

**THIRD AMENDED AND RESTATED BYLAWS**  
**OF THE**  
**WHITTINGTON CREEK HOMEOWNERS ASSOCIATION**

**PROPOSED ON**  
**April 20, 2017**

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**THIRD AMENDED AND RESTATED BYLAWS OF  
WHITTINGTON CREEK HOMEOWNERS ASSOCIATION**

**ARTICLE 1  
NAME AND LOCATION**

**WHITTINGTON CREEK HOMEOWNER'S ASSOCIATION, INCORPORATED**, (the "Association") is a not for profit, mutual benefit corporation incorporated under the laws of the State of Tennessee, with its principal office located at 1800 Whittington Creek Boulevard, Knoxville, Tennessee 37922.

**ARTICLE 2  
DEFINITIONS**

2.01 "Association" means the Whittington Creek Homeowner's Association, Incorporated and its successors and assigns. The principal office of the Association shall be within the Association's Clubhouse, 1800 Whittington Creek Boulevard, Knoxville, TN 37922, unless the Board establishes a different location.

2.02 "Board" means the Board of Directors of the Association, as duly elected pursuant to these bylaws, as amended from time to time.

2.03 "Common Areas" means those portions of the Properties designated by the Master Deed as being intended for the common use and enjoyment of the Members.

2.04 "Day" means calendar day unless expressly stated otherwise.

2.05 "Declaration" means the "Declaration of Covenants and Restrictions, Hemingway Grove of Whittington Creek," originally dated August 22, 1995, as amended, and restated from time to time. A copy of the Declaration, and all prior versions of the Declaration, shall be maintained in the Association's Office.

2.07 "Lot" means any plot of land located within the "Properties," as shown and described on the Subdivision Map, but excluding Common Areas or any dedicated streets.

2.8 "Member" means the natural person who holds fee simple title to a single Lot, as reflected in the records of the Register of Deeds for Knox County, Tennessee. If fee simple title is held by husband and wife, or otherwise by more than one natural person, all such listed fee owners shall be considered and treated as one for all purposes in these Bylaws. Membership in the Association commences as of the date a Member's deed to a Lot is recorded in the office of the Register of Deeds for Knox County, Tennessee. For purposes of clarity, "Member" is synonymous with the term "Owner" as used in the original Bylaws of the Association.

2.09 "Notice" means and refers to Notice(s) as defined and prescribed in Article 16 of these Bylaws.

2.10 "Properties" means the real property described in the Declaration and any additional

real property acquired by the Association for use as Common Areas.

2.11 “Quorum”

(a) “Quorum” means the number of Members who must be present at any meeting of the Members, or the number of Directors who must be present at a meeting of the Board, to transact business.

(b) In determining the existence of a Quorum, Members who have been declared delinquent by the Board pursuant to the Declaration in payment of the Annual or any Special Assessment shall not be included in the number of Members present for purposes of establishing a Quorum. A Member or Director may be present at a meeting in person, by valid proxy or by telephone to the extent permitted by these Bylaws.

(c) The Board shall establish procedures for determining the presence of a Quorum at any meeting of the Members. The Members present at a duly called or convened meeting of the Members at which a Quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of enough Members to leave less than a Quorum.

2.12 "Representative Group" means a group of Members who are authorized by the residents of a Section, as defined in Article 6.02(a) of these Bylaws to designate a Member to serve as either the Section's Director, or as an At-Large Director nominee for the Board. The authority of the Representative Group to act on behalf of the Section shall be established to the satisfaction of the Nominating Committee.

2.13 “Subdivision Map” means the map recorded with the Register of Deeds for Knox County, Tennessee, in 1995 by Bryan Testerman, as Developer, that shows the number, size and configuration of the Lots, Common Areas and dedicated streets of Whittington Creek Subdivision, together with all revisions, supplements and amendments thereto that have been effected by Developer pursuant to and in accordance with the Declaration and filed of record in the office of the Register of Deeds for Knox County, Tennessee. Copies of the Subdivision Map shall be maintained in the Association’s Office.

**ARTICLE 3  
MEMBERSHIP, PURPOSE, AND AUTHORITY**

3.01 The Association is composed of the Members. Its purpose is to preserve and enhance Whittington Creek Subdivision for the benefit of all of its Members regarding such matters as appearance, property values, safety, recreation, maintenance and use of Common Areas, preservation of Association assets and resources and to make necessary provision for the carrying out of the day-to-day management of the Association's business.

3.02 The Association may exercise all rights or privileges given it by the Declaration, the Articles of Incorporation, these Bylaws, and the laws of the State of Tennessee.

**ARTICLE 4**  
**ASSOCIATION SEAL AND WEBSITE**

4.01 The Association may have a seal in circular form having within its circumference the words: "Whittington Creek Homeowner's Association, Incorporated."

4.02 The Association may establish and maintain an Internet Website as a resource for making announcements, Association activities, access to the Association's financial statements and other reports from the Board and other items of general interest available to Members. The use and content of the Website shall be governed by rules and procedures established by the Board.

**ARTICLE 5**  
**MEETINGS OF THE MEMBERS**

5.01 Annual Meeting. There will be an annual meeting of the Members of the Association, which shall be held on the second Tuesday of February at 7:00 p.m. at the Association's principal office. The Board may designate another date, time, or place for the Annual Meeting, subject to the following restrictions: the Annual Meeting shall be held during the first calendar quarter each year; shall begin no earlier than 6:30 p.m., nor later than 8:00 p.m.; and, if other than at the Association's principal office, the meeting shall be held at a location within a radius of no more than five (5) miles from the Association's principal office.

