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any Owner of any interest in any portion of the Real Estate.

Section 11. Provisions Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 12. Reservations of Declarant. The provisions of Article VII hereof not withstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least ten (10) Lots within Whittington Estates, without the approval or consent of the Owners or Mortgagors of the Lots, provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagor, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

Section 13. Rights to Common Areas. Title to all Common Areas shall be held in Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, a right of access to his Lot over the Streets, the right to reasonable use of the Recreation Area in accordance with the rules and regulations of the Association and the right of access thereto over the Streets, and the right to proper utilization and benefit of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Lot; provided, however, that no Owner shall materially interfere with any other Owner in exercising his rights hereunder. In the event that any Owner’s use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

Section 14. Transfer of Control of Owner's Association and Delivery of Warranty Deed to Common Areas. Declarant shall transfer control of the Owner's Association to the Lot Owners and give a Warranty Deed conveying the Common Areas to the Association free and clear of encumbrances no later than the earlier of (a) four (4)
months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) five (5) years after the first Lot is conveyed.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

"DECLARANT"

W. Stephen Leatherman

By: W. Stephen Leatherman

Secretary

(Name and Title Printed)

STATE OF INDIANA    )
COUNTY OF MARION   )

Before me, a Notary Public in and for said County and State, personally appeared W. Stephen Leatherman, the Secretary of Whittington Inc., who acknowledged the execution of foregoing, and who having duly sworn upon his oath, stated that the representations therein contained are true.

My Commission Expire: 09-23-97

Notary Public, J.R. King
Resident: Marion
COUNTY, IN
FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF WHITTINGTON ESTATES

THIS FIRST AMENDMENT TO THE DECLARATIONS,
COVENANTS, CONDITIONS AND RESTRICTIONS OF
WHITTINGTON ESTATES ("Amendment"), is made the 2nd day of
("Declarant").

WHEREAS, Declarant caused to be recorded the Declaration
of Covenants, Conditions and Restrictions of Whittington Estates
("Covenants") on January 20, 1995 as instrument number 1028, book
145, page 253 in the Hendricks County Recorders Office.

WHEREAS, the real estate and improvements on Exhibit
"A" of the Covenants are subject to the terms, conditions and
restrictions in the Covenants.

WHEREAS, the Declarant desires to amend the Covenants,
pursuant to Article IX, Section 12 of the Covenants which
amendments do not materially adversely effect the rights of any
Mortgagor, substantially impair the benefits of the Covenants to any
Owner or substantially increase the obligations imposed by the
Covenants on any Owner.

NOW, THEREFORE, Declarant hereby declares that the
Covenants shall be amended as follows:

1. Article I, General Purpose of this Declaration. Article
I of the Covenants is hereby amended and restated in its entirety as
follows:

The Real Estate is hereby subjected to the Covenants herein
declared, amendments thereto and the By-Laws of the Whittington
Homeowners’ Association, Inc., to preserve the value of the Real Estate, to insure proper and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate, to preserve and maintain proper set backs from streets and adequate free space between structures, to provide adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the value of all Lots within Whittington Planned Unit Development and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Whittington Estates/Historical Whittington.

2. Article III, Section 1, General Restrictions. The first paragraph of Section 1 of Article III, of the Covenant is hereby amended and restated in its entirety as follows:

In order to maintain the standards of the property, no weeds, underbrush or other unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owners shall maintain their Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, subject to the By-Laws of the Whittington Homeowners’ Association, Inc. and, specifically, Owner shall:

3. Article V, Section 1, Declarant’s/Association’s Right to Guarantee Compliance. Section 1 of Article V is hereby amended and restated in its entirety as follows:

In the event the Owner of any Lot in Whittington shall fail to maintain that Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, or the By-Laws of the Whittington Homeowners’ Association, Inc., the Association, or prior to the Association’s incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the
requirements of these Covenants. The cost thereof to
the Association or Declarant shall be collected in any
reasonable manner from Owner. Neither
Association/Declarant nor any of its agents,
employees, or contractors shall be liable for any
damage which may result from any maintenance work
performed hereunder at the time dwellings are
constructed upon.

In witness whereof, the Declarant has caused this amendment to be
executed on the 2 day of July, 1998.

WHITTINGTON, INC., an Indiana
corporation, "DECLARANT"

[Signature]
David Sharp
Title

STATE OF INDIANA
COUNTY OF MARION

Before me, a Notary Public in and for said County and State,
personally appeared [Signature], who acknowledged the
execution of the foregoing and who, having been duly sworn under
the penalties of perjury, stated that the matters herein set forth are true
and correct.

Witness my hand and notarial seal this 2nd day of July, 1998.

[Signature]
Printed: KRISaad HAGAN
Notary Public

My Commission Expires: July 31, 1998
County of Residence: [Residence]

Kroger, Gardis & Regas
BY-LAWS
OF
WHITTINGTON HOMEOWNERS’ ASSOCIATION, INC.
An Indiana Nonprofit Corporation

ARTICLE I

Definitions

Section 1.01. Definitions.


"Annual Budget" means the annual budget of total Common Expenses, including, but not limited to, the budget for the repair, upkeep and maintenance of the Lake, as defined and determined in Section 11.01 herein.

"Articles" means the Articles of Incorporation of the Association.

"Assessment" means all sums lawfully assessed against the Owners by the Corporation or as declared or authorized by the Act, the Declaration, any Supplemental Declaration, these Articles or the By-Laws.

"Association" or "Corporation" means Whittington Homeowners’ Association, Inc., an Indiana not-for-profit corporation, being the association of Owners of Whittington.

"Board of Directors" means the governing body of the Association, being the Initial Board of Directors referred to herein or subsequent Board of Directors elected by the Owners.
“By-Laws” means these By-Laws providing for the administration and management of the Association and Whittington as required by and in conformity with the provisions of the Act.

“Common Areas” means the common areas and facilities as defined in Article II, Section 4 of the Declaration, and including, but not limited to Recreation Areas and the Lake.

“Common Expenses” means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all sums lawfully assessed against the Owners by the Association or as declared by the Act, the Declaration, the Articles or the By-Laws.

“Corporation” or “Association” means the Whittington Homeowners’ Association, Inc., an Indiana not-for-profit corporation, being the association of Owners of Whittington.

“Declaration” means the Declaration of Covenants, Conditions and Restrictions of Whittington recorded in the office of the Recorder of Hendricks County, Indiana as the same may be amended from time to time.

“Declarant” means Whittington, Inc., an Indiana corporation, its successors and assigns.

“Directors” means all the members of the Board of Directors and “Director” means any individual member thereof.

“General Operating Reserve” means the reserve established and Maintained under Section 11.06 herein.

“General Replacement Reserve” means the reserve for Common Area Replacements, as established under Section 11.05 herein.

“Initial Board” or “Initial Board of Directors” means those Individuals appointed by Declarant as Directors pursuant to the power reserved to Declarant by Section 5.02 in their capacity as the Board of Directors.

“Lake” means the Lake shown on the Plat.

“Lot” means any separate parcel numbered and identified in the Plat of Whittington Planned Unit Development, with or without improvements.

“Majority of Owners” means and "Majority of the Percentage Vote" means the Owners entitled to cast more than fifty percent (50%) of the Percentage Votes.

“Majority Vote” means a Majority of the Percentage Vote present in person or by proxy and voting at any duly constituted meeting of the Members.

“Managing Agent” means a reputable and recognized professional property management
agent employed by the Board pursuant to Section 5.16.

"Member" means a member of the Association and "Members" means more than one member of the Association.

"Owner" means a person, firm, corporation, partnership, association, trust, limited liability company, or other legal entity or any combination thereof who or which owns the legal and or equitable title to a Lot in Whittington provided, however, that such Owner shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title.

"Plat" means the final plat for each and every recorded section of Whittington in accordance with the Master Plan.

"Pro-rata Share" means the percentage obtained by dividing one by the total number of Lots within Whittington conveyed by Declarant to an Owner.

"Property" means the Real Estate and improvements used in connection with the operation, use and enjoyment of Whittington excluding the personal property of the Owners.

"Real Estate" means the real estate more particularly described in Exhibit "A" attached to the Declaration.

"Recreation Area" means that portion of the Common Area where fitness trails are located, as designated on the recorded Plat, which is intended for the common benefit of all Owners.

"Regular Assessment" means the Assessment levied pursuant to Section 11.02 herein.

"Special Assessment" means the Assessment levied pursuant to Section 11.03 herein.

"Statutes" means the Indiana Nonprofit Corporation Act of 1991, as the same may be amended from time to time.

"Supplemental Declaration" means any supplement or amendment to the Declaration that may be recorded by Declarant and that extends the provisions of the Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act, these By-Laws or the Declaration.

"Temporary General Budget" means the annual general budget for a fiscal year based upon one hundred and ten percent (110%) of such last approved Annual Budget as determined under Section 11.01 herein.

"Turnover Date" means the date on which control of the Association is obtained by the Owners and the Common Area is conveyed to the Association.
"Whittington" means Whittington Planned Unit Development as it is platted and recorded in accordance with the Declaration.

Section 1.02. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Lot, shall be subject to the restrictions, terms and conditions set forth in the Declaration, the Articles, these By-Laws and the Act, and to any rules and regulations adopted by the Board as herein provided.

Section 1.03. Certain References. All references in these By-Laws to the Statute and the Articles shall include the Statute and the Articles, respectively, as now in effect or as may be amended hereafter from time to time.

ARTICLE II

Purposes

Section 2.01. Purposes. The Corporation is formed for the following purposes:

(a) To enforce the Declaration which is recorded in the public records of Hendricks County, Indiana and are incorporated herein by reference;

(b) To be the Association referred to in the Declaration;

(c) To assess all Owners in the Whittington in accordance with the Declaration;

(d) To exercise all rights conferred by the laws of the State of Indiana upon nonprofit corporations, including, but not limited to, the power to acquire by bequest, devise, purchase, gift, lease or otherwise, any property of any sort or nature without limitation as to its amount or value, and to hold, invest, reinvest, manage, use apply, employ, sell, expend, disburse, lease, mortgage, convey, option, donate or otherwise dispose of such property and the income, principle and proceeds of such property for any of the purposes set forth in these articles of incorporation;

(e) To do such other things as are incidental to the purposes of the Association or necessary or desirable in order to accomplish them.

ARTICLE III

NonProfit

The Corporation shall be non-stock and nonprofit and shall not be authorized to issue capital stock. The Board of Directors shall not commit or allow to be committed any act prohibited by Section 501 of the Internal Revenue Code of 1986, as amended, any of the rules and regulations promulgated thereunder, or the Act. The Board of Directors shall do and perform
all acts subject to and as required by each of the above-referenced laws, rules and regulations.

ARTICLE IV

Meetings of Association

Section 4.01. Purpose of Meetings. At least annually and at such other times as may be necessary, a meeting of the Owners shall be held for the purpose of electing the Board (subject to the provisions of Article 5 hereof), approving the Annual Budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, any Supplemental Declaration, the Articles, these By-Laws, the Act or the Statute.

Section 4.02. Annual Meetings. The annual meeting of the Members shall be held on the first Tuesday of December in each calendar year. At the annual meeting, the Owners shall (subject to the provisions of Article 5 hereof) elect the Board of Directors in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 4.03. Special Meetings. A special meeting of the Members for any reason or purpose, unless otherwise prescribed by the Statute or the Articles, may be called by resolution of the Board or upon a written petition of Owners who have not less than ten percent (10%) of the vote. The written resolution or petition shall be presented to the President or Secretary of the Association and describe the purpose for which the meeting is to be held 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 4.04. Notice and Place of Meeting. All meetings of the Members shall be held at any suitable place in Hendricks County, Indiana, as may be designated by the Board. Written or printed notice stating the date, time and place of any meeting, a description, if required by the Statute or the Articles, of the matter or matters to be considered at the meeting and in the case of a special meeting or when required by any other provision of the Statute, the Articles, or these By-Laws, and, the purpose or purposes for which the meeting is called, shall be delivered or mailed first class or registered mail by the Secretary to each Member entitled by the Act or the Articles to vote at not less than ten (10) days prior to the date of such meeting and no more than forty-five (45) days before the date of the meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Lots and not otherwise. Notice of any such meeting may be waived in writing by any Member if the waiver is signed by the Member and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. Attendance at any such meeting in person, or by proxy, shall constitute a waiver of notice of such meeting. Each Member, who has in the manner above provided waived notice of a Members meeting, who personally attends a Members meeting or who is represented at a Members meeting by a proxy authorized to appear by an instrument of proxy, shall be conclusively presumed to have been given due notice of such meeting. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

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and waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the Member objects to considering the matter when the matter is presented. Notice of any adjourned meeting of Members shall not be required to be given if the date, time and place thereof are announced at the meeting at which the adjournment is taken, except as may be expressly required by law.

