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143 *Jay Bailey*

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHITTINGTON ESTATES

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HENDRICKS COUNTY RECORDER

HIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHITTINGTON PLANNED UNIT DEVELOPMENT ("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 January 20 1995, as Instrument No. 1028 in the Office of the Recorder of Hendricks County, Indiana, in Book 103 Page 1027; 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, THEREFOR, 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 thereof.

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## 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 of expediting the drainage of surface and subsurface waters from, over, and across \_\_\_\_\_

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.

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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 be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

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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.

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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

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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

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(d) The Association shall, upon notification of conveyance of a Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

Section 9. Non-payment of Assessments; Remedies of Association.

(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 substance of this Declaration.

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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 or 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            Mortgagees' 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 construed and

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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 notwithstanding, 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 Mortgagees 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 Mortgagee, 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.