5.02 Special Meetings.

(a) Special Meetings of the Members may be called by the Board at any time. The Board shall call a Special Meeting upon the written request of fifty (50) or more Members prepared and submitted in accordance with the requirements of these Bylaws.

(b) The request of a Member, or Members, for a Special meeting shall be in writing, specifying the general nature of the business proposed to be transacted, endorsed by a total of at least fifty (50) Members eligible to vote at the meeting and be delivered to the Board in accordance with Article 16 hereof. The Board shall set the time and place of a Special Meeting requested by Members more than thirty (30) days, but not later than sixty (60) days, after its receipt of the Members' request for a Special Meeting.

5.03 Notice of Meetings. The Board shall provide Notice of any meeting of the Association to each Member in accordance with Article 16 below at least thirty (30) days, but not more than sixty (60) days, before the scheduled date of the meeting. Notice of all meetings shall specify the place, day and hour of the meeting, the purpose of the meeting and an agenda of the business to be conducted at the meeting. Notice of a Special Meeting requested by Members shall be accompanied by a copy of the Members' Special Meeting request. In the discretion of the Board, matters not included on the agenda sent to Members with the Notice of Meeting may be taken up at the Meeting.

5.04 Member Participation and Voting.

(a) A Member shall be entitled to one vote on all matters in respect of which Members are

entitled to vote under the Declaration or these Bylaws. A Member who owns more than one Lot shall be entitled to one vote for each full Lot owned by the Member.

(b) Any Member who is delinquent in payment of any installment of the Annual Maintenance or any Special Assessment, or the payment of any penalty assessed by the Board pursuant to Article 20 hereof, or who has failed to comply with a final cease and desist order issued by the Board pursuant to Article 20 hereof, may attend any meeting of the Association, but shall not be entitled to vote at the meeting, or to be counted in the number of Members required to establish a quorum or to initiate any action permitted by the Declaration or these Bylaws.

(c) Unless otherwise expressly provided herein or in the Declaration, voting on any matter shall be by simple majority.

5.05 Business to be Conducted. At any Annual or Special meeting of the Members, only such business shall be conducted as shall have been properly brought before the meeting pursuant to these Bylaws. Written minutes of each meeting shall be prepared by the Secretary and preserved among the Association's permanent records.

5.06 Quorum. Fifty (50) Members who are eligible to vote shall constitute a Quorum at any meeting of the Members. In the absence of a Quorum, any meeting of Members may be adjourned, from time to time, either by the chairman of the meeting or by vote of the Members present at the meeting, without Notice to Members other than as declared to those present in person or by proxy at the meeting. No other business shall be transacted at the meeting, or any adjourned meeting, until a Quorum is established. At each such adjourned meeting of Members the number of Members necessary to constitute a Quorum shall be one-half of the Quorum required at the preceding meeting, or adjourned meeting. Except as otherwise expressly provided by applicable law, the Declaration, or these Bylaws, in all matters the affirmative vote of a simple majority of the Members present and eligible to vote at the meeting shall be the act of the Members of the Association.

5.07 Attendance by Proxy. Each Member may vote in person or by written proxy at any meeting. All proxies shall be in writing, signed by the Member and delivered to a Director or Officer before the meeting is called to order by the chairman. A proxy shall be revocable in writing prior to the exercise thereof, or shall cease at any date and time specified in the proxy. A proxy vote signed by the Member and delivered to a Director or Officer before the meeting is called to order by the chairman shall be non-revocable.

5.08 List of Members Eligible to Vote. At least ten (10) days before each Annual or Special meeting of Members, the Board shall prepare a complete list by name and address of the Members entitled to vote at the meeting, arranged in alphabetical order. This list shall be available for examination at the Association office, and/or by posting on the Association's website, for a period of at least five (5) days prior to the meeting, and shall be open to examination during the meeting. A Member who is not eligible to vote for any of the reasons set forth herein or in the Declaration may cure the delinquency or other basis for such ineligibility at any time prior to when

a meeting of the Members is called to order; provided, however, that for purposes of this paragraph 5.08, delinquency based on a Member's failure to pay a monetary obligation may be cured only by delivery of a certified or cashier's check to the Association a minimum of three (3) business days prior to the date of the Annual or Special meeting.

5.09 Organization of Meeting.

(a) At every meeting of Members, the President of the Association shall serve as chairman of the meeting, and the Secretary of the Association shall act as secretary of the meeting. If either the President or the Secretary is not present at a meeting, the Board shall designate one of their members to act in place of the President or Secretary at the meeting.

(b) The Board shall be entitled to make such rules or regulations for the conduct of meetings of Members as it shall deem necessary, appropriate, or convenient. Subject to such rules and regulations adopted by the Board, the chairman of the meeting shall have the authority to prescribe reasonable rules and procedures, and to take such actions as, in his or her judgment, are necessary for the proper conduct of the meeting, including, without limitation, establishing a limit on the time allotted to questions and discussion by Members. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of Members shall not be required to be held in accordance with rules of parliamentary procedure.

**ARTICLE 6  
BOARD OF DIRECTORS**

6.01 General. Subject to any provisions in these Bylaws, or in the Declaration, with respect to actions required to be approved by the Members, the business and affairs of the Association shall be managed and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the day-to-day operation of the business of the Association to a management committee or other person, provided that the business and affairs of the Association shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

6.02 Number and Types of Directors. The Board shall consist of five (5) Directors, composed of one (1) At-large Director and four (4) Neighborhood Section Directors, defined as follows:

(a) Section Directors. One Director shall be selected from each of the following Neighborhood Sections ("Sections"):

Section 1: Emerson, Dickinson, and Tennyson

Section 2: Hillshire and Isherwood

Section 3: Abbey Court and Sherwood

Section 4: Hemingway Grove

(b) At-Large Directors: An At-Large Director may reside in any Section.