Section 4.05. Membership and Voting Right. There shall be two classes of voting Members in the Association.

(a) Class A members shall consist of the Owners with the exception of Declarant. Each Owner shall be entitled to one vote for each Lot owned, provided, however, that in the event any Lot is owned by more than one member, there shall be only one vote cast for that Lot.

(b) Class B membership shall consist of Declarant, which shall be entitled to three (3) votes for each Lot owned, and each member of the Initial Board of Directors during their respective terms. The members of the Initial Board of Directors shall have no voting rights in their capacity as Class B members. Class B membership shall be terminated and converted to Class A membership upon the happening of either of the following events, whichever occurs first: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or (b) January 1, 1999.

Section 4.06. Voting.

(a) Multiple Owner. Where the Owner of a Lot constitutes or consists of more than one person, or is a partnership, there shall be only one voting representative entitled to all of the vote allocable to that Lot. At the time of acquisition of title to a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary 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 those persons constituting such multiple Owner or a majority of 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 Owner 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 (b) of this Section 4.06, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Lot.

(b) Voting by Corporation or Trust. Where a corporation or trust is an Owner 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 duly empowered by the Board of Directors of such corporation may cast the vote to which the corporation is
entitled. The secretary of the corporation 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 stating who is authorized to vote on behalf of said corporation or trust.

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

(d) Pledgees. If the vote of an Owner or Owners has been pledged by mortgage, security agreement, conditional assignment, or other instrument, an executed copy of which has been filed with the Secretary, only the pledgee shall be entitled to cast the vote of such Owner or Owners upon those matters upon which the Owner's or Owners vote is so pledged.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, the Act or the Statute, a Majority of Owners shall constitute a quorum at all meetings of the Members. In the absence of a quorum, any officer entitled to preside at, or act as secretary of, such meeting shall have the power to adjourn the meeting from time to time until a quorum shall be constituted. At any such adjourned meeting at which a quorum shall be present, any matters may be considered which might have been considered at the original meeting, but only those Members entitled to vote at the original meeting shall be entitled to vote at any adjournment or adjournments thereof unless a new record date is fixed by the Board of Directors for the adjourned meeting.

(f) Required Vote. When a quorum is present at any meeting, action on a matter (other than the election of Directors) is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Declaration, the Statute, the Articles or these By-Laws require a greater number of affirmative votes. Unless otherwise provided in the Articles of Incorporation or these By-Laws, Directors are elected by a plurality of the votes cast by the Members entitled to vote in the election at a meeting at which a quorum is present and may also be appointed by the Declarant in accordance with Section 5.02 hereof.

(g) Validity of a Vote, Consent, Waiver or Proxy Appointment. If the name on a vote, consent, waiver or proxy appointment corresponds to the name of a Member, the Corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the Member. The Corporation may reject a vote, consent, waiver or proxy appointment if the authorized vote tabulation officer, acting in good faith, has a reasonable basis for doubt about the validity of the signature, or the signatory's authority. If so accepted or rejected, the Corporation and its officer are not liable in damages to the Member for any consequences of the rejection. Any of the Corporation's actions based on an
acceptance or rejection of a vote, consent, waiver or proxy appointment under this Section is valid unless a court of competent jurisdiction determines otherwise.

(h) Voting List. After fixing a record date for a notice of a meeting of Members, the Corporation shall prepare a list of the names of the Corporation's Members who are entitled to notice of a Members meeting. The list must show the address and number of votes each Member is entitled to vote at the meeting and must be arranged in alphabetical order. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the Corporation's principal office or at a place identified in the meeting notice in Hendricks County where the meeting will be held.

(i) Fixing a Record Date to Determine Members Entitled to Vote. The Board of Directors may fix a day and hour not more than fifty-five (55) days prior to meetings of the Members as the time as of which members entitled to notice of, and to vote at, such meeting shall be determined, and all persons who are Members at such time, and no others, shall be entitled to notice of, and to vote at, such meeting. In the absence of such a determination, such date and time shall be fixed in accordance with the Act. Any determination of Members entitled to notice of, or to vote at, a Members meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which is only required if the meeting is adjourned to a date more than fifty-five (55) days after the record date for determining Members entitled to notice of the original meeting.

Section 4.07: Conduct of Meetings.

(a) Annual Meeting. The President shall act as the chairman of all annual meetings of the Association if he is present. At all annual meetings, the President 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 Vote.

(2) Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed Annual Budget for the current year.

(3) Annual Budget. The proposed Annual Budget for the current fiscal year shall be presented to the Owners for approval or amendment.
(4) Election of Board of Directors. After the Turnover Date, nominations for the Board may be made by any Member from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary at least seven (7) days prior to the date of the annual meeting. Voting for the Board will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a member of the Board. 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. Each voting Owner shall sign his ballot. Prior to the Turnover Date, the nomination and election of the Board shall be governed by the provisions of Section 5.02 hereof.

(5) Other Business. Other business may be brought before the meeting only by decision of the Board of Directors or upon a written request of an Owner submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting, except that such written request may be waived at the meeting if agreed by a Majority of Owners.

(6) Adjournment. Upon the completion of the agenda above, the meeting shall be adjourned by the President.

(b) Special Meeting. The President shall act as chairman of any special meetings of the Association if he is present. The President shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE V

Board of Directors

Section 5.01. Duties and Number. All corporate powers shall be exercised by or under the authority of, and the affairs of the Corporation shall be managed under the direction of, its Board of Directors (herein sometimes collectively called "Board" and individually "Directors"). Only Members shall be eligible to serve as Directors. Prior to the Turnover Date, the Board shall be composed of three individuals. After the Turnover Date, the Board shall be composed of five individuals. The number of Directors comprising the Board may be increased after the Turnover Date by resolution adopted by not less than a majority of the Board of Directors, but said number shall not exceed thirteen (13). In the event the number of Directors is increased as provided herein, the election of the additional Director or Directors shall be by a vote of the Members according to a procedure established by resolution of the Board.

Section 5.02. Initial Board of Directors. The Initial Board of Directors shall consist of Donald E. Foster, David A. Sharp and Andrew R. Foster, all of whom have been or shall be
Section 5.07. Meeting by Electronic Media. Any or all of the members of the Board of Directors may participate in a meeting of the Board or the committee by or through the use of conference telephone hook-up or any other means of communication by which all persons participating in the meeting have a reasonable opportunity to speak and be heard, and participation by these means shall constitute presence in person at the meeting.

Section 5.08. Quorum. A majority of the number of Directors prescribed by these By-Laws, from time to time, shall be necessary to constitute a quorum for the transaction of any business except the filling of vacancies, and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles or these By-Laws.

Section 5.09. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a written consent thereto is signed by all members of the Board of Directors.

Section 5.10. Resignations. Any Director may resign at any time by giving written notice to the Board of Directors, the President, the Secretary, or any other officer of the Corporation. Such resignation shall take effect when the notice is delivered unless the notice specifies a later effective date; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.11. Removal. Unless the Articles provide otherwise, a Director may be removed only for cause by the members, and only by action duly taken at a meeting of the members, provided that there is a quorum present, by the affirmative vote of two-thirds (2/3) in number of the members of record present in person, or by proxy, and entitled to vote for the election of Directors, and provided further, that notice of the intention to act upon such matter shall have been given in the notice calling such meeting. If the notice calling such meeting shall so provide, the vacancy caused by such removal may be filled at such meeting by vote of a majority of the members present and entitled to vote for the election of Directors.

Section 5.12. Vacancies. Any vacancy or vacancies occurring in the Board caused by a death, resignation or otherwise, other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the members through a vote of a majority of the remaining Directors. At the first annual meeting of the members following any such vacancy, a Director shall be elected by the Members to serve for the balance of the term of the Director in respect to whom there has been a vacancy.

Section 5.13. Limitation on Board Action. After the Turnover Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than $25,000.00 without obtaining the prior approval of a Majority of Owners, except that in the following cases, approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire, flood, natural disaster or other cause where...
appointed by Declarant. The Initial Board shall hold office until the Turnover Date. In the event of any vacancy in the Initial Board for any reason or cause whatsoever, prior to the Turnover Date, every such vacancy shall be filled by a person appointed by Declarant. Each Owner, by virtue of Owner’s acceptance of a deed to a Whittington Lot, or acquisition of any interest in a Whittington Lot, shall be deemed to have appointed Declarant as each Owner’s agent, attorney-in-fact and proxy, which appointment shall be deemed coupled with an interest and irrevocable until the Turnover Date, to exercise all of said Owner’s right to vote as a Member and to vote as Declarant determines as to all matters on which Members are entitled to vote.

Section 5.03. Term of Office and Staggered Board. The members of the Board of Directors shall be elected at each annual meeting of the Corporation, provided, however, the Initial Board of Directors shall be comprised of those members designated in the Corporation’s Articles. The President and Treasurer shall be elected to serve a term of three (3) years. The Vice-President, Secretary and at-large Director shall serve a term of one (1) year. However, at the first election, the President of the Board of Directors shall be elected for a three (3) year term, the Treasurer for a two year term and the remaining elected members of the Board of Directors for one (1) year terms so that the terms of the members of the Board shall be staggered. There shall be separate nominations for the office of each member of the Board to be elected at such first election, with the exception of the at-large member who shall be appointed by the Board as set forth herein. Each Director shall hold office throughout the term of his or her election or appointment until his or her successor is chosen and qualified.

Section 5.04. Annual Meeting. The Board of Directors shall meet each year immediately after the annual meeting of the Members, for the purpose of organization and consideration of any other business that may properly be brought before the meeting.

Section 5.05. Regular Meetings. Regular meetings of the Board of Directors may be held once per month at such time and place as may be selected by the Board.

Section 5.06. Other Meetings. Special meetings of the Board of Directors may be called at any time by the President, and shall be called on the written request of any member of the Board of Directors. Notice of such a special meeting shall be sent by the Secretary to each Director at his or her residence or usual place of business by letter or telegram, at such time that, in regular course, such notice would reach such place not later than during the second day immediately preceding the day for such meeting; or may be delivered by the Secretary to a Director personally at any time during such second preceding day. A Director may waive any notice before or after the date and time stated in the notice. Except for waiver by attendance as provided herein below, such waiver must be in writing, signed by the Director entitled to the notice, and delivered to the Corporation or any officer thereof. By his or her attendance at or participation in a meeting, a Director waives his or her right to object to the lack of notice of such meeting unless the Director at the beginning of the meeting (or promptly upon the Director’s arrival) objects to holding the meeting or transacting business at the meeting and does not thereafetr vote for or assent to action taken at the meeting. Such meetings may be held at any place within the State of Indiana, as may be specified in the respective notices, or waivers of notice, thereof.

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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 Owners at the annual meeting; and

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

Section 5.14. Compensation. No Director shall be compensated for services as a Director except as otherwise expressly authorized by a Majority of Owners. The Board may employ a Managing Agent to assist the Board in performing the duties of the Association. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 5.15. Duties of the Board of Directors. The Board shall provide for the administration of Whittington, the maintenance, upkeep and replacement of the Common Areas and the collection and disbursement of the Common Expenses. After the Turnover Date, the Board may, on behalf of the Association, employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) protection, surveillance and replacement of the Common Areas unless the same are otherwise the responsibility or duty of the Owners, provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, 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 used in connection with Whittington, removal of garbage and waste, and snow removal from the Common Areas and Boat Docking Facilities;

(c) landscaping, painting, decorating, furnishing, maintaining and repairing the Common Areas;

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

(e) assessment and collection from the Owners of the Owner's share of the Common Expenses;

(f) preparing and delivering annually to the Owners the proposed Annual Budget;
(g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;

(h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; and

(i) making available to Owners current copies of the Declaration, By-Laws and rules and regulations governing Whittington ("Organizational Documents") and any other books, records and financial statements of the Association. The Board shall also make available to prospective purchasers of Lots and or Lots current copies of the Organizational Documents and the most recent annual audited financial statement, if such statement has been prepared. "Available" means available for inspection upon request during normal business hours or under other reasonable circumstances. Upon written request by the United States Department of Housing and Urban Development ("HUD") or the Veterans Administration ("VA"), the Board shall also prepare and furnish within a reasonable time an audited financial statement for the Association for the immediately preceding fiscal year.