(c) Restrictions on Representation. Except as provided in Article 7.05(b), no more than three

Directors, inclusive of Section and At---Large Directors, may reside within the same Section.

6.03 Term of Office. At the first election of Directors after the adoption of the First Amended and Restated Bylaws, the Members shall elect one (1) At-Large Director for a term of one (1) year, the Section Directors from Sections 1 and 2 for terms of two (2) years each and the Section Directors from Sections 3 and 4 for terms of three (3) years each. The succeeding terms for all Directors shall be three (3) years. A Director may be reelected to serve any number of successive terms on the Board.

6.04 Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members, or by majority vote of the Board. In the event of a vacancy on the Board, the Board will name a successor at the earliest practicable time after the vacancy occurs. In selecting the successor for a Neighborhood Section Director, the Board shall attempt to name a Member who resides in the same Neighborhood Section as that of the Director being replaced. If the Board is unable to locate a Member from the Neighborhood Section who is willing to serve, the Board may name a successor in accordance with Section 7.03(d), below. A Member appointed to fill a vacancy on the Board shall serve until the next Annual or Special Meeting of the Members that will include an election of Directors.

6.05 Quorum. Unless the Declaration requires a greater number, a quorum of the Board shall consist of a majority of the total number of directors fixed from time to time by the Board; provided, however, at any meeting, whether a quorum be present or otherwise, a majority of the Directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board, without notice other than by announcement at the meeting.

6.06 Action Taken Without a Board Meeting. The Directors shall have the right to take any action in the absence of a Board meeting which they could take at a Board meeting upon the written consent of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board. In addition to any resolution adopted by written consent, the Secretary shall preserve the original of the written consents signed by the Directors who consented to Board action in the absence of a meeting.

6.07 Compensation. No Director shall receive compensation for serving on the Board, or for any service rendered to the Association as a Director. However, Directors may be reimbursed the actual amount of expenses they have reasonably incurred on behalf of the Board or the Association. All reimbursements shall be supported by original invoices or by other evidence acceptable to the Board. Expenditures over \$2,500.00 must have the prior approval of the Board.

## **ARTICLE 7 NOMINATION AND ELECTION OF DIRECTORS**

7.01 Election of Directors. Directors shall be elected by the Members by an election held on the date of the Annual Meeting, or a Special Meeting called for that purpose, from a slate of



nominees submitted by the Nominating Committee, together with write-in votes cast by Members on the election ballot.

7.02 The Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more non-Board Members. The members of the Nominating Committee shall be appointed by the Board and their names and addresses provided to all Members at least three months prior to the Annual or Special Meeting of the Members at which one or more Directors will be elected. The Nominating Committee may nominate as many candidates as it deems appropriate, but not fewer than the number of vacancies that are to be filled at the election. The duties of the Nominating Committee shall be considered complete at the time they present the slate of nominees to the Board.

7.03 Selection of Nominees. At least thirty (30) days prior to any Annual or Special Meeting of the Association at which Directors will be elected, the Nominating Committee will deliver its slate of nominees to the Board. The nominees for Director will include:

- (a) Members who have expressed an interest in serving on the Board;
- (b) Any Member who has been designated by a Section, through a representative group, as the Section's Director on the Board;
- (c) Nominees selected by the Nominating Committee, if any; and
- (d) In the absence of, and/or in addition to, nominees from the Nominating Committee, the Board may nominate one or more Members as candidates for the Board. Such candidates may be selected by any means the Board deems reasonable.

7.04 Member Interest in Serving on the Board. Any Member who desires to serve on the Board must provide the following information, in writing, to the Board or to the Chairman of the Nominating Committee: the Member's full name, address, telephone number, length of membership in the Association and any biographical information the Member wishes to include regarding the Member's interest and qualifications for serving on the Board. To be included on the ballot for the next Annual or Special Meeting of the Association at which Directors will be elected, the Member's notification must be received by the Board or by a member of the Nominating Committee at least thirty (30) days before the scheduled date of the next Annual or Special Meeting of the Association at which Directors will be elected. Members will be included as nominees for the director category requested; if no category has been designated, then the Member will be included on the ballot as both a Section and At-Large nominee.

7.05 Neighborhood Section Directors.

(a) Section Designation. A Section shall, through a Representative Group, have the right to designate the person who will serve as its Section Director. If any other Members residing in the same Section have expressed an interest pursuant to Article 7.04 in serving as the Section's Director, then the name, or names, of such Member(s), along with the Member designated by the Section, shall comprise the Nominating Committee's slate of Section nominees for that Section.

(b) Absence of Sectional Nominees. If no Member has been designated by a Section as its choice for the Section's Director, and if no Member from the Section has expressed an interest in serving on the Board pursuant to Article 7.04, then the Nominating Committee shall attempt to identify two or more Members who reside in such Section who would be willing to serve as the Section's Director. If it is unable to do so, the Nominating Committee may include on its slate of proposed Directors for such Section any eligible Member, or Members, of the Association the Nominating Committee believes will fairly represent the interests of the entire Association as a Director. The provisions of Article 6.02 regarding the number of Directors required to be selected from each Section and the maximum number of Directors who may reside in a Section, shall be inapplicable to the extent of Director seats filled pursuant to this Section 7.05(b).

#### 7.06 At-Large Directors.

(a) A Section, through a Representative Group, may submit to the Board or the Nominating Committee the names of one or more of its residents who the Section desires be included as nominees for an At-Large Director seat to be filled at the next election. Any Member, or Members, submitted by the Section shall be included on the Nominating Committee's slate of At-Large Director nominees.

(b) In addition to the names of Members submitted by Sections pursuant to the preceding subparagraph, the Nominating Committee shall include on its slate of the At-Large Director nominees for the next election any Member who has expressed an interest in serving as an At-Large Director in accordance with Article 7.04. If Articles 7.04 and 7.06(a) do not produce any Member who is willing to serve as an At-Large Director, the Nominating Committee shall include on its slate of At-Large Director nominees any Member, or Members, the Committee believes will fairly and adequately represent the interests of the entire Association on the Board. The provisions of Article 6.02 regarding the number of Directors required to be selected from each Section, and the maximum number of Directors who may reside in a Section, shall be inapplicable to the extent of an At-Large Director seat filled pursuant to this Section 7.06(b).

7.07 Write-In Nominees. The ballot for each election shall include space for write-in votes for each Director seat to be filled.

7.08 Absence of Candidates. In the event the Nominating Committee and the Board are unable to identify by any of the means described above a slate of nominees for all Director seats to be filled at an election, then the vacant Director seats shall be filled by Members receiving a majority of write-in votes who accept their election to the Board. In the absence of write-in votes for any vacant Director seats to be filled at the election, and/or if any Member elected by write-in vote decline to serve on the Board, then, unless the existing Directors whose terms are expiring agree to serve another term, the Board for the succeeding year will function with a reduced number of Directors until vacant seats can be filled by any means the Board deems reasonable.

#### 7.09 Balloting.

(a) The election of Directors will be by written ballot prepared by the Board in accordance

with the provisions of this Article 7 and made available to Members at the Association's Office or by publication on the Association's website at least one week before the Meeting at which the election will be held. A Member may cast a single proxy vote and once the original written proxy vote is delivered it shall be non-revocable in accordance with the provisions of Article 5.07. Members may cast their ballots at the Association's Office between 9:00 a.m. and 5:00 p.m. on the date of the election, and during the meeting until the Chairman, after reasonably determining that all Members in attendance have cast their ballots, declares voting closed.

(b) The existence of a quorum for purposes of the election shall be determined by the number of Members who are present in person or by proxy at the meeting, together with the number of ballots that have been cast by Members who are not present in person or by proxy at the meeting. In the absence of a quorum, the meeting shall be adjourned pursuant to the procedures set forth in Article 5.06.

(c) The ballots shall be counted by the Board, and the results announced at the meeting, if feasible, and in no event later than noon on the day following the election. The nominee for each Director position who receives the largest number of votes shall be elected. In the event two or more nominees receive the same number of votes, the winner shall be selected by secret ballot of Members present in person or by proxy at the meeting in accordance with procedures established by the Board. In conducting a runoff election, the ballot of a Member not present in person or by proxy at the Meeting shall constitute the proxy of, and a vote by, that Member for any nominee in the runoff election for whom the Member voted in his or her original ballot.

## **ARTICLE 8 MEETINGS OF DIRECTORS**

8.01 Regular Meetings. Regular meetings of the Board shall be held at least quarterly at such place and at such hour as may be fixed from time to time by resolution of the Board.

8.02 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) Directors. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

8.03 Quorum. A majority of the Directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decisions made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of one or more Directors; provided, however, that any action taken is approved by a majority of the required quorum for that meeting.

8.04 Telephone Meetings. Any meeting, regular or special, may be held or attended by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person

at such meeting. Participation of a Director by telephone shall be noted in the minutes of the meeting of the Board.

8.05 Waiver of Notice. The transaction of any meeting of the Board however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present; and (b) either before or after the meeting, each of the Directors not present sign a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

8.06 Notice of Adjourned Meeting. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

8.07 Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

8.08 Board Meetings Closed. Except as otherwise provided in the Declaration, these Bylaws or by resolution of the Board, regular and special meetings of the Board shall be closed and not be open for attendance by Members or others.

8.09 Duties and Powers of the Board. The Board shall have the duty and all powers consistent with the Declaration or these Bylaws to manage the affairs of the Association in accordance with the Declaration, these Bylaws and rules and procedures adopted by the Board pursuant hereto.

8.10 Duties of Directors.

(a) Directors are fiduciaries who are obligated to manage the Association in good faith and in the interests of the Members. Directors have the duty to exercise reasonable care in carrying out their responsibilities; the duty of loyalty to act in an independent manner and with regard only to the concerns of the Members; and the duty to disclose to the Board, and/or to the Members, as required by the Declaration, or these Bylaws, any information that is material to the Director's ability to act or vote impartially regarding any matter that comes before the Board for decision. Unless otherwise decided by the Board, all matters discussed at Board meetings and all decisions reached by the Board that are not required by the Declaration or these Bylaws to be communicated to the Members are confidential and shall be treated in a confidential manner by each Director.

(b) Directors are expected to attend all regular and special Board meetings. A director's failure to attend 75% of the regular meetings of the Board in any calendar year, or a director's

absence from three or more consecutive regular meetings shall constitute cause for being removed from the Board.

## **ARTICLE 9 COMMITTEES**

9.01 Standing Committees. The Association shall have the following standing committees: Architectural Review Committee, Finance Committee, and Nominating Committee. The Board may appoint such other committees as it deems appropriate in carrying out its responsibilities under the Declaration and these Bylaws. The members of all Committees shall be Members of the Association.

9.02 Committee Composition. The members of the standing committees, and any other committees established by the Board, shall be composed of a Director, appointed by the Board, who shall serve as Chairman, and such other members as the Board, or the committee, may designate from time to time. The term of the Chairman will expire at the time the Chairman ceases to be a Director. The term of the non-Board members of each committee shall be indefinite. The initial members of each committee shall be appointed by the Board at its first meeting after the adoption of these Bylaws.