Section 5.16. Powers of the Board of Directors. The Board 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; provided, however, any management agreement shall be terminable by the Association for cause upon thirty (30) days written notice and any such agreement may not exceed one (1) year renewable by agreement of the parties for successive one (1) year periods;

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

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

ARTICLE VI

Executive or Other Committee

Section 6.01. Designation of Executive or Other Committee. The Board of Directors may, by resolution adopted by a majority of the actual number of Directors elected and qualified, from time to time, designate two (2) or more of its number to constitute an executive or other committee. The Board of Directors shall have the power at any time to increase or decrease the number of members of the executive or other committee, to fill vacancies thereon, to change any
member thereof, and to change the functions or terminate the existence thereof.

Section 6.02. Powers of the Executive or Other Committee. During the intervals between meetings of the Board of Directors, and subject to such limitations as may be required by law or by resolution of the Board of Directors, the executive or other committee shall have and may exercise all of the authority of the Board of Directors, except that the executive or other committee shall not have authority to (i) authorize distributions of funds of the Corporation; (ii) except as otherwise provided in the Act, amend the Articles or adopt, amend or repeal the By-Laws; or (iii) fill vacancies on the Board of Directors or any of its committees.

Section 6.03. Meetings; Procedure; Quorum. Regular meetings of the executive or other committee may be held, without notice, at such time and place as may from time to time, be fixed by resolution of the committee. Special meetings of the committee may be called at any time by the chairman of the committee. Notice of such a special meeting shall be sent to each member of the committee at his or her residence or usual place of business by letter or telegram, at such time that, in regular course, such notice would reach such place not later than during the date immediately preceding the day for such meeting; or may be delivered to a member personally or by telephone at any time during such immediately preceding day. Notice of any such meeting need not be given to any member of a committee who has waived such notice, either in writing or by telegram, arriving either before or after such meeting, or who shall be present at the meeting or who executes a consent to action consistent with the By-Laws. Any meeting of a committee shall be a legal meeting, without notice thereof having been given, if all the members of the committee who have not waived notice thereof in writing or by telegram, shall be present in person. A majority of the committee, from time to time, shall be necessary to constitute a quorum for the consideration and approval of any matters, and the act of a majority of the members present at a meeting at which a quorum is present shall be an act of the committee. The members of a committee shall act only as a committee, and the individual members shall have no power as such. All minutes of meetings of a committee shall be submitted to the next succeeding meeting of the Board of Directors for approval; but failure to submit the same or to receive the approval thereof shall not invalidate any completed or incomplete action taken by the Corporation upon authorization by the committee prior to the time at which the same shall have been, or were, submitted as above provided.
ARTICLE VII

Officers

Section 7.01. Number and Qualifications. The officers of the Corporation may consist of a President, one (1) or more Vice-Presidents, a Secretary, a Treasurer, an at-large member, and such other officers as may be recommended by the Board of Directors and elected by the members at such time and in such manner and for such terms as the Board of Directors may prescribe. The officers shall be elected from among the Directors by the Owners entitled to vote at the annual meeting. Any two (2) or more offices may be held by the same person. The at-large member of the Board shall be the only officer appointed by the Board and shall serve concurrently as the chairperson of the Architectural Control Committee.

Section 7.02. Election and Term of Office. The elected officers shall be elected at the annual meeting by the Owners entitled to vote for the members of the Board of Directors. Each officer shall hold office until his or her successor is chosen and qualified, or until his or her death, or until he or she shall have resigned, or shall have been removed in the manner hereinafter provided.

Section 7.03. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors, its President or the Secretary. Such resignation shall take effect upon delivery unless a later time is specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.04. Removal. Unless the Articles provide otherwise, an officer may be removed only for cause by the members, and only by action duly taken at a meeting of the members, provided that there is a quorum present, by the affirmative vote of two-thirds (2/3) in number of the members of record present in person, or by proxy, and entitled to vote for the election of Directors, and provided further, that notice of the intention to act upon such matter shall have been given in the notice calling such meeting. If the notice calling such meeting shall so provide, the vacancy caused by such removal may be filled at such meeting by vote of a majority of the members present and entitled to vote for the election of Directors.

Section 7.05. Vacancies. Any vacancy or vacancies occurring in any office caused by death, resignation, removal, an increase in the number of officers or otherwise, shall be filled until the next annual meeting of the members through a vote of a majority of the remaining Directors. At the first annual meeting of the members following any such vacancy, an officer shall be elected by the Members to serve for the balance of the term of the office in respect to which there has been a vacancy.

Section 7.06. President. Subject to the general control of the Board of Directors, the President shall manage and supervise all the affairs and personnel of the Corporation and shall discharge all the usual functions of the chief executive officer of a corporation and perform such other duties as these By-Laws or the Board of Directors may prescribe. The President shall preside at meetings of the Board of Directors and the executive committee of the Board of
Directors, if such committee has been designated. The President of Board of Directors shall have full authority to execute proxies on behalf of the Corporation and to execute, with the Secretary, powers of attorney appointing other corporations, partnerships, or individuals the agent of the Corporation, all subject to the provisions of the Act, the Articles of Incorporation and these By-Laws.

Section 7.07. Vice-President. Subject to the control of the Board of Directors, the Vice-President shall, in the absence of the President, perform all of the duties and functions of the President during such absence. Subject to the control of the President, the Vice-President shall perform such duties and functions as the Board of Directors and/or the President shall prescribe.

Section 7.08. Secretary. The Secretary shall attend all meetings of the Board of Directors, and shall keep or cause to be kept in a book provided for such purpose a true and complete record of the proceedings of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors. He or she shall perform such other duties as these By-Laws, the Board of Directors or the President may prescribe. He or she shall give all notices of the Corporation and, in case of his or her absence, negligence or refusal so to do, any notice may be given by a person so directed by the President or by the requisite number of Directors upon whose request the meeting is called as provided by these By-Laws.

Section 7.09. Treasurer. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial affairs of the Corporation. He or she shall be the legal custodian of all moneys, notes, securities and other valuables which may from time to time come into the possession of the Corporation. He or she shall immediately deposit all funds of the Corporation coming into his or her hands in some reliable bank or other depository to be designated by the Board of Directors, and shall keep such bank account in the name of the Corporation. He or she shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation, and shall perform such other duties as these By-Laws, the Board of Directors or the President may prescribe. The Treasurer may be required to furnish bond in such amount as shall be determined by the Board of Directors.

Section 7.10. At-Large Member. The at-large member of the Board of Directors shall have the same voting rights as the President, Vice-President, Secretary and Treasurer. The at-large member shall serve concurrently as the chairperson of the Architectural Control Committee and shall be the only officer appointed by the Board of Directors, pursuant to Article XIII of these By-Laws.

Section 7.11. Assistant Officers. The Board of Directors may from time to time recommend to the members entitled to vote assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these By-Laws, the Board of Directors or the President may prescribe. An Assistant Secretary may, in the absence or disability of the Secretary, attest the execution of all documents by the Corporation. Assistant officers shall be non-voting members of the Board of Directors.
Section 7.12. Delegation of Authority. In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate the powers or duties of such officer to any other officer or to any Director, for the time being.

ARTICLE VIII

Special Corporate Acts, Negotiable Instruments, Deeds and Contracts

Section 8.01. Execution of Negotiable Instruments. All checks, drafts, bills of exchange and orders for the payment of money of the Corporation shall, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by any two of the following officers: President, Vice-President, Secretary or Treasurer. The Board of Directors may, however, authorize any one or more of such officers to sign checks, drafts, bills of exchange and orders for the payment of money by the Corporation singly and without necessity of countersignature; and the Board of Directors may designate any employee or employees of the Corporation, in addition to those named above, who may, in the name of the Corporation, execute checks, drafts, bills of exchange and orders for the payment of money by the Corporation or in its behalf.

Section 8.02. Execution of Deeds, Contracts, and the Like. All deeds, notes, bonds and mortgages made by the Corporation and all other written contracts and agreements, other than those executed in the ordinary course of corporate business, to which the Corporation shall be a party shall be executed in its name by any one or more of, the President, Vice-President, Secretary or Treasurer or by any other officer so authorized by the Board of Directors, acting by resolution; and the Secretary, when necessary or required, shall attest the execution thereof.

Section 8.03. Ordinary Contracts and Agreements. All written contracts and agreements into which the Corporation enters in the ordinary course of business operations shall be executed by any officer of the Corporation or by any other employee or agent of the Corporation designated by an officer of the Corporation to execute such contracts and agreements.

ARTICLE IX

Indemnification of Officers and Directors

Section 9.01. Indemnification.

(a) Non-Liability of Directors. The Directors shall not be liable to the Owners 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 wilful 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. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(b) **Additional Indemnity of Officers and Directors.** To the extent not inconsistent with the terms and conditions of the Declaration, the Corporation shall indemnify each member of the Board of Directors, each incorporator, each officer and each employee or agent of the Corporation against all liability and expenses (including legal fees and disbursements), judgments, fines, penalties and amounts paid in settlement or upon execution of judgment, that may be incurred by or on his behalf, to the fullest extent now or hereafter permitted by law, in connection with any threatened, pending or completed action, suit, proceeding, including the appeal thereof, whether civil, criminal, administrative or investigative, brought or threatened to be brought against him or her by reason of his or her performance as a director or officer of Corporation, or in any other capacity on behalf of Corporation and shall continue as to an individual who has ceased to be a director or officer of the Corporation, and shall inure to the benefit of the heirs, executors, administrators and legal representatives of such individual. The rights of indemnification provided for herein shall not be deemed the exclusive rights to which any director or officer of the Corporation may be entitled.

**Section 9.02. Expenses.** All direct expenses incurred by one or more individuals entitled to be indemnified by the Corporation in defending any such action, suit or proceeding shall be paid by the Corporation on behalf of each such individual as such expenses are incurred, in advance of the final disposition of such action, suit or proceeding if:

(a) the individual entitled to indemnification furnishes the Corporation a written affirmation of such individual's good faith belief that such individual has met the standard of conduct required by law; and

(b) the individual entitled to indemnification furnishes the Corporation a written undertaking, executed personally or on the individual's behalf, to repay the advance if it is ultimately determined that the individual did not meet the required standard of conduct; and

(c) determination is made that the facts then known to those making the determination would not preclude indemnification under applicable law.

**Section 9.03. Liability Insurance.** If so decided by the Board of Directors, the Corporation shall purchase and maintain, on behalf of any person who is a Director, officer, employee or agent of the Corporation, insurance against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the Corporation would have the power to indemnify him or her against such liability under law.
Section 9.04. Effect of Indemnification Rights. The foregoing provisions for indemnification shall be deemed to be a contract between the Corporation and each person entitled to indemnification thereunder and no such person's rights to indemnification shall be diminished or otherwise adversely affected by any repeal, amendment or modification of the foregoing provisions which occurs subsequent to such person becoming an officer, Director, employee or agent of the Corporation.

ARTICLE X

Management

Section 10.01. Appurtenant Maintenance. In the event that the maintenance or repair of any Lot is reasonably necessary in the discretion of the Board to protect the Common Areas or to preserve the appearance or value of the Property, or is otherwise in the interest of the general welfare of the Owners, the Board shall have the power to undertake such maintenance or repair; but no such maintenance or repair shall be undertaken without a resolution by the Board and reasonable written notice to the Owner of the Lot proposed to be maintained. The cost of any such maintenance or repair shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of the Lot at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects.

Section 10.02. Common Areas. All maintenance, repairs and replacements to the Common Areas (except as otherwise provided in the Declaration, any Supplemental Declaration, or these By-Laws) shall be furnished by the Association as part of the Common Expenses. The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas.

Section 10.03. Alterations and Additions. No person shall make any alterations or additions to or which would affect the Common Areas without the prior written approval of the Board of Directors.

Section 10.04. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by, or to comply with any provisions of, the Declaration, the Act, these By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.
ARTICLE XI

Assessments

Section 11.01. Proposed Annual Budget. The Board of Directors of the Association shall establish an Annual Budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days of the beginning of each fiscal year of the Association. The Annual Budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the coming fiscal year. Written notice of the annual meeting, and any meeting called for the purpose of taking action to authorize Assessments, shall be sent to all members not less than thirty (30) days nor more than sixty (60) in advance of the meeting. At the annual meeting of the Owners, each Budget may be approved in whole or in part or may be amended in whole or in part by a separate Majority Vote for each budget; provided, however, that in no event shall the annual meeting of the Owners be adjourned until the 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 Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The Annual Budget and the Regular Assessments shall include the amounts required for funding the reserve accounts required by Sections 11.05 and 11.06. The failure or delay of the Board to prepare proposed Annual Budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no Annual Budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved Annual Budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a Temporary General Budget.