9.03 Duties. Each standing committee shall have and perform the duties and responsibilities prescribed by the Declaration and/or by these Bylaws, together with any other responsibilities assigned by the Board consistent with the Declaration.

## **ARTICLE 10 OFFICERS**

10.01 Standing Officers. The Officers of the Association shall be a President, Vice-president, Secretary, and a Treasurer, selected by the Board from among its members.

10.02 Special appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

10.03 Election of Officers. The election of Officers shall take place at the first meeting of the Board following each Annual Meeting of the Members.

10.04 Term. Officers shall hold office for one (1) year. An Officer may be reelected for any number of successive terms.

10.05 Resignation and Removal. Any Officer may be removed from office with or without cause by a majority vote of the Directors. An Officer may resign at any time by giving written Notice to the Board. Such resignation shall take effect on the date of receipt of such Notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

10.06 Vacancies. A vacancy in any office may be filled by appointment by the Board. The Director appointed to such vacancy shall serve for the remainder of the term of the Officer

replaced.

10.07 Multiple Offices. No person shall simultaneously hold more than one Standing Officer position, except that the office of Secretary may be held by any Officer.

10.08 Duties. In addition to any duties prescribed by the Declaration, the duties of the Officers are as follows:

(a) President. The President shall preside at all meetings of the Members and of the Board; shall see that orders and resolutions adopted by the Board are carried out; and shall sign all leases, mortgages, deeds, and other written instruments on behalf of the Association as its President, and shall exercise and discharge such other duties as may be designated by the Board.

(b) Vice-President. The Vice-president shall act in the place and stead of the President in the event of the President's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be designated by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve Notice of meetings of the Board and of the Members; keep appropriate current records showing the names and addresses of the Members, and perform such other duties as may be designated by the Board.

(d) Treasurer. The Treasurer shall ensure that the financial governance policies and procedures established by the Board pursuant to Article 12 hereof are implemented and followed. These policies and procedures shall include, without limitation, provisions relating to the receipt and deposit of checks, cash and other forms of payment into the Association's bank accounts; the regular reconciliation of the Association's bank account statements; the disbursement of Association funds; the keeping of proper books of account; the annual audit of the Association's books and records; the preparation of the Board's proposed Annual Budget; the delivery to the Members of the financial records and reports specified in Article 12 hereof; and the performance of such other duties as may be designated by the Board.

10.09 Authority of Officers. In addition to the specific duties and authority set forth herein, the Board, by written resolution, may authorize any officer to execute contracts and other instruments on behalf of the Association.

**ARTICLE 11**  
**EMPLOYMENT OF MANAGER, CONSULTANTS, AND EMPLOYEES**

11.01 General. The Board may employ a full or part-time manager (the “Manager”) and other employees it deems necessary to the proper management of the Association. In addition, the Board may contract with independent contractors, vendors, legal and accounting consultants, and others (collectively, “Service Providers”) whose products and services the Board considers necessary. The Board shall conduct a reasonable background investigation before offering employment to a Manager or other employee, or contracting with a Service Provider.

11.02 Terms of Employment or Engagement

(a) The Manager and all other employees shall be employed pursuant to written terms and conditions of employment that (i) describe the duties, responsibilities and/or services to be performed; (ii) specify vacation and other employee benefits, as applicable; (iii) provide that employment is “at will” and may be terminated by either party with or without cause upon Notice not to exceed thirty (30) days, or without prior Notice when termination is for theft, conviction of a crime, inappropriate conduct toward any Member and other “for cause” reasons established by the Board.

(b) Service Provider agreements shall be in writing, clearly specify that such Service Providers are acting as independent contractors and not as employees of the Association, and, except as otherwise approved by the Board for good cause, provide for a maximum and non-automatically renewable term of one year; be subject to termination by the Association for convenience without cause, and without penalty, upon thirty (30) days' notice; require the Service Provider to defend, indemnify and hold the Association harmless with respect to any and all claims, demands and liabilities that may arise out of the Service Provider's performance of services; and require the Service Provider to carry such policies of insurance as the Board deems advisable, with the Association named as an additional insured.

11.03 Fidelity Bond. The Board may purchase a fidelity bond covering the Manager and other employees in such amount(s) as it deems appropriate.

11.04 Conflicts of Interest. The Board shall not engage a Manager, employee, or any Service Provider in violation of the Association’s Conflict of Interest Policy pursuant to Article 19 herein.

11.05 Notice to Members. The Board shall ensure that the Members are provided timely notification of the employment or replacement of a Manager and other employees, a general description of any employee’s duties and responsibilities and of any change in the Association office’s day-to-day operations or procedures, including changes that result from a change in personnel.

**ARTICLE 12**  
**FINANCIAL GOVERNANCE**

12.01 General. The Board shall establish policies and procedures relating to the use and conservation of the Association's funds and other assets. The Members shall be furnished the reports and information required to be made available to Members pursuant to Article 12.05 and Article 16 and otherwise be kept reasonably informed about the financial affairs of the Association.

12.02 Annual Budget. The Board shall prepare for approval by Members at the Annual Meeting an annual budget, prepared on a calendar year basis, covering all anticipated revenues, operating expenses, and capital improvements for the coming year. The proposed Annual Budget shall be made available to the Members at least ten (10) days prior to the Annual Meeting. Upon approval by the Members, the Annual Budget shall govern the Board's expenditure of Association funds during the budget year.