Section 11.02. Regular Assessments. The Annual Budget as adopted by the Owners shall, based on the estimated cash required for the Common Expenses in the current fiscal year and required reserve amounts as set forth in said budget, contain a proposed assessment against each Lot based on the Pro-Rata Share of each Lot. Immediately following the adoption of the Annual Budget, each Owner shall be given written notice of such Assessment against his respective Lot. In the event the Regular Assessment for a particular fiscal year is initially based upon a Temporary General Budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final Annual Budget by the Owners to reflect the Assessment against each Lot based upon such Annual Budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final Annual Budget, including reserve funds as herein provided. Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Turnover Date. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association. The Regular Assessment against each Lot shall
be due and payable in advance in semi-annual installments and within 30 days notice that such assessment is due. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

(a) If the Regular Assessment based upon the final Annual Budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the Temporary General Budget, that portion of such excess shall be paid on the first day of the second month immediately following the month of the adoption of the Annual Budget; or

(b) If the Regular Assessment based upon the Temporary General Budget exceeds the Regular Assessment based upon the final Annual General Budget adopted by the Owners, such excess shall be refunded to the Owner on the first day of the second month following the determination of the Regular Assessment based upon the Annual Budget finally adopted by the Owners.

(c) The Regular Assessments shall be payable in advance and shall commence at the time of closing and delivery of deed for the Lot. In computing the initial payment, the amount of the Regular Assessments shall be calculated by apportioning the payment based upon a thirty (30) day month until the due date for the next payment of the Regular Assessment.

(d) In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the Annual Budget, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the next year's Annual Budget or by the making of one or more special Assessments for such purpose, at the option of the Association In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a Temporary General Budget and thereafter, before the Annual Budget and Regular Assessment are finally determined, approved and adjusted as herein provided, and sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or to their designated representatives as

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promptly as practicable but not less than thirty (30) days prior to the due date of the Assessment
to which such notice pertains. Payment of such Assessment shall not be deemed past due for any
purpose if paid by the Owner within thirty (30) days after the date of actually mailing of such
notice.

Section 11.03. Special Assessments. From time to time Common Expenses of an unusual
or extraordinary nature or not otherwise anticipated may arise. At such time and without the
approval of the Owners, unless otherwise provided in these By-Laws, the Declaration or the Act,
the Board of Directors shall have the full right, power and authority to make Special Assessments
to fund such Common Expenses which, upon resolution of the Board, shall become a lien on
each Lot, in accordance with the Pro-Rata Share interest of each Lot. Without limiting the
generality of the foregoing provisions, Special Assessments may be made by the Board of
Directors from time to time to pay Common Expenses, including but not limited to, capital
expenditures or the costs of any repair or reconstruction of damage caused by fire or other cause
or disaster to the extent insurance proceeds are insufficient therefor under the circumstances
described herein, in the Declaration or the Act.

Section 11.04. Duties of the Association. The Board of Directors of the Association
shall cause proper books and records of the levy and collection of each Regular and Special
Assessment to be kept and maintained, including a roster setting forth the identification of each
and every Lot and each Assessment applicable thereto, which books and record shall be kept in
the office of the Association and shall be available for the inspection and copying by each Owner
(or duly authorized representative of any Owner) at all reasonable times during regular business
hours of the Association.

(a) The Association shall promptly furnish to any Owner or Mortgagee upon request
a certificate in writing signed by an officer of the Association, setting forth the
extent to which Assessment has been levied and paid with respect to such
requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such
certificate shall be conclusive evidence of payment of any Assessments therein
stated to have been paid.

(b) The Association shall notify any Mortgagee from which it has received a written
request for notice of any default in the performance by any Owner of any
obligation under the By-Laws or this Declaration which is not cured within sixty
(60) days.

Section 11.05. Reserve for Common Area. The Board of Directors shall cause to be
established and maintained a General Replacement Reserve fund for replacements by the
allocation and payment to such General Replacement Reserve fund not less often than annually
of an amount determined by the Board to be sufficient to meet the costs of periodic maintenance,
repair, renewal and replacement of the Common Areas and resurfacing, repairing or replacing
private streets, parking areas, sidewalks, landscaping and other appurtenances. In determining the
amount, the Board shall take into consideration the expected useful life of such Common Areas,
projected increases in the cost of materials and labor, conservative investment income and gains

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to be earned by such funds, and the advice of Declarant, the Managing Agent and any consultants the Board may employ or engage. Such contributions to the General Replacement Reserve fund shall be conclusively deemed to be a Common Expense. Such contributions to the General Replacement Reserve fund shall be deposited in a separate interest bearing account with a bank or savings and loan association, or such other investment account as determined by the Board in its sole discretion. The General Replacement Reserve for replacements may be expended only for the purpose of effecting the periodic maintenance, repair, renewal or replacement of the Common Areas. The Board shall annually review the adequacy of the General Replacement Reserve fund.

Section 11.06. General Operating Reserve. The Board of Directors may establish and maintain a reserve fund for general operating expenses ("General Operating Reserve") of a non-recurring nature by the allocation and payment to such General Operating Reserve fund not less frequently than annually of such amount as the Board in its discretion determines to be reasonable under the circumstances. Such contribution to the General Operating Reserve fund shall be conclusively deemed to be a Common Expense. Such contribution to the General Operating Reserve fund shall be deposited in a separate interest bearing account with a bank or savings and loan association or such other investment account as determined by the Board in its sole discretion. The General Operating Reserve may be expended only for operating contingencies of a non-recurring nature. The proportionate interest of any Owner in any General Operating Reserve fund for general operating expenses shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 11.07. Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas. Each Owner shall be personally liable for the payment of his respective Pro-Rata Share of all Assessments. Where the Owner constitutes more than one person, the liability of such person shall be joint and several. If any instrument payable to the Association is returned to the Association due to insufficient funds, there shall be a return fee of not less than Twenty Dollars ($20.00) or such maximum amount as is permitted by law. If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment, a late fee of Twenty-Five Dollars ($25.00) and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the maximum rate allowable under applicable usury laws. A lien for such Assessment on the Owner's Lot may be filed and foreclosed by the Board for and on behalf of the Association as provided by law; provided, however, any lien for delinquent Assessments or other charges that the Association has on a Lot will be subordinate to a first mortgage on the Lot if the mortgage was recorded before the delinquent Assessment was due. Upon the failure of an Owner to make timely payments of any Assessment when due, the Board may in its discretion accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment without foreclosing or waiving the lien securing the same. In any action to recover an Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the
Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys’ fees and expenses, including but not limited to paralegal fees, from the Owner of the respective Lot.

Section 11.08. Waiver of Lien Upon Foreclosure. Notwithstanding anything to the contrary contained in the Declaration and these By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, 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 as to such installments that became due prior to such sale, transfer or conveyance, but extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Owner or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular or Special Assessments, shall be deemed to be a Common Expense collectible from all Owners as otherwise provided herein (including the party acquiring the Lot from which it arose), as provided in the Act.

Section 11.09. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act, in the Statute or otherwise, until the Turnover Date the Annual Budget and all Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 5.02 hereof shall be deemed to cover and include each Owner’s right to vote on and approve the Annual Budget and any Assessments until the Turnover Date.

ARTICLE XII

Restriction, Entry, Rules and Regulations

Section 12.01. Restrictions on Use. The following restrictions on the use and enjoyment of the Lots, Common Areas, Recreation Area and the Property shall be applicable to Whittington:

(a) All Lots shall be used exclusively for residential purposes and for occupancy by a single family excepting Declarant specifically reserves the right to occupy and maintain a Lot as a sales office or sales area.

(b) Nothing shall be done or kept in any Lot or in the Common Areas and no Owner shall permit anything to be done or kept in his Lot or in the Common Areas that will result in a cancellation of insurance on any part of the Common Areas, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
(c) No nuisance shall be permitted and no waste shall be committed in any Lot or Common Areas.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any Lot, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or be placed upon the exterior wall or roofs or any other parts of any Lot without the prior consent of the Board, unless otherwise provided in the Declaration. Interior windows and door drapes or coverings shall be of a neutral translucent color and texture or of the same color of the exterior facade surrounding the window or door.

(e) No Lot shall be used in any unlawful manner or in any manner that might cause injury to the reputation of Whittington or that might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Lots or neighboring property, including without limiting the generality of the foregoing, noise by the use of any loud speakers, electrical equipment, amplifiers or other equipment or machines or loud person.

(f) The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Area.

(g) All Owners, guests, tenants or invitees, and all occupants of any Lot or other persons entitled to use the same and to use and enjoy the Common Areas 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 Lots and Common Areas, including but not limited to rules relating to the keeping of animals, the parking or storage of vehicles, boats, jet skis or trailers and other matters incidental to the use of the Common Areas.

(h) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas except with express permission from the Board.

(i) All garbage, trash and refuse shall be stored in appropriate containers inside the Lot (including the garage) or in an inconspicuous place and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection.

(j) No "for sale," "for rent" or "for lease" signs or other advertising display shall be maintained or permitted on the Property without the prior consent of the Board, except as otherwise provided in the Declarations and except that the right to place or display such signs is reserved to Declarant with respect to unsold or unoccupied Lots.
(k) Common Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the provisions of the Declaration, these By-Laws and the rules and regulations from time to time adopted by the Board.

(l) No use shall be made of any part of the Real Estate which violates, and all Owners, members of their families, their guests, tenants, invitees and all occupants or other Persons entitled to use or who may use any part of the Real Estate, shall at all times fully comply with, the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Declaration, these By-Laws or other instruments recorded in the Office of the Recorder of Hendricks County with respect to Whittington.

(m) Recreational use of the Lakes within Whittington is prohibited.

(n) The Lake within the Recreation Area may be used only in the manner authorized by the Association which shall not be inconsistent with the provisions of this Declaration.

(o) The Association, on behalf of the owners, or authorized agents of Whittington, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the Lakes or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to cost, together with reasonable attorneys' fees.

(p) All restrictions as adopted by the Board and all restrictions as delineated in the declaration.

Section 12.02. Right of Board to Adopt Rules and Regulations. The Board may promulgate such rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas 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. The Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

Section 12.03. Enforcement. The Declarant, the Association and any of its Members shall have the right of enforcement of all restrictions and regulations as identified in the Declarations or adopted pursuant to this Article XII. The Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. Any costs, including reasonable attorneys fees, may be recovered from any Owner for violation thereof; however, any reservation of right to the use of summary abatement or similar means to enforce restrictions against a Lot or its use shall require that judicial proceedings be instituted before any items of construction can be altered or demolished.
ARTICLE XIII

Architectural Control Committee

Section 13.01 Appointment Of Architectural Control Committee. The Board of the Association, or Declarant if the Association is not yet incorporated, shall appoint an Architectural Control Committee ("Committee") to be composed of three (3) members.

Section 13.02 Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls, shall begin within Whittington until the plans and specifications locations and plot plan thereof in detail and to scale have been submitted to and approved by the Committee. The plans, specifications and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by the Association or Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

Section 13.03. Landscape. The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

Section 13.04. Duties of Committee. The Committee shall approve or disapprove proposed improvements within (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. 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.

Section 13.05. Liability of Committee. Neither the Committee nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 13.06. Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and the Declaration.
ARTICLE XIV

Insurance

Section 14.01. Maintenance of Insurance; Notice to Mortgagee; Endorsements. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars ($1,000,000.00) for any single occurrence, occurring on or in connection with Common Areas and Landscape Easements. The Association shall also maintain in force adequate fire, and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvement. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured and shall cover claims of one or more insured parties against other insured parties.

Section 14.02. Fidelity Bonds. The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any Director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its Managing Agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Whittington plus the Association's reserve funds.

Section 14.03. Notice. The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be cancelled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal Nation Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, and as amended thereafter. coverage for the Common Areas, underwritten by companies duly authorized to do business in Indiana.
ARTICLE XV

Fiscal Management

Section 15.01. Fiscal Year. The fiscal year of the Association shall begin each year on January 1 and end on the last day of December of the same year.

Section 15.02. Books of Account. Books of account of the Association shall be kept under the direction of the Treasurer in accordance with generally accepted accounting principles, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses and Boat Docking Facilities Expenses.

Section 15.03. Inspection. All books, records and accounts, and all vouchers accrediting the entries made thereupon, shall be available for examination by an Owner or any duly authorized agent or attorney of an Owner at any time during normal business hours for purposes reasonably related to his interest as an Owner.

Section 15.04. Auditing. Unless otherwise agreed by a Majority of Owners, at the close of each fiscal year, the books and accounts of the Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards and which shall be available within 120 days after the fiscal year end of the Association.

Section 15.05. Annual Financial Statement. Prior to the annual meeting of the Association, the Board of Directors shall cause to be prepared and delivered to the Owners an annual financial statement, certified to by the Treasurer, showing all income and all disbursements of the Association during the previous fiscal year. To the extent possible, such financial statement shall be based upon the report prepared pursuant to Section 15.04. The requirements of this Section 15.05 shall be satisfied if the Board causes to be delivered to each Owner prior to the annual meeting of the Association a copy of the report prepared pursuant to Section 15.04.

Section 15.06. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other individuals as are from time to time so authorized by the Board.
ARTICLE XVI

Amendments to By-Laws

Section 16.01. Procedure. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements as amendments to the Declaration.

Section 16.02. Amended and Restated By-Laws. An amended and restated By-Laws, containing the original By-Laws and all amendments theretofore made, may be executed any time or from time to time by a majority of the then Board of Directors and shall be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original By-Laws and the various amendments thereto.

ARTICLE XVII

Miscellaneous

Section 17.01. Membership Certificates. Each Member shall automatically become a Member of the Association upon delivering of title to a Lot or Home. Such membership shall be nontransferable and membership shall automatically transfer to the new Owner.

Section 17.02. Personal Interests. No Person shall have or receive any earnings from the Association, except a Person who is an officer, director, employee or independent contractor employed or engaged by the Association may receive fair and reasonable compensation for his services as officer, director, employee or independent contractor, and a Person may also receive principal and interest on monies loaned or advanced to the Association as provided under Indiana law.

IN WITNESS WHEREOF, the undersigned executes this Code of Bylaws and certifies to the truth of the facts herein stated this 2 day of July, 1998.

DIRECTORS

Donald E. Foster

David A. Sharp

Andrew R. Foster
STATE OF INDIANA

COUNTY OF MARION

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Donald E. Foster, David A. Sharp and Andrew R. Foster personally appeared before me; acknowledged the execution thereof; and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 31st day of July, 1998.

[Signature]

(Notary)

Kasaro Hagan

(Printed)

My County of Residence: Marion

Prepared By: Morgan, Gard, & Pope

Whereas, a Master Plan for the Real Estate to be developed by Declarant as Whittenburg Estates Planned Unit Development was recorded January 20, 1995, as Instrument No 1028 in the Office of the Recorder of Hendricks County Indiana in Book PC 3 Page 105 27.
Cross Reference - (1) Declaration of Covenants, Covenants and Restrictions for Whittington Estates, recorded with the Recorder of Hendricks County, Indiana, on the 20th day of January 1995 in Book 145, Page 253; (2) First Amendment to the Declaration of Covenants, Covenants and Restrictions for Whittington Estates, recorded with the Recorder of Hendricks County, Indiana, on the 13th day of July 1998 in Vol. 67, Pages 906-908.

ACKNOWLEDGEMENT OF AMENDED BY-LAWS TO WHITTINGTON HOMEOWNERS ASSOCIATION, INC.

THIS ACKNOWLEDGEMENT of Amended By-Laws to Whittington Homeowners Association, Inc. is made as of this 15th day of February, 2008 by Whittington Homeowners Association, Inc., (“Whittington HOA”) an Indiana Corporation, and witnessed as follows:

WHEREAS, the Articles of Incorporation of Whittington HOA was filed with the Secretary of State of Indiana on March 31, 1998, and

WHEREAS, Section 3 of Article X of the Articles of Incorporation grants to the Board of Directors the power to make, alter, amend or repeal the By-Laws of the corporation; and

WHEREAS, a meeting of the Board of Directors for the purpose to change the By-Laws of Whittington HOA was held on February 4, 2008, at which time a proper quorum of the Directors attended and those in attendance unanimously voted and approved to accept the attached Exhibit “A” as the new By-Laws of Whittington HOA.

NOW THEREFORE, pursuant to the foregoing, the Board of Directors of Whittington Homeowners Association, Inc. hereby acknowledges the repeal of the existing By-Laws and the acceptance of Exhibit “A” as the new By-Laws to Whittington HOA, as follows:

1. The aforementioned recitals are incorporated herein.

2. The Board of Directors acknowledges the By-Laws attached hereto as Exhibit “A” and made a part hereof, comprising of 25 pages, was accepted and ratified as the new By-Laws for Whittington Homeowners Association, Inc. effective immediately and the original set of By-Laws of Whittington Homeowners Association, Inc. was repealed in its entirety.

IN WITNESS WHEREOF, the Whittington Homeowners Association, Inc., has executed this Acknowledgement of Amended By-Laws as of the date first written above.
WHITTINGTON HOMEOWNERS
ASSOCIATION, INC.

By: Brenda Schultz, President

Attest:

Paul Woodruff, Secretary

STATE OF INDIANA )
) SS:
COUNTY OF HENDERSON )

Before me, a Notary Public in and for said County and State, personally appeared Brenda Schultz, President and Paul Woodruff, Secretary of Whittington Homeowners Association, Inc., who acknowledged the execution of the foregoing Acknowledgement of Amended By-Laws to Whittington Homeowners Association, Inc.

WITNESS my hand and notarial seal this 15 day of FEBRUARY, 2008.

My Commission expires:

3/19/15

Notary Public

Thomas R. Reese
Printed
Residing in HENDERSON
County, Indiana

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

Robert D. Roache, II, Attorney-at-Law

This document was prepared by Robert D. Roache, II, Attorney-at-Law, 8144 Bowline Court, Indianapolis, IN 46236-8869, (317) 823-0660, facsimile (317) 823-1707.
BY-LAWS
OF
WHITTINGTON HOMEOWNERS' ASSOCIATION, INC.
An Indiana Nonprofit Corporation

ARTICLE I
Definitions

Section 1.01. Definitions.


"Annual Budget" means the annual budget of total Common Expenses, including, but not limited to, the budget for the repair, upkeep and maintenance of the Lake, as defined and determined in Section 11.01 herein.

"Articles" means the Articles of Incorporation of the Association.

"Assessment" means all sums lawfully assessed against the Owners by the Corporation or as declared or authorized by the Act, the Declaration, any Supplemental Declaration, these Articles or the By-Laws.

"Association" or "Corporation" means Whittington Homeowners' Association, Inc., an Indiana not-for-profit corporation, being the association of Owners of Whittington.

"Board of Directors" means the governing body of the Association, being the Initial Board of Directors referred to herein or subsequent Board of Directors elected by the Owners.

"By-Laws" means these By-Laws providing for the administration and management of the Association and Whittington as required by and in conformity with the provisions of the Act.

"Common Areas" means the common areas and facilities as defined in Article II, Section 4 of the Declaration, and including, but not limited to Recreation Areas and the Lake.

"Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all sums lawfully assessed against the Owners by the Association or as declared by the Act, the Declaration, the Articles or the By-Laws.

"Corporation" or "Association" means the Whittington Homeowners' Association, Inc., an Indiana not-for-profit corporation, being the association of Owners of Whittington.

"Declaration" means the Declaration of Covenants, Conditions and Restrictions of Whittington recorded in the office of the Recorder of Hendricks County, Indiana as the same may be amended from time to time.

"Declarant" means Whittington, Inc., an Indiana corporation, its successors and assigns.
“Directors” means all the members of the Board of Directors and “Director” means any individual member thereof.

“General Operating Reserve” means the reserve established and maintained under Section 11.06 herein.

“General Replacement Reserve” means the reserve for Common Area Replacements, as established under Section 11.05 herein.

“Lake” means the Lake shown on the Plat.

“Lot” means any separate parcel numbered and identified in the Plat of Whittington Planned Unit Development, with or without improvements.

“Majority of Owners” means and “Majority of the Percentage Vote” means the Owners entitled to cast more than fifty percent (50%) of the Percentage Votes.

“Majority Vote” means a Majority of the Percentage Vote present in person or by proxy and voting at any duly constituted meeting of the Members.

“Managing Agent” means a reputable and recognized professional property management agent employed by the Board pursuant to Section 5.16.

“Member” means a member of the Association and “Members” means more than one member of the Association.

“Owner” means a person, firm, corporation, partnership, association, trust, limited liability company, or other legal entity or any combination thereof who or which owns the legal and or equitable title to a Lot in Whittington provided, however, that such Owner shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title.

“Plat” means the final plat for each and every recorded section of Whittington in accordance with the Master Plan.

“Pro-rata Share” means the percentage obtained by dividing one by the total number of Lots within Whittington conveyed by Declarant to an Owner.

“Property” means the Real Estate and improvements used in connection with the operation, use and enjoyment of Whittington excluding the personal property of the Owners.

“Real Estate” means the real estate more particularly described in Exhibit “A” attached to the Declaration.

“Recreation Area” means that portion of the Common Area where fitness trails are located, as designated on the recorded Plat, which is intended for the common benefit of all Owners.

“Regular Assessment” means the Assessment levied pursuant to Section 11.02 herein.
“Special Assessment” means the Assessment levied pursuant to Section 11.03 herein.

“Statutes” means the Indiana Nonprofit Corporation Act of 1991, as the same may be amended from time to time.

“Supplemental Declaration” means any supplement or amendment to the Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act, these By-Laws or the Declaration.

“Temporary General Budget” means the annual general budget for a fiscal year based upon one hundred and ten percent (110%) of such last approved Annual Budget as determined under Section 11.01 herein.

“Whittington” means Whittington Planned Unit Development as it is platted and recorded in accordance with the Declaration.

Section 1.02. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Lot, shall be subject to the restrictions, terms and conditions set forth in the Declaration, the Articles, these By-Laws and the Act, and to any rules and regulations adopted by the Board as herein provided.

Section 1.03. Certain References. All references in these By-Laws to the Statute and the Articles shall include the Statute and the Articles, respectively, as now in effect or as may be amended hereafter from time to time.

ARTICLE II

Purposes

Section 2.01. Purposes. The Corporation is formed for the following purposes:

(a) To enforce the Declaration which is recorded in the public records of Hendricks County, Indiana and are incorporated herein by reference;

(b) To be the Association referred to in the Declaration;

(c) To assess all Owners in the Whittington in accordance with the Declaration;

(d) To exercise all rights conferred by the laws of the State of Indiana upon nonprofit corporations, including, but not limited to, the power to acquire by bequest, devise, purchase, gift, lease or otherwise, any property of any sort or nature without limitation as to its amount or value, and to hold, invest, reinvest, manage, use apply, employ, sell, expend, disburse, lease, mortgage, convey, option, donate or otherwise dispose of such property and the income, principle and proceeds of such property for any of the purposes set forth in these articles of incorporation;

(e) To do such other things as are incidental to the purposes of the Association or necessary or desirable in order to accomplish them.
ARTICLE III

NonProfit

The Corporation shall be non-stock and nonprofit and shall not be authorized to issue capital stock. The Board of Directors shall not commit or allow to be committed any act prohibited by Section 501 of the Internal Revenue Code of 1986, as amended, any of the rules and regulations promulgated thereunder, or the Act. The Board of Directors shall do and perform all acts subject to and as required by each of the above-referenced laws, rules and regulations.

ARTICLE IV

Meetings of Association

Section 4.01. Purpose of Meetings. At least annually and at such other times as may be necessary, a meeting of the Owners shall be held for the purpose of electing the Board (subject to the provisions of Article 5 hereof), approving the Annual Budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, any Supplemental Declaration, the Articles, these By-Laws, the Act or the Statute.