12.03 Bank Accounts. The Association's funds shall be deposited into one or more checking or deposit accounts in the name of the Association at an FDIC-insured bank, or a CUNA insured Credit Union, with a branch office in Knox County, Tennessee. These accounts shall be established in a manner that maximizes FDIC insurance on all Association deposits. As a part of the financial governance policies and procedures, the Board shall establish check-writing authority and limits in a manner that ensures that the Association's funds are subject to adequate safeguards and used in accordance with the approved Association budget; provided, however, that any disbursement of a non-budgeted cost or expense more than \$2,500 shall first be approved by the Board.

12.04 Books and Records. The Board shall ensure that complete and accurate books and records are maintained of the Association's assets, liabilities, and operations. These books and records, together with all other records required or permitted to be created or preserved by the Declaration or these Bylaws, including, without limitation, instruments relating to the Association or Whittington Creek that have been recorded in the Office of the Knox County Register of Deeds Office, the Minutes of Annual or Special Meetings of Members, meetings of the Board, independent audits, the Association's annual budget and quarterly reports and the Association's financial governance policies and procedures shall be available for inspection by any Member at the Association Office during posted business hours upon reasonable Notice to and coordination with the Manager or any Officer of the Association. Members may purchase up to two copies of any record maintained at the Association's office upon payment of a reasonable reproduction cost. As feasible, such books and records may also be made available to the Members in a secure, password protected, section of the Association's website. The Association's books, records, and organizational documents shall be available to other persons as required by law.

12.05 Periodic Reports. The Board shall prepare, or cause to be prepared, and make available to the Members quarterly statements of operations covering each item of revenue and expense contained in the Annual Budgets. Other reports and information pertaining to the Association's finances and operations may be made reasonably available to the Members in any manner the Board deems appropriate.



12.06 Delivery to Members. All reports and information required to be made available to Members shall be delivered or made available to Members in accordance with Article 16 of these Bylaws, or as otherwise provided in the Declaration.

12.07 Limitations on Spending. The Board shall have the authority to exceed the annual operating expense budget and the annual capital improvements budget approved by the Members at the Annual Meeting by up to ten percent (10%) per budget without Notice to, or approval by, the Members. Expenditures more than ten percent (10%) for either budget must be approved, in advance, by at least 75% of the number of Members who approved the Annual Budget. Approval by the Members of spending in excess of this limit may be requested and obtained by the Board without a formal meeting of the Members by such means of Notice to all Members as the Board deems appropriate.

12.08 Outside Accountants. The Board may engage an outside accountant or bookkeeping service to assist in maintaining the financial books and records of the Association. The Board shall engage a certified public accountant, who may not be the same accountant employed to provide bookkeeping services, to conduct an annual audit of the Association's books and records. The annual audit report shall be made available to Members at least ten (10) days prior to the succeeding year's Annual Meeting, if it is available by that date, and in any event the audit report shall promptly be made available to Members upon receipt by the Board. An accountant engaged by the Board to provide any of the services described in this Article 12.08 shall be properly licensed by the State of Tennessee, and be in good standing, as a certified public accountant.

12.09 Fiscal Year. The fiscal year of the Association shall be January 1 through December 31, or such other period as may be fixed by the Board.

**ARTICLE 13  
INDEMNIFICATION OF OFFICERS AND DIRECTORS**

13.01 The Association shall defend, indemnify, and hold harmless Directors and Officers in respect of all claims, damages, costs, and expenses arising out of or relating to the performance of their duties and responsibilities (or to their alleged failure to perform such duties and responsibilities) hereunder to the fullest extent permissible under §§ 48-18-501, et seq., of the Tennessee Code Annotated, as revised from time to time. Without limiting the generality of the foregoing, it is the intention of the Association that Directors and Officers be indemnified with respect to any action or decision made in good faith and with the belief that such action or decision was permitted by the Declaration or these Bylaws and was in the best interests of the Association. The rights of Directors and Officers under this Article 13 are in addition to any other rights of indemnity available to them under Tennessee law.

13.02 The Board shall have the authority to determine whether and to what extent employees, consultants and independent contractors employed or engaged by the Board on behalf

of the Association should be given contractual indemnity.

13.03 The Board shall purchase insurance coverage for the indemnification obligations of the Association in accordance with Article 17 of these Bylaws.

13.04 In any suit or other dispute brought by or involving the right of a Director or Officer to indemnification hereunder, the burden of proving that the Director or Officer is not entitled to be indemnified shall be on the Association.

13.05 The rights conferred by this Article 13 shall continue as to a person who has ceased to be a Director or Officer, or to employees, consultants and independent contractors given contractual indemnity by the Board, until the period within which any cause of action subject to indemnification has expired, and all such rights shall inure to the benefit of the heirs, executors, and administrators of such persons.

#### **ARTICLE 14 ASSESSMENTS**

Annual Maintenance and Special Assessments shall be determined and paid as set forth in the Declaration. The Board shall enforce payment of Assessments in any manner permitted by the Declaration, or by other legal means, and may employ an attorney to represent the Association. Any Member who is delinquent in payment of any portion of the annual Maintenance Assessment or any other financial obligation to the Association will not be eligible to vote on any matter on which Members are entitled to vote, or to be counted in determining a Quorum or in satisfying a minimum number of Members for any action required or permitted by these Bylaws or the Declaration.

#### **ARTICLE 15 USE OF COMMON AREAS**

15.01 The Board shall adopt, publish, and enforce rules and regulations governing use of the Common Areas and all Association amenities. These rules and regulations shall conform to the requirements of the Declaration, but may otherwise be formulated in the discretion of the Board to maximize the Members' use and enjoyment of Common Areas and amenities, while giving due consideration to actions taken at any Annual or Special Meeting of Members; safety of persons and property; relevant provisions of the Association's insurance policies; Member comments and suggestions; rules and practices of comparable subdivision homeowner associations; the maintenance and preservation of Association property; applicable state and local laws and regulations; and other relevant considerations.