Section 4.02. Annual Meetings. There shall be a meeting of the Members each year. At the annual meeting, the Owners shall (subject to the provisions of Article 5 hereof) elect the Board of Directors in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 4.03. Special Meetings. A special meeting of the Members for any reason or purpose, unless otherwise prescribed by the Statute or the Articles, may be called by resolution of the Board or upon a written petition of Owners who have not less than ten percent (10%) of the vote. The written resolution or petition shall be presented to the President or Secretary of the Association and describe the purpose for which the meeting is to be held 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 4.04. Notice and Place of Meeting. All meetings of the Members shall be held at any suitable place in Hendricks County, Indiana, as may be designated by the Board. Written or printed notice stating the date, time and place of any meeting, a description, if required by the Statute or the Articles, or the matter or matters to be considered at the meeting and in the case of a special meeting or when required by any other provision of the Statute, the Articles, or these By-Laws, and, the purpose or purposes for which the meeting is called, shall be delivered or mailed first class or registered mail by the Board to each Member entitled by the Act or the Articles to vote at not less than ten (10) days prior to the date of such meeting and no more than forty-five (45) days before the date of the meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Lots or at any other address designated in writing by a Member. Notice of any such meeting may be waived in writing by any Member if the waiver is signed by the Member and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation’s records. Attendance at any such meeting in person, or by proxy, shall constitute a waiver of notice of such meeting. Each Member, who has in the manner above provided waived notice of a Members meeting, who personally attends a Members meeting or who is represented at a Members meeting by
a proxy authorized to appear by an instrument of proxy, shall be conclusively presumed to have been given due notice of such meeting. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the Member objects to considering the matter when the matter is presented. Notice of any adjourned meeting of Members shall not be required to be given if the date, time and place thereof are announced at the meeting at which the adjournment is taken, except as may be expressly required by law.

Section 4.05. Membership and Voting Right. There shall be one class of voting Members in the Association.

Section 4.06. Voting.

(a) Multiple Owner. Where the Owner of a Lot constitutes or consists of more than one person, or is a partnership, there shall be only one voting representative entitled to all of the vote allocable to that Lot. At the time of acquisition of title to a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary 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 those persons constituting such multiple Owner or a majority of 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 Owner 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 (b) of this Section 4.06, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Lot.

(b) Voting by Corporation or Trust. Where a corporation or trust is a Owner 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 duly empowered by the Board of Directors of such corporation may cast the vote to which the corporation is entitled. The Secretary of the corporation 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 stating who is authorized to vote on behalf of said corporation or trust.

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

(d) Pledges. If the vote of an Owner or Owners has been pledged by mortgage, security agreement, conditional assignment, or other instrument, an executed copy of which has been filed with the Secretary, only the pledge shall be entitled to cast the vote of such Owner or Owners upon those matters upon which the Owner's or Owners
vote is so pledged.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-
Laws, the Act or the Statute, thirty percent (30%) of the total number of Lots or
proxies entitled to vote shall constitute a quorum at all meetings of the Members.
If the required quorum is not present, another meeting may be called subject to
the same notice requirement, and the required quorum at the subsequent meeting
shall be one-half (1/2) of the required quorum at the preceding meeting. No such
subsequent meeting shall be held more than sixty (60) days following the
preceding meeting. In the absence of a quorum, any officer entitled to preside at,
or act as secretary of, such meeting shall have the power to adjourn the meeting
from time to time until a quorum shall be constituted.

(f) Required Vote. When a quorum is present at any meeting, action on a matter (other
than the election of Directors) is approved if the votes cast favoring the action
exceed the votes cast opposing the action, unless the Declaration, the Statute, the
Articles or these By-Laws require a greater number of affirmative votes. Unless
otherwise provided in the Articles of Incorporation or these By-Laws, Directors are
elected by a plurality of the votes cast by the Members entitled to vote in the election
at a meeting at which a quorum is present.

(g) Validity of a Vote, Consent, Waiver or Proxy Appointment. If the name on a vote,
consent, waiver or proxy appointment corresponds to the name of a Member, the
Corporation, if acting in good faith, may accept the vote, consent, waiver or proxy
appointment and give it effect as the act of the Member. The Corporation may reject
a vote, consent, waiver or proxy appointment if the authorized vote tabulation
officer, acting in good faith, has a reasonable basis for doubt about the validity of
the signature, or the signatory’s authority. If so accepted or rejected, the Corporation
and its officer are not liable in damages to the Member for any consequences of
the rejection. Any of the Corporation’s actions based on an acceptance or rejection
of a vote, consent, waiver or proxy appointment under this Section is valid unless a
court of competent jurisdiction determines otherwise.

(h) Voting List. After fixing a record date for a notice of a meeting of Members, the
Corporation shall prepare a list of the names of the Corporation’s Members who are
entitled to notice of and to vote at a Members meeting. The list must show the
address and number of votes each Member is entitled to vote at the meeting and
must be arranged in alphabetical order. The list of Members must be available for
inspection by any Member for the purpose of communication with other Members
concerning the meeting, beginning two (2) business days before the date of the
meeting for which the list was prepared and continuing through the meeting, at the
Corporation’s principal office or at a place identified in the meeting notice in
Hendricks County where the meeting will be held.

Section 4.07. Conduct of Meetings.

(a) Annual Meeting. The President shall act as the chairman of all annual meetings of the
Association 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 Vote.

(2) Treasurer’s Report. The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed Annual Budget for the current year.

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

(4) Election of Board of Directors. Nominations for the Board may be made by any Member from those persons eligible to serve. Nominations may be in writing and presented to the Secretary seven (7) days prior to the date of the annual meeting. Nominations may also be made from the floor during a meeting to elect the Board. Voting for the Board will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a member of the Board. 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. Each voting Owner shall sign his ballot.

(5) Other Business. Other business may be brought before the meeting only by decision of the Board of Directors or upon a written request of a Owner submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting, except that such written request may be waived at the meeting if agreed by a Majority of Owners.

(6) Adjournment. Upon the completion of the agenda above, the meeting shall be adjourned by the President.

(b) Special Meeting. The President shall act as chairman of any special meetings of the Association 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 the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE V

Board of Directors

Section 5.01. Duties and Number. All corporate powers shall be exercised by or under the authority of, and the affairs of the Corporation shall be managed under the direction of, its Board of Directors (herein sometimes collectively called “Board” and individually “Directors”). Only Members shall be eligible to serve as Directors. The Board shall be composed of five (5) individuals. The number of Directors comprising the Board may be increased by resolution adopted by not less than a majority of the Board of Directors, but said number shall not exceed nine (9). In the event
the number of Directors is increased as provided herein, the election of the additional Director or Directors shall be by a vote of the Members according to a procedure established by resolution of the Board.

Section 5.02. Term of Office and Staggered Board. The members of the Board of Directors shall be elected at each annual meeting of the Corporation, provided, however, the Initial Board of Directors shall be comprised of those members designated in the Corporation's Articles. Each Director shall be elected to serve a term of three (3) years, except that at the first election, one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election. One-third (1/3) of the persons on the Board of Directors shall be elected at each subsequent annual meeting of the Corporation. In the event the number of persons on the Board is not divisible by three, the number of Directors' positions available for election at the annual meetings shall be such number to approximate as closely as possible the one-third requirement. For example, with a Board consisting of five (5) persons, two positions shall be elected at the annual meeting, two for the following annual meeting and one for the next annual meeting. Each Director shall hold office throughout the term of his or her election until his or her successor is elected and qualified.

Section 5.03. Annual Meeting. The Board of Directors shall meet each year at some time shortly after the annual meeting of the Members, for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting.

Section 5.04. Regular Meetings. Regular meetings of the Board of Directors may be held at the discretion of the Board and at such time and place as may be selected by the Board.

Section 5.05. Other Meetings. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or the President, and shall be called on the written request of any member of the Board of Directors. Notice of such a special meeting shall be sent by the Secretary to each Director at his or her residence or usual place of business by letter or telegram, at such time that, in regular course, such notice would reach such place not later than during the second day immediately preceding the day for such meeting; or may be delivered by the Secretary to a Director personally at any time during such second preceding day. A Director may waive any notice before or after the date and time stated in the notice. Except for waiver by attendance as provided herein below, such waiver must be in writing, signed by the Director entitled to the notice, and delivered to the Corporation or any officer thereof. By his or her attendance at or participation in a meeting, a Director waives his or her right to object to the lack of notice of such meeting unless the Director at the beginning of the meeting (or promptly upon the Director's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. Such meetings may be held at any place within the State of Indiana, as may be specified in the respective notices, or waivers of notice, thereof.

Section 5.06 Meeting by Electronic Media. Any or all of the members of the Board of Directors may participate in a meeting of the Board or the committee by or through the use of conference telephone hook-up or any other means of communication by which all persons participating in the meeting have a reasonable opportunity to speak and be heard, and participation by these means shall constitute presence in person at the meeting.
Section 5.07 Quorum. A majority of the number of Directors prescribed by these By-Laws, from time to time, shall be necessary to constitute a quorum for the transaction of any business except the filling of vacancies, and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles or these By-Laws.

Section 5.08 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a written consent thereto is signed by all members of the Board of Directors.

Section 5.09 Resignations. Any Director may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board of Directors, the President, the Secretary, or any other officer of the Corporation. Such resignation shall take effect when the notice is delivered unless the notice specifies a later effective date; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.10 Removal. Unless the Articles provide otherwise, a Director may be removed only for cause by the members, and only by action duly taken at a meeting of the members, provided that there is a quorum present, by the affirmative vote of a majority of the members present in person, or by proxy, and entitled to vote for the election of Directors, and provided further, that notice of the intention to act upon such matter shall have been given in the notice calling such meeting. A Director may be removed with or without cause by the balance of the Board.

Section 5.11 Vacancies. Any vacancy or vacancies occurring in the Board caused by a death, resignation or otherwise, other than a vacancy created by removal or an increase in the number of Directors, shall be filled through a vote of a majority of the remaining Directors. The replacement Director shall serve for the balance of the term of the Director in respect to whom there was a vacancy.

Section 5.12 Limitation on Board Action. The authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than $25,000.00 without obtaining the prior approval of a Majority of Owners, except that in the following cases, approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire, flood, natural disaster or other cause 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 Owners at the annual meeting; and

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

Section 5.13 Compensation. No Director shall be compensated for services as a Director except as otherwise expressly authorized by a Majority of Owners. The Board may employ a Managing Agent to assist the Board in performing the duties of the Association. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
Section 5.14 Duties of the Board of Directors. The Board shall provide for the administration of Whittington, the maintenance, upkeep and replacement of the Common Areas and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Association, employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) protection, surveillance and replacement of the Common Areas unless the same are otherwise the responsibility or duty of the Owners, provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, 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 used in connection with Whittington, removal of garbage and waste, and snow removal from the Common Areas;

(c) landscaping, painting, decorating, furnishing, maintaining and repairing the Common Areas;

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

(e) assessment and collection from the Owners of the Owner's share of the Common Expenses;

(f) preparing and delivering annually to the Owners the proposed Annual Budget;

(g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;

(h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; and

(i) making available to Owners current copies of the Declaration, By-Laws and rules and regulations governing Whittington ("Organizational Documents") and any other non-confidential books, records and financial statements of the Association. The Board shall also make available to prospective purchasers of Lots and or Lots current copies of the Organizational Documents and the most recent annual audited financial statement, if such statement has been prepared. "Available" means available for inspection upon request during normal business hours or under other reasonable circumstances. There shall be a reasonable cost charged for all copies provided.

Upon written request by the United States Department of Housing and Urban Development ("HUD") or the Veterans Administration ("VA"), the Board shall also prepare and furnish within a reasonable time an audited financial statement for the Association for the immediately preceding fiscal year.

Section 5.15 Powers of the Board of Directors. The Board 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; provided, however, any management agreement shall be terminable by the Association for cause upon thirty (30) days written notice and any such agreement may not exceed one (1) year renewable by agreement of the parties for successive one (1) year periods;

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

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

ARTICLE VI

Executive or Other Committee

Section 6.01. Designation of Executive or Other Committee. The Board of Directors may, by resolution adopted by a majority of the actual number of Directors elected and qualified, from time to time, designate two (2) or more of its number to constitute an executive or other committee. The Board of Directors shall have the power at any time to increase or decrease the number of members of the executive or other committee, to fill vacancies thereon, to change any member thereof, and to change the functions or terminate the existence thereof.

Section 6.02. Powers of the Executive or Other Committee. During the intervals between meetings of the Board of Directors, and subject to such limitations as may be required by law or by resolution of the Board of Directors, the executive or other committee shall have and may exercise all of the authority of the Board of Directors, except that the executive or other committee shall not have authority to: (a) authorize distributions of funds of the Corporation; (b) except as otherwise provided in the Act, amend the Articles or adopt, amend or repeal the By-Laws; or (ii) fill vacancies on the Board of Directors or any of its committees.

Section 6.03. Meetings; Procedure; Quorum. Regular meetings of the executive or other committee may be held, without notice, at such time and place as may from time to time, be fixed by resolution of the committee. Special meetings of the committee may be called at any time by the chairman of the committee. Notice of such a special meeting shall be sent to each member of the committee at his or her residence or usual place of business by letter or telegram, at such time that, in regular course, such notice would reach such place not later than during the date immediately preceding the day for such meeting; or may be delivered to a member personally or by telephone at any time during such immediately preceding day. Notice of any such meeting need not be given to any member of a committee who has waived such notice, either in writing or by telegram, arriving either before or after such meeting, or who shall be present at the meeting or who executes a consent to action consistent with the By-Laws. Any meeting of a committee shall be a legal meeting, without notice thereof having been given, if all the members of the committee who have not waived notice thereof in writing or by telegram, shall be present in person. A majority of the committee, from time to time, shall be necessary to constitute a quorum for the consideration and approval of any matters, and the act of a majority of the members present at a meeting at which a quorum is present shall be an act of the committee. The members of a committee shall act only as a committee, and the individual members shall have no power as such. All minutes of meetings of a committee
shall be submitted to the next succeeding meeting of the Board of Directors for approval; but failure
to submit the same or to receive the approval thereof shall not invalidate any completed or
incomplete action taken by the Corporation upon authorization by the committee prior to the time
at which the same shall have been, or were, submitted as above provided.

ARTICLE VII

Officers

Section 7.01 Number and Qualifications. The officers of the Corporation may consist of a
President, one (1) or more Vice-Presidents, a Secretary, a Treasurer, and such other officers as may
be chosen by the Board of Directors at such time and in such manner and for such terms as the
Board of Directors may prescribe. The officers shall be chosen from among the Directors. Any two
(2) or more offices may be held by the same person, except the President and Secretary shall not be
the same person.

Section 7.02 Election and Term of Office. The officers shall be chosen annually by the
Board of Directors. Each officer shall hold office until his or her successor is chosen and qualified,
or until his or her death, or until he or she shall have resigned, or shall have been removed in the
manner hereinafter provided.

Section 7.03 Resignations. Any officer may resign at any time by giving written notice to the
Board of Directors, its Chairman, the President or the Secretary. Such resignation shall take effect
upon delivery unless a later time is specified therein, and unless otherwise specified therein, the
acceptance of such resignation shall not be necessary to make it effective.

Section 7.04 Removal. Any officer may be removed either with or without cause, at any time,
by the Board of Directors.

Section 7.05 Vacancies. Whenever any vacancies shall occur in any office by death,
resignation, removal, increase in the number of offices of the Corporation, or otherwise, the same
shall be filled by the Board of Directors, and the officer so chosen shall hold office during the
remainder of the term for which his or her predecessor was chosen or as otherwise provided herein.

Section 7.06 Chairman of Board of Directors. The President shall preside as Chairman at all
meetings of the Board of Directors and the executive committee of the Board of Directors, if such
committee has been designated. The President shall perform such other duties as may be prescribed,
from time to time, by the Board of Directors of the Corporation. The President shall have the
authority to execute proxies on behalf of the Corporation, and to appoint, with the Secretary,
powers of attorney appointing other corporations, partnerships, or individuals the agent of the
Corporation.

Section 7.07 President. Subject to the general control of the Board of Directors, the
President shall manage and supervise all the affairs and personnel of the Corporation and shall
discharge all the usual functions of the chief executive officer of a corporation and perform, such
other duties as these By-Laws or the Board of Directors may prescribe. The President shall have full
authority to execute proxies on behalf of the Corporation and to execute, with the Secretary, powers
of attorney appointing other corporations, partnerships, or individuals the agent of the Corporation,
all subject to the provisions of the Act, the Articles of Incorporation and these By-Laws.
Section 7.08 Vice-President. Subject to the control of the Board of Directors, the Vice-President shall, in the absence of the President, perform all of the duties and functions of the President during such absence. Subject to the control of the President, the Vice-President shall perform such duties and functions as the Board of Directors and/or the President shall prescribe.

Section 7.09 Secretary. The Secretary shall attend all meetings of the Board of Directors, and shall keep or cause to be kept in a book provided for such purpose a true and complete record of the proceedings of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors, He or she shall perform such other duties as these By-Laws, the Board of Directors or the President may prescribe. He or she shall give all notices of the Corporation and, in case of his or her absence, negligence or refusal so to do, any notice may be given by a person so directed by the President or by the requisite number of Directors upon whose request the meeting is called as provided by these By-Laws.

Section 7.10 Treasurer. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial affairs of the Corporation. He or she shall be the legal custodian of all moneys, notes, securities and other valuables, which may from time to time come into the possession of the Corporation. He or she shall immediately deposit all funds of the Corporation coming into his or her hands in some reliable bank or other depository to be designated by the Board of Directors, and shall keep such bank account in the name of the Corporation. He or she shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation, and shall perform such other duties as these By-Laws, the Board of Directors or the President may prescribe. The Treasurer may be required to furnish bond in such amount as shall be determined by the Board of Directors.

Section 7.11 Delegation of Authority. In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate the powers or duties of such officer to any other officer or to any Director, for the time being.
ARTICLE VIII

Special Corporate Acts, Negotiable Instruments, Deeds and Contracts

Section 8.01. Execution of Negotiable Instruments. All checks, drafts, bills of exchange and orders for the payment of money of the Corporation shall, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by any two of the following officers: President, Vice-President, Secretary or Treasurer. The Board of Directors may, however, authorize any one or more of such officers to sign checks, drafts, bills of exchange and orders for the payment of money by the Corporation singly and without necessity of countersignature; and the Board of Directors may designate any employee or employees of the Corporation, in addition to those named above, who may, in the name of the Corporation, execute checks, drafts, bills of exchange and orders for the payment of money by the Corporation or in its behalf. Any person handling money shall be bonded.

Section 8.02. Execution of Deeds, Contracts, and the Like. All deeds, notes, bonds and mortgages made by the Corporation and all other written contracts and agreements, other than those executed in the ordinary course of corporate business, to which the Corporation shall be a party shall be executed in its name by any one or more of, the President, Vice-President, Secretary or Treasurer or by any other officer so authorized by the Board of Directors, acting by resolution; and the Secretary, when necessary or required, shall attest the execution thereof.

Section 8.03. Ordinary Contracts and Agreements. All written contracts and agreements into which the Corporation enters in the ordinary course of business operations shall be executed by any officer of the Corporation or by any other employee or agent of the Corporation designated by an officer of the Corporation to execute such contracts and agreements.

ARTICLE IX

Indemnification of Officers and Directors

Section 9.01. Indemnification.

(a) Non-Liability of Directors. The Directors shall not be liable to the Owners 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. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(b) Additional Indemnity of Officers and Directors. To the extent not inconsistent with the terms and conditions of the Declaration, the Corporation shall indemnify each member of the Board of Directors, each incorporator, each officer and each employee or agent of the Corporation against all liability and expenses (including legal fees and disbursements), judgments, fines, penalties and amounts paid in
settlement or upon execution of judgment, that may be incurred by or on his behalf, to the fullest extent now or hereafter permitted by law, in connection with any threatened, pending or completed action, suit, proceeding including the appeal thereof, whether civil, criminal, administrative or investigative, brought or threatened to be brought against him or her by reason of his or her performance as a director or officer of Corporation, or in any other capacity on behalf of Corporation and shall continue as to an individual who has ceased to be a director or officer of the Corporation, and shall inure to the benefit of the heirs, executors, administrators and legal representatives of such individual. The rights of indemnification provided for herein shall not be deemed the exclusive rights to which any director or officer of the Corporation may be entitled.

Section 9.02 Expenses. All direct expenses incurred by one or more individuals entitled to be indemnified by the Corporation in defending any such action, suit or proceeding shall be paid by the Corporation on behalf of each such individual as such expenses are incurred, in advance of the final disposition of such action, suit or proceeding if:

(a) the individual entitled to indemnification furnishes the Corporation a written affirmation of such individual’s good faith belief that such individual has met the standard of conduct required by law; and

(b) the individual entitled to indemnification furnishes the Corporation a written undertaking, executed personally or on the individual’s behalf, to repay the advance if it is ultimately determined that the individual did not meet the required standard of conduct; and

(c) determination is made that the facts then known to those making the determination would not preclude indemnification under applicable law.

Section 9.03 Liability Insurance. If so decided by the Board of Directors, the Corporation shall purchase and maintain, on behalf of any person who is a Director, officer, employee or agent of the Corporation, insurance against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the Corporation would have the power to indemnify him or her against such liability under law.

Section 9.04 Effect of Indemnification Rights. The foregoing provisions for indemnification shall be deemed to be a contract between the Corporation and each person entitled to indemnification thereunder and no such person’s rights to indemnification shall be diminished or otherwise adversely affected by any repeal, amendment or modification of the foregoing provisions which occurs subsequent to such person becoming an officer, Director, employee or agent of the Corporation.

ARTICLE X

Management

Section 10.01 Appurtenant Maintenance. In the event that the maintenance or repair of any Lot is reasonably necessary in the discretion of the Board to protect the Common Areas or to preserve the appearance or value of the Property, or is otherwise in the interest of the general
welfare of the Owners, the Board shall have the power to undertake such maintenance or repair; but no such maintenance or repair shall be undertaken without a resolution by the Board and reasonable written notice to the Owner of the Lot proposed to be maintained. The cost of any such maintenance or repair shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of the Lot at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects.

Section 10.02. Common Areas. All maintenance, repairs and replacements to the Common Areas (except as otherwise provided in the Declaration, any Supplemental Declaration, or these By-Laws) shall be furnished by the Association as part of the Common Expenses. The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas.

Section 10.03. Alterations and Additions. No person shall make any alterations or additions to or which would affect the Common Areas without the prior written approval of the Board of Directors.

Section 10.04. Costs and Attorneys Fees. In any proceeding arising because of failure of an Owner to make any payments required by, or to comply with any provisions of, the Declaration, the Act, these By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

ARTICLE XI

Assessments

Section 11.01. Proposed Annual Budget. The Board of Directors of the Association shall establish an Annual Budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days of the beginning of each fiscal year of the Association. The Annual Budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the coming fiscal year. Written notice of the annual meeting, and any meeting called for the purpose of taking action to authorize Assessments, shall be sent to all members not less than thirty (30) days nor more than sixty (60) in advance of the meeting. At the annual meeting of the Owners, each Budget may be approved in whole or in part or may be amended in whole or in part by a separate Majority Vote for each budget; provided, however, that in no event shall the annual meeting of the Owners be adjourned until the 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 Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The Annual Budget and the Regular Assessments shall include the amounts required for funding the reserve accounts required by Sections 11.05 and 11.06. The failure or delay of the Board to prepare proposed Annual Budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no Annual Budget approved by the Owners as
herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved Annual Budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a Temporary General Budget.

Section 11.02. Regular Assessments. The Annual Budget as adopted by the Owners shall, based on the estimated cash required for the Common Expenses in the current fiscal year and required reserve amounts as set forth in said budget, contain a proposed assessment against each Lot based on the Pro-Rata Share of each Lot. Immediately following the adoption of the Annual Budget, each Owner shall be given written notice of such Assessment against his respective Lot. In the event the Regular Assessment for a particular fiscal year is initially based upon a Temporary General Budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final Annual Budget by the Owners to reflect the Assessment against each Lot based upon such Annual Budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final Annual Budget, including reserve funds as herein provided. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association. The Regular Assessment against each Lot shall be due and payable in advance in semi-annual installments and within 30 days notice that such assessment is due. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

(a) If the Regular Assessment based upon the final Annual Budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the Temporary General Budget, that portion of such excess shall be paid on the first day of the second month immediately following the month of the adoption of the Annual Budget; or

(b) If the Regular Assessment based upon the Temporary General Budget exceeds the Regular Assessment based upon the final Annual General Budget adopted by the Owners, such excess shall be refunded to the Owner on the first day of the second month following the determination of the Regular Assessment based upon the Annual Budget finally adopted by the Owners.

(c) The Regular Assessments shall be payable in advance and shall commence at the time of closing and delivery of deed for the Lot. In computing the initial payment, the amount of the Regular Assessments shall be calculated by apportioning the payment based upon a thirty (30) day month until the due date for the next payment of the Regular Assessment.