15.02 The Association's Common Areas and amenities shall be available for the use of Members and their spouses, immediate family members, any person who permanently resides in the residence of a Member and the guests of Members, in accordance with rules adopted by the Board relating to guest use of Common Areas and amenities.

**ARTICLE 16**  
**NOTICES AND COMMUNICATIONS WITH MEMBERS**

16.01 General. Whenever Notice is required to be given Members under these Bylaws, except as otherwise required or permitted by the Declaration, these Bylaws or by law, Notice shall be in writing and delivered to each Member by any of the following methods: U.S. Mail, first class, postage prepaid, addressed to the Member's address in Whittington Creek Subdivision last appearing on the books of the Association; hand-delivery (which may be either personally to a Member or by depositing such notice in the Member's Whittington Creek Subdivision mail box); or by any other method that is reasonable and that has been approved by the Board and communicated to Members by a form of Notice expressly authorized in this Article 16.01. It shall not be necessary that the same method of giving Notice be employed for each Member, provided all Members are given Notice in a manner specified herein.

16.02 Association Newsletter and Website. Notification of Annual and Special Meetings of the Members may also be communicated to Members by announcement in the Association newsletter or the Association Website; provided, however, that with respect to Special Meetings such notification shall not be in lieu of notice as specified in Article 16.01.

16.03 Electronic Mail and Facsimile. The Board may approve delivery of Notice by electronic mail or facsimile transmission. Use of either method shall be used only after the Board has formally approved use of either or both methods, adopted procedures relating to the use thereof and has communicated its approval, and information regarding the use thereof, to the Members by Notice in accordance with Article 16.01. Notice by either electronic transmission or facsimile shall only be used to provide Notice to Members who have requested use of such in a letter mailed to the Board at the address of the Association's principal office. The Board shall preserve proof of delivery of Notice to a Member by electronic mail or facsimile in the record of notices maintained by the Association.

16.04 Notice or Communications to Officers and Directors. Any Notice required to be given by the Board to any Officer or Director regarding meetings or other business of the Board may be given by any method adopted by the Board. Any Notice or other communication required or permitted to be given by Members to an Officer or the Board shall be in writing and either mailed or hand-delivered to the Officer or Board at the address of the Association's principal office.

16.05 Periodic Reports and Information to Members.

(a) The Board shall keep the Members regularly informed on all matters required to be reported to Members by the Declaration or these Bylaws. Financial reports and other information the Board is required to provide Members pursuant to Article 12 may be given by: (a) mail or hand-delivery; (b) publication in a password-protected area of the Association's website; or (c) by website or newsletter notice that copies of such reports are available at the Association's principal office.

(b) The Board shall provide prompt Notice to Members of (i) changes in the composition of

the Board or Officers; (ii) significant actions taken by the Board since the last quarterly or other report to Members; and (iii) the status of capital improvements and other projects previously approved by the Members or by the Board.

## **ARTICLE 17 INSURANCE AND BONDS**

17.01 The Board shall obtain and maintain in effect at all times the types and amounts of insurance and bonds shown in Exhibit A hereto. All such insurance shall be obtained from an insurance company or companies with a minimum financial strength rating of "A-" by A.M. Best, "A" by Standard & Poor's, or the comparable minimum rating of another nationally recognized insurance rating organization, that is licensed to sell insurance in Tennessee. Such policies shall be written in the name and for the benefit of the Association and each of its Members, subject to such deductibles and other policy endorsements as the Board deems to be in the best interests of the Association. All such policies shall provide that coverage will not be canceled for failure of payment of premiums without a minimum of thirty (30) days prior written Notice being delivered to the President of the Association at the address of the Association's office.

17.02 The Board is authorized to purchase insurance on behalf of any person required or permitted to be indemnified pursuant to these Bylaws.

17.03 All insurance and bonds shall be obtained in accordance with the Association's Conflict of Interest Policy pursuant to Article 19 herein.

## **ARTICLE 18 RETENTION OF RECORDS**

18.01 All books, records, financial statements, tax returns, contracts, employment agreements, Notices to and from Members, insurance policies prepared or received by the Association, all organizational documents of the Association defined in Article 2, minutes of meetings of the Members and all other records prepared pursuant to these Bylaws or received by the Association, whether in paper, electronic or other form of media storage, shall be stored at the principal office of the Association, or other location designated by the Board. A duplicate of all such records shall be retained in such form as established by the Board and stored in a separate off-site location.

18.02 All records described in subsection 18.01 shall be retained for the period provided in the Declaration or such longer period as may be required by law or by specific retention policy established by the Board.

18.03 The Board shall adopt and implement written policies and procedures to ensure that the record storage and retention provisions of this Article 18 are followed.

## **ARTICLE 19 CONFLICTS OF INTEREST**

19.01 In conducting the business of the Association, actions taken by the Board, any by any Officer and Director, generally, shall be free of conflicts of interest, or the appearance of a conflict of interest. A conflict of interest exists when the financial, personal, or other interests of a Director or Officer regarding a proposed transaction or decision involving the Association may interfere with the Director's or Officer's ability to make an informed and independent decision based solely on the best interests of the Association, rather than those of the Director or Officer. For purposes of avoiding conflicts of interest, a "Director" or "Officer" includes the Director or Officer and his or her family members, friends, business associates, anyone with whom any of them has a personal or business relationship, including any other Member of the Association, who has, or may derive, a financial or other benefit from a proposed transaction with the Association. Directors shall immediately disclose any existing or potential conflict of interest to the Board and recuse themselves from voting on any matter regarding which such conflict exists.