(d) In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the Annual Budget, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the next year's Annual Budget or by the making of one or more special Assessments for such purpose, at the option of the Association In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).
The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that a Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a Temporary General Budget and thereafter, before the Annual Budget and Regular Assessment are finally determined, approved and adjusted as herein provided, and sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or to their designated representatives as promptly as practicable but not less than thirty (30) days prior to the due date of the Assessment to which such notice pertains. Payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actually mailing of such notice.

Section 11.03 Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in these By-Laws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make Special Assessments to fund such Common Expenses which, upon resolution of the Board, shall become a lien on each Lot, in accordance with the Pro-Rata Share interest of each Lot. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay Common Expenses, including but not limited to, capital expenditures or the costs of any repair or reconstruction of damage caused by fire or other cause or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described herein, in the Declaration or the Act.

Section 11.04 Duties of the Association. The Board of Directors of the Association shall cause proper books and records of the levy and collection of each Regular and Special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and record shall be kept in the office of the Association.

(a) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessment has been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

Section 11.05 Reserve for Common Area. The Board of Directors shall cause to be established and maintained a General Replacement Reserve fund for replacements by the allocation and payment to such General Replacement Reserve fund not less often than annually of an amount determined by the Board to be sufficient to meet the costs of periodic maintenance, repair, renewal and replacement of the Common Areas and surfacing, repairing or replacing private streets, parking areas, sidewalks, landscaping and other appurtenances. In determining the amount, the Board shall take into consideration the expected useful life of such Common Areas, projected increases in the cost of materials and labor, conservative investment income and gains to be earned
by such funds, and the advice of Declarant, the Managing Agent and any consultants the Board may employ or engage. Such contributions to the General Replacement Reserve fund shall be conclusively deemed to be a Common Expense. Such contributions to the General Replacement Reserve fund shall be deposited in a separate interest bearing account with a bank or savings and loan association, or such other investment account as determined by the Board in its sole discretion. The General Replacement Reserve for replacements may be expended only for the purpose of effecting the periodic maintenance, repair, renewal or replacement of the Common Areas. The Board shall annually review the adequacy of the General Replacement Reserve fund.

Section 11.06. General Operating Reserve. The Board of Directors may establish and maintain a reserve fund for general operating expenses ("General Operating Reserve") of a non-recurring nature by the allocation and payment to such General Operating Reserve fund not less frequently than annually of such amount as the Board in its discretion determines to be reasonable under the circumstances. Such contribution to the General Operating Reserve fund shall be conclusively deemed to be a Common Expense. Such contribution to the General Operating Reserve fund shall be deposited in a separate interest bearing account with a bank or savings and loan association or such other investment account as determined by the Board in its sole discretion. The General Operating Reserve may be expended only for operating contingencies of a non-recurring nature. The proportionate interest of any Owner in any General Operating Reserve fund for general operating expenses shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 11.07. Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas. Each Owner shall be personally liable for the payment of his respective Pro-Rata Share of all Assessments. Where the Owner constitutes more than one person, the liability of such person shall be joint and several. If any instrument payable to the Association is returned to the Association due to insufficient funds, there shall be a return fee of not less than Twenty Dollars ($20.00) or such maximum amount as is permitted by law. If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment, a late fee of Twenty-Five Dollars ($25.00) and all costs of collection thereof, including attorneys’ fees, shall bear interest from the date of delinquency until paid at the maximum rate allowable under applicable usury laws. A lien for such Assessment on the Owner’s Lot may be filed and foreclosed by the Board for and on behalf of the Association as provided by law; provided, however, any lien for delinquent Assessments or other charges that the Association has on a Lot will be subordinate to a first mortgage on the Lot if the mortgage was recorded before the delinquent Assessment was due. Upon the failure of an Owner to make timely payments of any Assessment when due, the Board may in its discretion accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment without foreclosing or waiving the lien securing the same. In any action to recover an Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys’ fees and expenses, including but not limited to paralegal fees, from the Owner of the respective Lot.

Section 11.08. Waiver of Lien Upon Foreclosure. Notwithstanding anything to the contrary
contained in the Declaration and these By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, 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 as to such installments that became due prior to such sale, transfer or conveyance, but extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Owner or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular or Special Assessments, shall be deemed to be a Common Expense collectible from all Owners as otherwise provided herein (including the party acquiring the Lot from which it arose), as provided in the Act.

ARTICLE XII

Restriction, Entry, Rules and Regulations

Section 12.01, Restrictions on Use. The following restrictions on the use and enjoyment of the Lots, Common Areas, Recreation Area and the Property shall be applicable to Whittington:

(a) All Lots shall be used exclusively for residential purposes and for occupancy by a single family.

(b) Nothing shall be done or kept in any Lot or in the Common Areas and no Owner shall permit anything to be done or kept in his Lot or in the Common Areas that will result in a cancellation of insurance on any part of the Common Areas, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Lot or Common Areas.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any Lot, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or be placed upon the exterior wall or roof or any other part of any Lot without the prior consent of the Board, unless otherwise provided in the Declaration.

(e) No Lot shall be used in any unlawful manner or in any manner that might cause injury to the reputation of Whittington or that might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Lots or neighboring property, including without limiting the generality of the foregoing, noise by the use of any loud speakers, electrical equipment, amplifiers or other equipment or machines or loud person.

(f) The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Area.

(g) All Owners, guests, tenants or invitees, and all occupants of any Lot or other persons
entitled to use the same and to use and enjoy the Common Areas 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 Lots and
Common Areas, including but not limited to rules relating to the keeping of animals,
the parking or storage of vehicles, boats, jet skis or trailers and other matters
incidental to the use of the Common Areas.

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

(i) All garbage, trash and refuse shall be stored in appropriate containers inside the Lot
(including the garage) or in an inconspicuous place and shall be kept therein until not
earlier than sundown of the evening before scheduled trash collection and shall be
removed by noon on the following day.

(j) No “for sale”, “for rent” or “for lease” signs or other advertising display shall be
maintained or permitted on the Property without the prior consent of the Board,
except as otherwise provided in the Declarations. All signs are to be professionally
manufactured.

(k) Common Areas shall be used only for the purposes for which they are designed and
intended, and shall be used subject to the provisions of the Declaration, these By-
Laws and the rules and regulations from time to time adopted by the Board.

(l) No use shall be made of any part of the Real Estate, which violates, and all Owners,
members of their families, their guests, tenants, invitees and all occupants or other
Persons entitled to use or who may use any part of the Real Estate, shall at all times
fully comply with, the terms, covenants, provisions, conditions, limitations,
restrictions and requirements contained and described in the Declaration, these By-
Laws or other instruments recorded in the Office of the Recorder of Hendricks
County with respect to Whittington.

(m) Recreational use of the Lakes within Whittington is prohibited.

(n) The Lake within the Recreation Area may be used only in the manner authorized by
the Association, which shall not be inconsistent with the provisions of this
Declaration.

(o) The Association, on behalf of the owners, or authorized agents of Whittington, shall
have the authority to institute an action for injunction to abate such activity or seek
mandatory relief for correction of any damage caused to the Lakes or interference
with the drainage systems, together with any damages incurred, and upon recovery of
judgment shall be entitled to cost, together with reasonable attorneys’ fees.

(p) All restrictions as adopted by the Board and all restrictions as delineated in the
declaration.

(q) All mailboxes in Whittington Estates shall be uniform in appearance. The style,
type, and location shall be determined by the Architectural Control Committee
"Committee"). Owners shall be prohibited from removing, altering, or substituting the mailboxes approved by the Committee. Owners shall be responsible to keep the mailboxes in a good state of repair and to replace them with a substantially identical one if necessary.

(r) All driveways for Lots shall be required to be concrete.

Section 12.02. Right of Board to Adopt Rules and Regulations. The Board may promulgate such rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas 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. The Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

Section 12.03. Enforcement. The Association and any of its Members shall have the right of enforcement of all restrictions and regulations as identified in the Declarations or adopted pursuant to this Article XIII. The Association shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. Any costs, including reasonable attorneys fees, may be recovered from any Owner for violation thereof; however, any reservation of right to the use of summary abatement or similar means to enforce restrictions against a Lot or its use shall require that judicial proceedings be instituted before any items of construction can be altered or demolished.

ARTICLE XIII

Architectural Control Committee

Section 13.01. Appointment Of Architectural Control Committee. The Board of the Association may appoint an Architectural Control Committee ("Committee"). If a Committee is not appointed, then the Board shall serve as the Committee.

Section 13.02. Construction Approvals. No construction of any building or structure of any kind, including but not limited to, additions, alterations, fences, screens and walls and exterior paint colors, shall begin within Whittington until the plans and specifications locations and plot plan thereof in detail and to scale have been submitted to and approved by the Committee. The plans, specifications and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by the Association may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Committee. The Committee shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

Section 13.03. Landscape. The plans and specifications submitted to Committee shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.
Section 13.04. Duties of Committee. The Committee shall approve or disapprove the proposed improvements, or respond to the applicants, within (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. 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.

Section 13.05. Liability of Committee. Neither the Committee nor any agent thereof, shall be responsible in any way for any defects in any plans specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 13.06. Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and the Declaration.

ARTICLE XIV

Insurance

Section 14.01. Maintenance of Insurance; Notice to Mortgagees; Endorsements. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars ($1,000,000.00) for any single occurrence, occurring on or in connection with Common Areas and Landscape Easements. The Association shall also maintain in force adequate fire, and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards may be insurable under standard “extended coverage” provisions in an amount equal to the full replacement value of such Common Area improvement. The Association shall notify all Mortgagees, which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured and shall cover claims of one or more insured parties against other insured parties.

Section 14.02. Fidelity Bonds. The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any Director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its Managing Agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months’ Assessments on all Lots in Whittington plus the Association’s reserve funds.

Section 14.03. Notice. The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be cancelled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal Nation Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, and as amended
thereafter, coverage for the Common Areas, underwritten by companies duly authorized to do business in Indiana.

ARTICLE XV

Fiscal Management

Section 15.01. Fiscal Year. The fiscal year of the Association shall begin each year on January 1 and end on the last day of December of the same year.

Section 15.02. Books of Account. Books of account of the Association shall be kept under the direction of the Treasurer in accordance with generally accepted accounting principles, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses.

Section 15.03. Inspection. All non-confidential books, records and accounts, and all vouchers accrediting the entries made thereupon, shall be available for examination by an Owner or any duly authorized agent or attorney of an Owner at any time during normal business hours for purposes reasonably related to his interest as an Owner. Copies of non-confidential documents will be made available to an Owner at Owner's expense. All requests for inspection and/or copies of documents must be made through a member of the Board of Directors.

Section 15.04. Auditing. If a Majority of Owners vote at a meeting of the membership to have an audit of the books and records of the Association, such audit will be conducted by an independent Certified Public Accountant at the close of the fiscal year or at such other such time as designated by the Majority of Owners. If such audit is conducted, it shall be made available within 120 days after said affirmative vote by the Members.

Section 15.05. Annual Financial Statement. Prior to the annual meeting of the Association, the Board of Directors shall cause to be prepared and delivered to the Owners an annual financial statement, certified to by the Treasurer, showing all income and all disbursements of the Association during the previous fiscal year. To the extent possible, such financial statement shall be based upon the report prepared pursuant to Section 15.04. The requirements of this Section 15.05 shall be satisfied if the Board causes to be delivered to each Owner prior to the annual meeting of the Association a copy of the report prepared pursuant to Section 15.04.

Section 15.06. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other individuals as are from time to time so authorized by the Board.

ARTICLE XVI

Amendments to By-Laws

Section 16.01. Procedure. The Board of Directors shall have the power, without the assent or vote of the Members, to make, alter, amend or repeal these By-Laws.

Section 16.02. Amended and Restated By-Laws. An amended and restated By-Laws may be
executed any time or from time to time by a majority of the Board of Directors and shall, upon recording in the office of the Secretary of the State of Indiana, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original By-Laws and the various amendments thereto.

ARTICLE XVII

Miscellaneous

Section 17.01. Membership Certificates. Each Member shall automatically become a Member of the Association upon delivering of title to a Lot or Home. Such membership shall be nontransferable and membership shall automatically transfer to the new Owner.

Section 17.02. Personal Interests. No Person shall have or receive any earnings from the Association, except a Person who is an independent contractor employed or engaged by the Association may receive fair and reasonable compensation for his services as an independent contractor, and a Person may also receive principal and interest on monies loaned or advanced to the Association as provided under Indiana law.