19.02 It shall not be a violation of this conflict of interest policy for the Association to purchase goods or services, or to enter into any other transaction, with a Member or any entity in which the Member has an interest if the Member's proposal relating to the transaction or decision in question is, in the opinion of a majority of the disinterested members of the Board, the best or most responsive of at least one other bid or proposal obtained by the Board on the same terms and conditions as that submitted by the Member.

## **ARTICLE 20 RULE MAKING**

20.01 Rules and Regulations. Subject to the Declaration, the Board may establish reasonable rules and regulations for the purpose of implementing its powers and responsibilities under the Declaration and these Bylaws. The Board shall furnish the Members a copy of such rules and regulations, and amendments thereto, in accordance with Article 16.01 at least fourteen (14) days prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Members until and unless any such rule or regulation is specifically overruled, cancelled, or modified by a majority of the votes of the entire Association at an Annual Meeting or at a Special Meeting of the Association called in accordance with the Declaration and these Bylaws.

20.02 Authority and Enforcement. Subject to the Declaration and the provisions of Article 20.03 hereof, the Board shall have the power to impose (a) monetary fines not to exceed \$25.00 per day for the violation of the Declaration, these Bylaws and any rule or regulation established by the Board; and (b) a late payment charge not to exceed \$25.00 per month for failure to pay an installment of maintenance fees, or any special assessment, when due. Such fines shall constitute an equitable charge and a continuing lien as a specific Assessment against the Member's property in the subdivision. Until all amounts payable to the Association have been paid, and/or until a violation has been abated or cured, the Board may suspend a Member's right to use any of the Common Areas.

20.03 Procedure. Except with respect to the failure to pay Maintenance Fees or Special Assessments, the Board may impose a fine, suspend voting rights or limit or suspend any other rights of a Member for violations of the Declaration, Bylaws or any rules and regulations of the Association, pursuant to the following procedures:

(a) Demand to Cease and Desist. The Board shall serve the Member with a written notice to cease and desist specifying:

(i) the violation;

(ii) the action required to abate the violation;

(iii) a time period of not less than ten (10) days from delivery of such written notice to the Member during which the violation may be abated (or, in the case of violations that cannot reasonably be abated or cured within ten (10) days, during which remedial measures must be commenced and thereafter diligently prosecuted by such Member to completion) without sanction; and

(iv) a statement that the Member has the right to challenge the violation and/or the remedial measures specified in the Board's notice by serving the Board with a written demand for hearing within ten (10) days after the Member's receipt of such notice. If the Board has not received a demand for a hearing within such ten (10) day period, the Board's demand to cease and desist shall be deemed final and not subject to challenge by the Member.

(b) Notice of Hearing. Within ten (10) days of its receipt of a timely demand for hearing, the Board shall serve the Member with written notice of hearing before the Board in executive session specifying:

(i) the violation;

(ii) the time and place of the hearing to be held not less than ten (10) days, nor more than thirty (30) days, from the date of the notice of hearing; and

(iii) the proposed sanction to be imposed.

(c) Hearing Procedures. The hearing will be held pursuant to the notice in executive session of the Board at the Association's principal office. The Member shall have the right to be represented by counsel and to present evidence, call witnesses and otherwise to be heard with respect to the violation. The hearing shall not be open to other Members, other than Members called as witnesses by the Member or the Board. Witnesses shall not be allowed to attend the hearing except during the time when such witness provides his or her testimony to the Board. In the discretion of the Board, or at the request of the Member, all proceedings at such hearing will be recorded and preserved. Within ten (10) days after the hearing is concluded, the Board shall issue and deliver to the Member by certified mail, return receipt requested, a written decision. Subject to the Member's rights or remedies under Tennessee law, such decision shall be final and binding on the Association and the Member.

**ARTICLE 21  
AMENDMENTS**

The Board shall have the power to amend these Bylaws by the majority vote of Directors present at a Regular or Special meeting of the Board at which a quorum is present, provided the Members have been given at least thirty (30) days' Notice of the proposed amendment and the opportunity to present comments and to be present at the Board meeting at which the Board will consider the proposed revision. No Amendment to these Bylaws shall be effective until approved by the Board and reflected in a written resolution of the Board, signed by a majority of its members.

**ARTICLE 22  
MISCELLANEOUS**

22.01 Precedence of Instruments. In the event of a conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. No Amendment to these Bylaws shall be effective until approved by the Board and reflected in a written resolution of the Board, signed by all its members.

22.02 Article and Section Headings. The headings and titles of these Bylaws are inserted for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction of these Bylaws.

22.03 Singular, plural, gender. Words importing the singular also include the plural and vice versa where the context requires. References to a gender shall include any other gender.

22.04 Illegality. If any provision of these Bylaws is held to be illegal, invalid, or unenforceable and such invalidity or unenforceability does not have a material and substantial negative impact on the rights, duties and obligations of Members (a) such provision will be fully severable, (b) these Bylaws will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of these Bylaws and (c) the remaining provisions of these Bylaws will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from these Bylaws.

22.05 Governing Law. These Third Restated and Amended Bylaws shall be governed by and construed in accordance with the laws of the state of Tennessee.

*[Signature Page Follows]*

*[Signature Page to Third Amended and Restated Bylaws of the Whittington Creek  
Homeowner's Association]*

IN WITNESS WHEREOF, we, being all the Directors of the Whittington Creek Homeowner's Association, Incorporated, have hereunto set our hands this the \_\_\_\_ day of \_\_\_\_\_, 2017.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Andy Barre

\_\_\_\_\_  
Larry Elmore

\_\_\_\_\_  
Rockforde (*Rocky*) King

\_\_\_\_\_  
Elaine Ramer

\_\_\_\_\_  
Pete Sowa